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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from York County

Honorable Brian M. Gibbons, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

HAROLD GENE WHITE III,

APPELLANT

APPELLATE CASE NO. 2022-000579

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INDEX

INDEX	i
BENCH TRIAL TRANSCRIPT DATED APRIL 20-21, 2022	1
STATE WAIVES RIGHT TO JURY TRIAL	5
COLLOQUY WITH DEFENDANT	6
DEFENSE MOTION TO SUPPRESS ITEMS OBTAINED AT AMANDA LANE	19
TESTIMONY	
TRISTA BAIRD	
Direct Examination by Ms. Joyner	23
Cross-Examination by Mr. Wellborn	32
CONTINUED DEFENSE MOTION TO SUPPRESS ITEMS OBTAINED AT AMANDA LANE BY MR. WELLBORN	50
RESPONSE BY MS. JOYNER.....	63
COURT’S RULING DENYING DEFENSE MOTION TO SUPPRESS	70
CONTINUED DEFENSE MOTION TO SUPPRESS ITEMS OBTAINED AT AMANDA LANE BY MR. WELLBORN	70
RESPONSE BY MS. JOYNER.....	71
COURT’S RULING DENYING DEFENSE MOTION TO SUPPRESS	71
OPENING STATEMENT BY MS. JOYNER.....	73
DEFENSE WAIVER OF OPENING STATEMENT BY MR. WELLBORN.....	73
TESTIMONY	
CHARITY CHAPPELERA	
Direct Examination by Ms. Joyner	73
MELISSA WALLACE	
Direct Examination by Ms. Joyner	79
Cross-Examination by Mr. Wellborn	105

DOUGLAS ROBINSON	
Direct Examination by Ms. Joyner	109
Cross-Examination by Mr. Wellborn	126
DORIS YARBOROUGH	
Direct Examination by Ms. Joyner	129
STIPULATION AS TO CHAIN OF CUSTODY	130
TESTIMONY	
DANIELLE GATTI	
Direct Examination by Mr. Porter	131
Cross-Examination by Mr. Wellborn	137
Continued Direct Examination by Mr. Porter	141
DEFENSE MOTION TO SUPPRESS TEXT MESSAGES OBTAINED FROM PHONES OBTAINED AT AMANDA LANE BY MR. WELLBORN.....	145
RESPONSE BY MR. PORTER	146
COURT’S RULING DENYING DEFENSE MOTION TO SUPPRESS	151
DEFENSE MOTION TO EXCLUDE TEXT MESSAGE COMMUNICATIONS	152
COURT DEFERS RULING	154
TESTIMONY	
DANIELLE GATTI	
Continued Direct Examination by Mr. Porter	156
Cross-Examination by Mr. Wellborn	174
Redirect Examination by Mr. Porter	203
CONTINUED DEFENSE MOTION TO EXCLUDE TEXT MESSAGE COMMUNICATIONS	206
RESPONSE BY MR. PORTER	217
RESPONSE BY MR. WELLBORN.....	223
CONTINUED RESPONSE BY MR. PORTER.....	231
COURT’S RULING DENYING DEFENSE MOTION TO EXCLUDE TEXT MESSAGE COMMUNICATIONS	232

STIPULATION AS TO THE AUTHENTICITY OF CELLULAR PHONE REPORTS	234

TESTIMONY

JASON WELLS	
Direct Examination by Ms. Joyner	239
Cross-Examination by Mr. Wellborn	255
STATE RESTS	258
DEFENSE MOTION FOR DIRECTED VERDICT	258
RESPONSE BY MS. JOYNER.....	259
RESPONSE BY MR. WELLBORN.....	261
CONTINUED RESPONSE BY MS. JOYNER	263
COURT’S RULING DENYING MOTION FOR DIRECTED VERDICT	265
DEFENSE RESTS	265
COLLOQUY WITH DEFENDANT	265
CLOSING ARGUMENT BY MS. JOYNER.....	268
CLOSING ARGUMENT BY MR. WELLBORN.....	273
ARGUMENT IN REPLY BY MR. PORTER.....	277
COURT DEFERS VERDICT.....	281
BENCH TRIAL TRANSCRIPT DATED APRIL 28, 2022.....	283
VERDICT	284
SENTENCING	292
COURT’S EXHIBIT #1 (SEARCH WARRANT).....	297
COURT’S EXHIBIT #2 (SEARCH WARRANT).....	303
COURT’S EXHIBIT #3 (BENCH TRIAL TRANSCRIPT DATED MARCH 12-13, 2019)	308
STATE’S EXHIBIT #34 (LAB REPORT).....	492

STATE’S EXHIBIT #35 (LAB REPORT).....	494
INDICTMENTS	498
SENTENCE SHEETS	506
CERTIFICATE OF COUNSEL	514

[STATE’S EXHIBITS #36-37 (CDs) ARE ON FILE WITH THIS COURT]

1 STATE OF SOUTH CAROLINA

2 -----x

3 STATE,

4 Plaintiff,

Case Numbers

5 2018_GS-46-03874

6 -against-

2018-GS-46-03876

7 HAROLD GENE WHITE, III,

2018-GS-46-07327

8 2022-GS-46-00076

9 Defendant.

10 -----x

11 April 20-21, 2022

12 York, S.C.

13

14 B E F O R E:

15 HONORABLE BRIAN GIBBONS

16

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

18 ERIN JOYNER AND Daniel Porter,

19 Attorneys for the State

20

21 CHRISTOPHER WELLBORN,

22 Attorney for the Defendant

23

24 Aileen Butler

25 Official Court Reporter

	<u>I N D E X</u>				
	<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
1	Trista Baird				
2	Ms. Joyner	24			
3	Mr. Wellborn		33		
4	Charity Cantrell				
5	Ms. Joyner	74			
6	Melissa Wallace				
7	Ms. Joyner	80			
8	Mr. Wellborn		106		
9	Doug Robinson				
10	Ms. Joyner	109			
11	Mr. Wellborn		126		
12	Doris Yarborough				
13	Ms. Joyner	130			
14	Dana Gatti				
15	Mr. Porter	132,142		205	
16	Mr. Wellborn		134, 175		
17	Jason Wells				
18	Ms. Joyner	240			
19	Mr. Wellborn		256		
20					
21					
22					
23					
24					
25					

<u>E X H I B I T S</u>				
	<u>NO.</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>EVD.</u>
1				
2				
3				
4	State's 1	Drugs	Premarked	252
5	State's 2	Marijuana	Premarked	249
6	State's 3	Photo	Premarked	83
7	State's 4A,B	Photo	Premarked	84
8	State's 5A,B	Photo	Premarked	
9	State's 6A	Photo	Premarked	86
10	State's 6D	Photo	Premarked	87
11	State's 10	Photo	Premarked	
12	State's 11B	Photo	Premarked	89
13	State's 19E-F	Photos	Premarked	94
14	State's 21	Photo	Premarked	94
15	State's 22A,B	Photos	Premarked	94
16	State's 23A-C	Photos	Premarked	94
17	State's 24A,B	Photos	Premarked	94
18	State's 25A-C	Photos	Premarked	94
19	State's 26	Photo	Premarked	94
20	State's 27	Photo	Premarked	94
21	State's 28	Photo	Premarked	94
22	State's 29	Photo	Premarked	94
23	State's 30	Photo	Premarked	94
24	State's 31	Photo	Premarked	94
25	State's 32	Photo	Premarked	94

1	<u>E X H I B I T S</u>			
2				
3	<u>NO.</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>EVD.</u>
4	State's 33	Scale	premarked	246
5	State's 34	Report	premarked	255
6	State's 35	Report	premarked	255
7	State's 36	CD	premarked	237
8	State's 37	CD	premarked	235
9	State's 38	phone	premarked	255
10				
11	Court's 1	Search warrant		31
12	Court's 2	Search warrant		32
13	Court's 3	Transcript		6
14				
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1 THE COURT: Madam solicitor will you introduce the
2 case.

3 MS. JOYNER: Thank you, Your Honor. The State of
4 of South Carolina versus Harold White. The bench
5 trial today on four Indictments, 2018-GS-46-7327 for
6 possession with intent to distribute oxycodone,
7 2018-GS-46-3874 for possession of cocaine,
8 2018-GS-46-3876 for possession with intent to
9 distribute marijuana and 2022-GS-46-00076 for
10 possession with intent to distribute hydrocodone.

11 Your Honor, Mr. Wellborn has indicated that his
12 client does not wish to enter a plea to those charges
13 and wishes to go forward on a bench trial. So the
14 State is waiving our right to a jury trial on the
15 record as well.

16 If I can hand up a copy of our witness list which
17 I provided to Mr. Wellborn and also what I have marked
18 as Court's Exhibits 3 which I am asking to enter into
19 the record. Mr. Wellborn has looked at the Courts
20 Exhibit 3 which is in that binder. It is a hundred
21 and eighty-four page transcript. I'll give the Court
22 a brief procedural history why we're introducing the
23 transcript.

24 We had previously gone to a bench trial on May 12
25 -- I'm sorry, March 12th and 13th of 2019. There was

1 a mistrial in the case. So there were certain legal
2 arguments which obviously are not binding to the
3 Court. There was testimony that was taken. So we
4 felt that it would be helpful for the Court to have a
5 copy of the transcript as it may become relevant
6 during the testimony of witnesses regarding what was
7 previously stated to the Court.

8 THE COURT: Okay.

9 MS. JOYNER: We ask to enter that as Court's
10 Exhibit 3.

11 (WHEREUPON, Court's Exhibit 3 was received in
12 evidence.)

13 THE COURT: What is Court's Exhibit 1 and 2.

14 MS. JOYNER: Those are going to be our search
15 warrants.

16 THE COURT: Okay. Got it.

17 THE COURT: All right. Mr. Wellborn, is it your
18 understanding your client has waived his right to a
19 jury trial and wishes to proceed via a bench trial?

20 MR. WELLBORN: That is correct, Your Honor.

21 THE COURT: Let me talk to your client about that.
22 Mr. White, do you mind standing up for me sir. Raise
23 your right hand. Do you swear or affirm that the
24 testimony will be the truth, the whole truth and
25 nothing but the truth so help you God?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Thank you, sir, you can be seated.
3 All right. Sir, have you been over your right to a
4 jury trial with your lawyer?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: All right. So you understand that a
7 jury trial is very different from a bench trial. You
8 are still presumed innocent until proven guilty on
9 both types of trials, but with the jury trial the
10 State of South Carolina has to convince 12 jurors,
11 unanimous jurors that you are guilty of the crimes
12 that you have been charged with. They have to prove
13 that by way of what's called beyond a reasonable doubt
14 and all 12 jurors have to be unanimous in any verdict
15 either for you or against you. Do you understand that
16 right?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: All right. And after going over all
19 this with your lawyer, do you wish to waive your right
20 to a jury trial?

21 THE DEFENDANT: Yes.

22 THE COURT: You want to have one judge decide
23 these cases.

24 THE DEFENDANT: Yes, sir.

25 THE COURT: All right. Thank you. Anything else

1 I need to know about the issue of the jury trial Mr.
2 Wellborn.

3 MR. WELLBORN: Not that I'm aware of Your Honor.

4 THE COURT: All right. Thank you.

5 All right, any objection to this transcript from
6 the trial three years ago for the Court's whatever
7 I'll be using it for.

8 MR. WELLBORN: No, sir. I believe you will be
9 using it for reference if it become necessary. I
10 haven't seen the exhibits which were handed to Your
11 Honor, the search warrants. I would like to see
12 those.

13 MS. JOYNER: They haven't been handed in yet.

14 MR. WELLBORN: If they hadn't been handed then I
15 am sure they will be shown to me at the appropriate
16 time.

17 THE COURT: That's right.

18 Before we get started with everything I'll remind
19 everybody I want you to understand why I say this,
20 remember I'm not a jury. Okay. Now, you all
21 understand what I mean by that, the significance of
22 it. Okay. You all can tailor your evidence
23 presentation accordingly. Okay. Certainly I
24 understand if you have an objection to something make
25 the objection and I can deal with it. But as both the

1 fact finder and the judge of the law I'm going to
2 allow both sides leeway to make a full presentation of
3 their case. Okay. And, you know, a lot of things
4 which would otherwise in front of a jury possibly be
5 inadmissible pursuant to the evidentiary rules, you
6 know, typically when I tried things nonjury which I
7 did for a long time when I was in Family Court for
8 eight years. Everything is nonjury there. Been on
9 the Circuit Court now for nine years. I know what's
10 credible and what's not. So even though it may not be
11 technically admissible, I can give it the weight and
12 credibility it deserves. The only reason I'm saying
13 that, I don't need to have the lawyers keep popping up
14 and down objecting to this and that. I understand
15 where we are, okay, and I'll do what I got to do and
16 if something is not credible or not believable we can
17 deal with it that way. But admissibility is kind of
18 different when you're dealing in a bench trial
19 situation. Do you understand solicitor?

20 MS. JOYNER: I understand, Your Honor.

21 THE COURT: Mr. Wellborn?

22 MR. WELLBORN: I do. However I want to just sort
23 of giving the Court respect, so that you understand
24 where I'm going and some clarity, unlike Federal Court
25 as we are aware in South Carolina we do not have

1 conditional guilty pleas. So I'm in a situation where
2 my client wants to protect the record, protect the
3 appellant record if that becomes necessary. So
4 therefore there maybe things that depending on Your
5 Honor's ruling on certain issues I'm still required to
6 register an objection to protect the appellant record.
7 And so what I would do is as a courtesy to the Court I
8 will simply preference any objection with, Your Honor,
9 in order to protect the record, so that you understand
10 why I'm doing it. So I just want to make that clear
11 because I am in a position where I am required to
12 absolutely make sure that the record for appeal, if
13 such appeal becomes necessary, is protected.

14 THE COURT: Not a problem. Not an issue. I've
15 tried many cases with you Mr. Wellborn. Not a
16 problem.

17 MR. WELLBORN: Thank you.

18 THE COURT: All right. Before we start, let's
19 talk about schedule wise, it's now about ten to
20 eleven. I've got a hearing at 1:30 which shouldn't
21 take more than 15 minutes to hear involving a road
22 closure from Lancaster. They wanted to come over
23 here. So that's fine. We are going to do that. So
24 why don't we run to about 12:15. Okay. And then
25 we'll take lunch recess, recommence about 1:45. Is

1 that okay?

2 MR. WELLBORN: Your Honor, the only thing I would
3 say, I do have a bond hearing scheduled for two
4 o'clock.

5 THE COURT: Okay.

6 MR. WELLBORN: And I would like to make that.

7 THE COURT: Absolutely. I will protect you on
8 that. Is that right next door?

9 MR. WELLBORN: Yes.

10 THE COURT: So we can do start back at 2:15 here.

11 MR. WELLBORN: Perfect. Thank you.

12 THE COURT: Not a problem. More lunch is better.
13 Anything else? And then of course we got all day
14 tomorrow to deal with this and half a day Friday to
15 deal with this if we need it. That will be enough
16 time. I haven't talked to you about it. From a
17 scheduling standpoint they assured me it can be done
18 today and tomorrow. Do you agree with that.

19 MR. WELLBORN: Depending on what happens today we
20 may very well not need tomorrow.

21 THE COURT: Sounds good. We will see what
22 happens. All right. Let me have brief opening
23 statements from you all to kind of give me an idea
24 what we're talking about. Yes, ma'am.

25 MS. JOYNER: Your Honor, before we do that, I

1 think that at a bench trial an opening statement would
2 allow jeopardy to attach and I have a couple of legal
3 issues that I would like to address to the Court
4 before we begin.

5 THE COURT: Okay.

6 MS. JOYNER: Including the search warrant which is
7 a most lengthy one. But we did have a couple of
8 matters that I wanted to briefly put on the record.
9 The first --

10 THE COURT: This are pretrial matters?

11 MS. JOYNER: Yes, sir. The first is regarding a
12 witness name Charlotte Pitts, she's a chain of custody
13 witness. She's not present in the courtroom at this
14 moment. We expect her to be here about 11:30. During
15 the course of preparation we were originally scheduled
16 to go to trial I think it was the end of January and
17 that was continued through no fault of Mr. Wellborn or
18 mine, an issue came to light that Miss Pitts had left
19 SLED and although I have been assured by legal counsel
20 there was absolutely no Giglio file on Miss Pitts
21 another witness made some statements to me that she
22 felt that Miss Pitts had some credibility issues. And
23 so I did provide Mr. Wellborn the termination letter
24 and I just want to make sure that is sufficient for
25 him or if he has any objection or concern about the

1 State moving forward with Miss Pitts that we address
2 that now before jeopardy attaches.

3 MR. WELLBORN: I mean if the State chooses to call
4 Miss Pitts as a witness obviously even if I had a
5 credibility issue with her I couldn't object to her
6 testimony.

7 THE COURT: That's right. You call who you're
8 going to call and if he wants to go into that on cross
9 examination of course to attack her credibility the
10 State can object, but I'll probably hear him out on
11 that.

12 MS. JOYNER: I just want to make sure he is
13 satisfied with our response that he believes we
14 complied with Brady.

15 THE COURT: I see what you are saying. Any Brady
16 issue or discover reviews issue with that witness?

17 MR. WELLBORN: Not that I am aware of. Of course
18 the State would only have complete control of that
19 information.

20 MS. JOYNER: But I can tell I told him is that
21 another witness expressed that he thought that she
22 padded her time card and -- but that was never the
23 subject of investigation. I understand that she was
24 terminated for conduct outside of work. Not related
25 to her work.

1 MR. WELLBORN: And to be completely candid I have
2 not been provided with what that alleged conduct was.
3 So I don't know if that would go to credibility or
4 not. But I'm assuming if the State -- if they intend
5 to fully comply with Brady and Giglio they would
6 provide that information.

7 THE COURT: All right.

8 MR. WELLBORN: I have not today been provided with
9 that information.

10 THE COURT: Okay.

11 MS. JOYNER: I provided him the termination
12 letter.

13 THE COURT: Right.

14 MS. JOYNER: I don't know all of the specifics of
15 the termination. I was told it was conduct outside
16 the office of a personal nature. So I believe that we
17 are in compliance with it. I don't know if he has
18 reached out to legal counsel at SLED to inquire
19 further.

20 THE COURT: Who is your other witness who says
21 they have a problem with that witness?

22 MS. JOYNER: Miss Yarborough.

23 THE COURT: All right. That's Doris Yarborough?

24 MS. JOYNER: Yes, sir.

25 THE COURT: So you have two former SLED agents or

1 SLED people testifying in this case. One of them says
2 she has a problem with the other one.

3 MS. JOYNER: Well, yes.

4 THE COURT: Says she's not credible. Okay.

5 MR. WELLBORN: So here's I guess in a nutshell.
6 Saying someone has been fired for an issue outside of
7 the work which may or may not go to credibility is not
8 good enough for this reason. That was resolved by
9 Kiles verses Whitley in '95 which was a U.S. Supreme
10 Court opinion, which has said it is the prosecutor's
11 duty to seek and provide anything that goes to that
12 would impeach or use to impeach to the defendant.
13 It's not the defendant's responsibility to hope that
14 it gets provided or contact the state agencies
15 involved. It is the prosecutor's duty. It's very
16 simple task. All the prosecutor has to do is find out
17 what was the actual reason for termination, not just
18 bland, she was terminated for personal reasons or
19 reasons outside of work. Because the prosecutor has
20 indicated that it potentially goes to credibility it
21 is an issue. So if this witness is going to testify
22 and I am going to be able to cross examine her in
23 compliance with the Sixth Amendment. Kiles versus
24 Whitley, et al, requires the prosecutor to simply find
25 out what the reason was and provide it. That can be

1 done in camera with Court presence so it doesn't
2 embarrass anybody publically. The prosecutor can let
3 me know. I've been doing this a long enough to know
4 if it doesn't go to credibility I am not going to
5 inquire about it. I'm not here to embarrass anybody.
6 But the prosecution does have a duty to inquire and to
7 provide the information beyond simply she was let go
8 for reasons unrelated to work.

9 If it goes to credibility those reasons might be
10 hypothetically -- and I'm not suggesting this is it
11 -- might be a shoplifting charge which would go
12 directly to credibility. It might go to tax fraud.
13 It could be for all kinds of reasons.

14 THE COURT: Any crimes of dishonesty or false
15 statement.

16 MR. WELLBORN: Correct.

17 THE COURT: I agree with Mr. Wellborn. Just find
18 out why she was fired. As soon as she gets here talk
19 to her. Find out why she was fired. Tell Mr.
20 Wellborn what she says and then if you all want to
21 have a further hearing we can deal with it. And if
22 she says I don't want to tell you that, well, you say
23 the judge says you got to tell me that.

24 MS. JOYNER: All right.

25 THE COURT: And then if she don't believe you she

1 can walk in here and I'll say you got to tell her.

2 All right. What else?

3 MS. JOYNER: All right, we have a motion to allow
4 the testimony of Dalton Taylor through the virtual
5 courtroom.

6 THE COURT: That's the cop with the Covid?

7 MS. JOYNER: Yes, sir.

8 THE COURT: Okay.

9 MR. WELLBORN: I have no objection to that.

10 THE COURT: All right. We can do that. Now to do
11 that here everybody has got to mute so there is no
12 feedback. You all are familiar with that. I don't
13 how it works. I guess mine will be the only one with
14 volume, is that how it works? We have done it before.
15 We're not suppose to be the hybrid stuff. That's what
16 the chief justice has told us. You know, first of all
17 the virtual court I don't know how much longer it's
18 going to happen, but we're discouraged from doing
19 hybrid except in situations obviously like this. So I
20 typically don't like to do the hybrid because of all
21 the feedback issues. We will try to make it work.

22 What else?

23 MS. JOYNER: Okay. We also previously agreed that
24 Detective Timothy Brooks Felmet will testify on the
25 computer issue.

1 I want to make sure Mr. Wellborn still has no
2 objection to that.

3 THE COURT: Who is that one?

4 MS. JOYNER: He is our computer guy, Timothy
5 Brooks Felmet from Rock Hill Police Department.

6 THE COURT: I see it. No objection to that
7 testimony?

8 MR. WELLBORN: No, sir.

9 THE COURT: Okay. All right.

10 MS. JOYNER: Just another note, Your Honor, and
11 just make sure there is no motion Mr. Wellborn has
12 related to this, this case there was marijuana that
13 was seized during execution of the search warrant on
14 April 17th of 2017 which was prior to the effective
15 date of the industrial hemp act which changed the way
16 that marijuana seized past the effective date of that
17 act was analyzed. So this would be analyzed the way
18 that it was prior to the industrial hemp act and I
19 believe that is the appropriate in this case but I
20 want to make sure Mr. Wellborn does not have a
21 different view that would be raised after jeopardy
22 attached.

23 THE COURT: That's on the marijuana charge?

24 MS. JOYNER: Yes, sir.

25 THE COURT: Okay.

1 MR. WELLBORN: Well --

2 THE COURT: I still have to judge whether or not
3 it was marijuana or not.

4 MR. WELLBORN: That's correct, and I think ex post
5 issues will come into play on that.

6 THE COURT: I haven't heard what the evidence is.
7 I have to make a determination whether or not the
8 State has met its burden to prove that the substance
9 was marijuana or not. All right. What else?

10 MS. JOYNER: I think we just at this point have
11 the search warrant issue.

12 THE COURT: Okay.

13 (WHEREUPON, Court's 1 and Court's 2 was marked for
14 ID)

15 MS. JOYNER: We are ready to call our witness for
16 the search warrant at this time.

17 MR. WELLBORN: Well, before we go there, so we're
18 clear. This is going to be the first pretrial motion
19 on behalf of the defendant which is to suppress any
20 and all items that were obtained as a result of the
21 search warrant in this particular matter.
22 Specifically, the property was located at [REDACTED] Amanda
23 Lane in Rock Hill. The search warrant was executed on
24 or about April 17th of 2017 at the home of the
25 defendant, Harold White. So we would move to suppress

1 any and all items obtained as a result of that search.

2 THE COURT: Motion to suppress. All right. All
3 right, got it. And the State's response to the motion
4 to suppress is?

5 MS. JOYNER: We oppose the motion. We are
6 prepared to offer the testimony of Detective Baird.

7 THE COURT: Is that the detective who asked for
8 the search warrant?

9 MS. JOYNER: Yes, sir.

10 THE COURT: Search warrant was granted by a
11 Magistrate?

12 MS. JOYNER: One search warrant was granted by
13 Judge Wood who was a Magistrate at the time and one by
14 Tanesha Lonergan with the city.

15 MR. WELLBORN: To be fair, the search warrant that
16 I am seeking or I'm seeking to suppress the results of
17 the one granted by then Judge Stephanie Wood. Judge
18 Wood, by the way, is under subpoena.

19 THE COURT: Okay.

20 MR. WELLBORN: It is my understanding that there
21 will be no testimony that is opposite to the testimony
22 in the last trial in which the executing officer, the
23 officer that drafted the search warrant, the officer
24 that used the search warrant to search the house where
25 she testified under oath that there was no oral

1 supplementation of that search warrant. That is what
2 Judge wood would also testify to if she were brought
3 in court. Now she is currently a solicitor in Union
4 County. She is under subpoena. She accepted service
5 of that subpoena. I have proposed that we stipulate
6 to the fact that there was no oral supplementation or
7 that Judge Wood would testify that there was no oral
8 supplementation.

9 THE COURT: That's what she testified to last
10 time?

11 MR. WELLBORN: She didn't testify last time. She
12 was prepared to testify but it was not necessary to
13 present her because the agent testified that there was
14 no oral supplementation of the warrant.

15 THE COURT: Okay.

16 MR. WELLBORN: So if the State is willing to
17 stipulate to that particular fact then I can excuse
18 Judge Wood from the subpoena. Otherwise we are going
19 to have to do one of two things, or one of three
20 things.

21 Number one, Judge Wood would have to appear.
22 Number two, Judge wood would appear electronically, or
23 number three, we will simply continue the matter until
24 Judge Wood can appear. But I'm hoping none of those
25 will be necessary and we can simply move past this by

1 the stipulation.

2 THE COURT: And the agent who is going to be
3 testifying now he testified at the last hearing?

4 MR. WELLBORN: Yes, sir.

5 THE COURT: That there was no oral supplementation
6 made for the search warrant.

7 MR. WELLBORN: That is correct. That is actually
8 on page 42 of the transcript.

9 THE COURT: Madam solicitor.

10 MS. JOYNER: Yes, we agree there will be no
11 deviation from the testimony.

12 THE COURT: Can you agree then that Judge Wood
13 doesn't need to be called.

14 MS. JOYNER: Yes.

15 THE COURT: The purpose of her being called as a
16 witness would be to establish there was no oral
17 supplementation of the search warrant which she issued
18 and your agent has said that. So that is stipulated?

19 MS. JOYNER: Yes.

20 THE COURT: So it's a stipulated fact then that
21 there was no oral supplementation of the search
22 warrant.

23 MR. WELLBORN: Thank you, Your Honor.

24 THE COURT: Okay. Thank you. You can let Judge
25 Wood know -- she's no longer a judge, but let Miss

1 Wood know.

2 MS. JOYNER: I can text her right now Your Honor.

3 THE COURT: All right. Beautiful.

4 MR. WELLBORN: And that will be brilliant since I
5 don't have internet access.

6 THE COURT: All right. Go ahead.

7 MS. JOYNER: Thank you, Your Honor. The State is
8 going to call Trista Baird to the stand.

9 THE COURT: All right.

10 TRISTA BAIRD, called as a witness, having been
11 duly sworn by the Court, was examined and testified as
12 follows:

13 DIRECT EXAMINATION

14 BY MS. JOYNER:

15 Q Can you please state your full name for the record?

16 A Trista Baird.

17 Q And are you a special agent with SLED?

18 A I am.

19 Q And is SLED's name for the South Carolina Law
20 Enforcement Division?

21 A That's right.

22 Q How long have you been with SLED?

23 A Since May of 2013.

24 Q And in what capacity have you work with SLED?

25 A I've been in the special victims unit the whole time.

1 I was an agent in the child fatality unit until 2019. I was
2 promoted to lieutenant and then at the beginning of this year I
3 was promoted to captain over the special victims unit.

4 Q And prior to moving over to SLED what was your law
5 enforcement experience, if any?

6 A I started at Rock Hill Police Department in 2017 and
7 stayed there until I came to SLED in May of 2013.

8 Q Now, so going back to April 17th of 2017 were you
9 employed with SLED then?

10 A I was.

11 Q And on that day were you involved -- were you involved
12 in obtaining a search warrant for the residence of 1635 Amanda
13 Lane?

14 A Yes.

15 Q And is that address within Rock Hill?

16 A It is.

17 Q It is within York County?

18 A It is.

19 Q Please tell the judge a little bit about the
20 circumstances. How you had become involved in getting involved
21 the search warrants in that case?

22 A So again, I was an agent in child fatality unit and I
23 were investigating the death of a nine month old and this was part
24 of that investigation.

25 Q And was that the death of Harold White's nine month old

1 daughter?

2 A That's right.

3 Q I am going to hand up to you first what has been marked
4 as a Court's Exhibit 1. Have you ever seen that Court Exhibit's
5 1 before?

6 A I have.

7 Q And what do you recognize that exhibit as?

8 A It is the search warrant that got for [REDACTED] Amanda Lane.

9 Q And when did you obtain that search warrant?

10 A April 17th of 2017.

11 Q Okay. And did you obtain that search warrant from
12 Judge Stephanie Wood?

13 A Yes.

14 Q Was she then a Magistrate?

15 A She was.

16 Q And did you prepare the affidavit portion of that
17 search warrant?

18 A I did.

19 Q And did you present this affidavit to Judge Wood in
20 support of your search warrant, the request for your search
21 warrant?

22 A Yes, ma'am.

23 Q Was there any additional testimony taken as to the
24 search warrant?

25 A No, ma'am.

1 Q Okay. Could you please read the affidavit that is
2 contained in Court's Exhibit One?

3 A "I, Special Agent Trista Baird, being duly sworn state
4 the following: Special Agent Trista Baird is employed with the
5 South Carolina Law Enforcement Division, SLED, and is assigned
6 to the special victims unit, department of child fatalities.
7 S/A Baird has worked in law enforcement since 2007. S/A Baird
8 has been employed by SLED since May of 2013. Prior to working
9 with SLED, S/A Baird was employed with the Rock Hill Police
10 Department as a detective assigned to investigate child and
11 vulnerable adult abuse.

12 On March 29, 2017, at approximately 5:56 pm, Piedmont
13 Medical Center EM and Rock Hill Police Department (RHPD) were
14 dispatched to [REDACTED] Simpson Street in the city limits of Rock
15 Hill, South Carolina, in reference to a nine-month-old female,
16 [REDACTED] child [REDACTED], DOB [REDACTED]/2016; DOD 3/29/2017 unconscious and not
17 breathing. EMS arrived on scene and found [REDACTED] child [REDACTED] supine
18 on the living room floor with a female performing chest
19 compressions. She was unresponsive, not breathing, had no
20 pulse, and had vomit coming from her mouth. She was transported
21 to Piedmont Medical Center where she was pronounced deceased.
22 York County Coroner's Office, RHPD, and SLED responded to the
23 hospital.

24 According to [REDACTED] child [REDACTED]'s father, Harold Gene White III,
25 his mother, Yolanda Harris Adams picked up his twins, [REDACTED] child [REDACTED]

1 [REDACTED] and [child 2] from his residence, [REDACTED] Amanda Lane,
2 Rock Hill, South Carolina, at approximately 11 o'clock am or 12
3 o'clock pm on March the 29, 2017. Adams took the twins to her
4 residence at [REDACTED] Simpson Street. Later in the afternoon, he
5 went to Adams's house and found [child] asleep in Adams's bed.
6 Harper White was playing with Adams's friend, Willette Woodard
7 Beard in the living room. Adams was not home. He then left the
8 residence.

9 According to Adams, her neighbor, Jasmine Latasha Rawlinson
10 picked up the twins from Harold White and brought them to her
11 house around lunchtime. Adams feed the twins each a bottle with
12 formula mixed with infant cereal. Then the three of them laid
13 down on her bed and went to sleep. Adams and [child 2] both woke
14 up, got out of bed, and left [child] sleeping in the bed.
15 Adams got her children ready for their doctor's appointment and
16 asked Amanda Jo Pettry, who resides at her residence and Beard
17 to watch [child] and [child 2] while she took her
18 children to the doctor. When she home, Adams was told that
19 [child] was still asleep and went to check on her. He
20 found her unresponsive and not breathing. Adams brought [child]
21 [REDACTED] to Julisa White, who had just arrived on the scene at some
22 point prior to Adams' arrival. Amanda Pettry began CPR in the
23 living room. Rawlinson, who was also on scene called 911.
24 Darrell Rodney Ross, who resides at the residence, was asleep in
25 one of the bedrooms for most of the day.

1 An autopsy was completed on March 30, 2017. The toxicology
2 report from NMS Labs revealed that [child] had 17 ng/ml of
3 Fentanyl and 5.2 ng/ml of Norfentanyl in her blood at the time
4 of her death.

5 It is the belief of this affiant that informed gained from
6 this search is necessary to assist investigator in determining
7 the cause and manner of death of [child], the individuals
8 who were present at the time and leading up to her death and the
9 timeline of events surrounding her death."

10 Q Now, kind of going back through the information that's
11 in the affidavit, was all this information correct according to
12 your investigation?

13 A At the time of the affidavit, yes.

14 Q And how long had you been involved in the
15 investigation?

16 A I responded on March 29, 2017 when the call came out of
17 the of the child fatality.

18 Q Now, going to the description of the premises that was
19 to be searched. Can you please move to that page and read
20 through the description of the premises that was -- that you
21 tended to search under the search warrant.

22 A "The property to be searched is a residence located at
23 [redacted] Amanda Lane in the city limits of Rock Hill and in the
24 County of York, South Carolina. The residence is located in the
25 Taylor Oaks Subdivision and has light brown siding with dark

1 green shutters and a dark green front door. To locate the
2 residence, turn on to Ashridge Road from SC 901/Mt. Holly Road.
3 Turn left onto Bloomsbury Drive and then turn left onto Amanda
4 Lane. The residence will be on the left side of the road on
5 Amanda Lane. The search is to include all rooms, attics,
6 basements, locked or unlocked containers, outbuildings, storage
7 sheds, tents, trash areas and trash containers, attached or
8 unattached. Any vehicles located on the premise including
9 trunks and closed or locked containers therein."

10 Q And so the premises to be search, [REDACTED] Amanda Lane, is
11 that the same address that is indicated in your affidavit that
12 you learned from the investigation that Juliana White had been
13 on the morning of her death prior to going to Simpson Street?

14 A Yes, ma'am.

15 Q Now, would you please read the description of the
16 property to be searched? The description of property.

17 A "Any and all evidence related to the death of child [REDACTED]
18 [REDACTED], DOB [REDACTED]/2016, DOD 3/29/2017 to include Fentanyl, a DEA
19 Schedule II synthetic morphine substitute anesthetic/analgesic,
20 any substances suspected to be Fentanyl; state issued
21 identification card and/or driver's license of any and all
22 individual at the residence; any and all cellphones belonging to
23 Yolanda Harris Adams, DOB [REDACTED]/1971, Darrell Rodney Ross, DOB
24 [REDACTED]/1951, Harold Gene White III, DOB [REDACTED]/1990, Jasmine Latasha
25 Rawlinson, DOB [REDACTED]/1991, Julisa Gabrielle White, DOB [REDACTED]/1990,

1 Williette Woodard Beard, DOB [REDACTED]/1953, and Amanda Jo Pettrey,
2 DOB [REDACTED]/1082.

3 Q The names that are listed in this description of
4 property, are those the names of the adults that are listed in
5 your affidavit as having had contact with the deceased child the
6 day of her death?

7 A That's right.

8 MS. JOYNER: Your Honor, we moved Court'S Exhibit
9 1 into the record.

10 THE COURT: Any objection to that coming in as
11 Court's Exhibit 1 for the purpose of this hearing?

12 MR. WELLBORN: I haven't seen what Court's Exhibit
13 1 is.

14 MS. JOYNER: I showed it to you prior to --

15 MR. WELLBORN: That's the search warrant?

16 THE COURT: The search warrant.

17 MR. WELLBORN: Thank you. No objection.

18 THE COURT: Without objection. Introduced as
19 Courts Exhibit 1 for the purpose of this suppression
20 hearing.

21 (WHEREUPON, Court's Exhibit 1 was received in
22 evidence.)

23 Q And just briefly I will show you what has been marked
24 as Court's Exhibit 2.

25 THE COURT: Madam bailiff, can you hand me Court's

1 Exhibit 1. (Handed.) Thank you.

2 Q Do you recognize Courts Exhibit 2?

3 A I do.

4 Q And what is Court's Exhibit 2?

5 A It is my search warrant for the extraction of
6 cellphones.

7 Q Was that the extraction of cell hones that was seized
8 at [REDACTED] Amanda Lane?

9 A That's right.

10 Q And what day did you obtain that search warrant?

11 A April 25, 2017.

12 Q And the affidavit section, does it contain identical
13 language of what you already read to the Court regarding the
14 first search warrant?

15 A That's right, with the exception of the sentence with
16 the cellphones in the last paragraph.

17 MS. JOYNER: Your Honor, we move Court's Exhibit 2
18 into evidence as well, or into the record

19 THE COURT: Any objection?

20 MR. WELLBORN: No objection.

21 THE COURT: Without objection for the purpose of
22 this suppression hearing.

23 (WHEREUPON, Court's Exhibit 2 was received in
24 evidence.)

25 MS. JOYNER: I don't have any other questions for

1 the Investigator Baird at this time.

2 THE COURT: All right, your witness Mr. Wellborn.

3 MR. WELLBORN: Thank you, Your Honor. I have a
4 fairly extensive cross examination. Can we have just
5 a second to use the bathroom.

6 THE COURT: Good idea. Let's take a brief recess.

7 (WHEREUPON, there was a brief recess.)

8 CROSS EXAMINATION

9 BY MR. WELLBORN:

10 Q Good morning.

11 A Morning.

12 Q So I will go over some things that you testified about.
13 I will ask a couple more questions.

14 MR. WELLBORN: Your Honor, is it already if I
15 stand at counsel table?

16 THE COURT: That's fine.

17 Q I kind of want to go through the timeline with you just
18 initially. March 29th was the date that Yolanda Adams
19 supposedly picked up [child], correct, at Amanda Lane?

20 A Right. There was some discrepancy in that, but that's
21 the correct date.

22 Q Yeah, I noticed that there were two versions of that
23 that were listed in the search warrant. So let's take a moment
24 if we can and explore that. Version number one in the affidavit
25 was that Yolanda Adams picked up both [child] and [child 2] from

1 the White residence at [REDACTED] Amanda Lane, right?

2 A Yes, sir.

3 Q But it was on March 29th?

4 A That's right.

5 Q 2017. All right. Somewhere between 11 and 12 p.m.?

6 A That's right.

7 Q All right. And according to Yolanda Adams it was
8 actually Jasmine Rawlinson that picked up the twins and brought
9 them to her house?

10 A Yes, sir, correct.

11 Q But the same day at approximately the same time?

12 A That's right.

13 Q Okay. All right. Now, the time that EMS was notified
14 was almost six o'clock, 5:56 p.m., correct?

15 A Yes, sir.

16 Q So somewhere six and seven hours later after the time
17 they were picked up?

18 A Yes, sir.

19 Q Where had [REDACTED] child [REDACTED] been prior to that? Do you
20 have knowledge of where she had been? Had she been anywhere
21 else before she was picked up?

22 A Just at Amanda Lane and then Simpson Street?

23 Q How do you know that?

24 A I know that Mr. White said that and maybe -- I don't
25 remember.

1 Q That's not in the affidavit. That's why I am asking.

2 A I didn't know. All I knew at the time is what is here.

3 Q Okay so you knew was she had been picked up some time
4 between 11 and 12?

5 A Right.

6 Q But you didn't know where she been prior to that,
7 correct?

8 A Just at Amanda Lane, no. Other than that, no, sir.

9 Q So you don't know whether she had gone out anywhere
10 that morning; nine, ten, eight, any time before she was picked
11 up?

12 A I don't think I knew at the time.

13 Q Okay. Now at the time that you drafted the affidavit
14 do you know who she'd been with prior to being picked up and I
15 just don't mean Mr. White, but anybody else other than Mr.
16 White; any school friends, any neighbors, any younger kids in
17 the neighborhood, anything like that?

18 A Just her siblings. She is only nine months old.

19 Q But again, since you don't know where she'd been, you
20 don't know who else had had been around her that day, correct,
21 before she was picked up?

22 A I don't believe I knew at the time.

23 Q All right. All right. Fair enough. So what about the
24 day before, do you who had been around her the day before?

25 A I don't remember.

1 Q Where had Amanda Jo Pettrey been prior to picking up
2 Juliana White if in fact she did pick up [child]?

3 A Amanda didn't pick up [child].

4 Q Well, excuse me. I'm sorry. Miss Rawlinson?

5 A That was a neighbor so I don't know. I just assume at
6 her house.

7 Q All right. You assume her house, but you don't know
8 where she been?

9 A Right, and I wasn't sure who picked up the twins.

10 Q Right. And if Yolanda Adams picked up [child]
11 did you know where Yolanda Adams had been prior to 11 o'clock or
12 12 o'clock?

13 A I don't remember.

14 Q Or where she had been prior to that?

15 A I don't remember.

16 Q Okay. All right. What was [child] wearing at
17 the time that she was picked up?

18 A I don't remember.

19 Q And if she was wearing shirt or pants or a dress or
20 whatever she was wearing, do you know how many days she had worn
21 that, or who had touched that?

22 A No, sir.

23 Q Okay. All right. So, one thing that nobody disputes
24 is that some time around lunchtime whether it was 11 or 12 --
25 oh, by the way, was she taken straight to Simpson Street after

1 being pick up at Amanda Lane or did somebody stop on the way, do
2 you know?

3 A We were told straight there.

4 Q All right. Fair enough. And at the time that she
5 arrived, do you know which room she was placed in at Simpson
6 Street?

7 A I don't know if I knew that information before the
8 search warrant or after, but I do know what I was told.

9 Q All right, I am just dealing with the affidavit. At
10 the time that you asked for the search warrant did you have that
11 information which room she went into initially?

12 A Again, I know which room but I don't know if I knew
13 that at the time of the search warrant or after.

14 Q Fair enough. At the time of the search warrant, do you
15 know if the room that she went into initially had any toys, any
16 stuff animals, anything that she was given?

17 A Again, I know that -- I know what she did when she got
18 there but I don't know if I knew that before or the affidavit
19 or after.

20 Q And I appreciate your candor on that and that is
21 important because we're just talking to what you knew at the
22 affidavit?

23 A Right, and I don't recall.

24 Q Because the affidavit doesn't address any of these
25 details?

1 A No, sir.

2 Q All right. Now, according to the affidavit some time
3 early afternoon Harold White came to the residence at Simpson
4 Street, correct?

5 A Yes, sir.

6 Q And that he found child to be asleep?

7 A Yes, sir.

8 Q Nothing in the affidavit suggests that he woke her up,
9 touched her, played with her, gave her anything or had any
10 physical contact with her?

11 A Right. No, sir.

12 Q He, I guess, at least had some interaction with his
13 son, Harper, correct?

14 A I don't know.

15 Q Bare with me one second. child 2 was playing with
16 Adams' friend, Willette Beard. So child 2 was awake, correct?

17 A That's correct.

18 Q All right. Some time after that, this would have been
19 again some where at least -- well, by the way do we know what
20 time Harold White came by the residence to check on them?

21 A I did not know at the time of the affidavit.

22 Q Okay. All right. So at it is some time prior
23 obviously to six p.m. or just about six p.m. Harold White had
24 been there at the residence?

25 A Right, and had left before she was found unresponsive

1 Q Yes. Now also in the residence at the time that she
2 was found unresponsive was Yolanda Adams, right?

3 A That's right.

4 Q And a Darrell Ross who resided at the residence?

5 A Yes, sir.

6 Q And there also was Amanda Jo Pettrey, correct?

7 A Yes, sir.

8 Q They were all at the residence. Okay. So a month
9 after Juliana White was taken to the hospital and pronounced
10 dead, right? Yes? Do you remember that happened on March 29th?

11 A Not a month later.

12 Q We're getting to that part.

13 A Right, on March much 29th she died, yes, sir.

14 Q So I believe it was on -- not quite a month later, but
15 it was the 15th of April you got a report from MSL labs that
16 Fentanyl had been found in child [REDACTED]'s system?

17 A That's right. The report was faxed to the coroner's
18 office. They called me.

19 Q And that was on the 15th of April?

20 A I don't know the exact date, but I know it was close to
21 when we executed the search warrant.

22 MR. WELLBORN: Will you stipulate it was the 15th
23 of April.

24 MS. JOYNER: That is the date on the report.

25 THE COURT: Okay.

1 MR. WELLBORN: Thank you.

2 Q And in the report there were 17 nanograms of Fentanyl
3 and 5.2 nanograms Norfentanyl, correct?

4 A Yes, sir.

5 Q That's what's in your warrant. Thank you. I will take
6 a moment to talk about that. A nanogram is one billion of a
7 gram, correct?

8 A I don't know.

9 Q Can we take judicial notice that nanogram is one
10 billionth of a gram. It's basic math.

11 MS. JOYNER: We will stipulate to that Your Honor.

12 THE COURT: Okay. So stipulated.

13 Q All right, so a nanogram is one billionth of a gram.
14 All right. Which is a pretty small amount, you would agree?

15 A Yes, sir.

16 Q Okay. Can you show us anything in this room that you
17 can see with your naked eye that would be one billionth of a
18 gram?

19 A I don't know.

20 MR. WELLBORN: Well, may I approach Your Honor?

21 Q Yes. I'm looking around the room. I got a pen. Got
22 cups. We could take maybe -- ah, there's a spec. I don't know
23 if you can see the spec of dust on the side here, would that be
24 about one billion of a gram? Do you think even more than that?

25 A I have no idea.

1 Q But you agree it has got to be a pretty small amount,
2 right?

3 A Right.

4 Q And depending on what the color of this particular
5 nanogram was, it might be not even noticeable to the naked eye
6 unless one was really, really looking for it, correct.

7 A Sure. Again, we're talking concentration of blood so
8 it's a little different, so I don't know the scientifics or the
9 size of this.

10 Q All right. By the way this nanogram of Fentanyl that
11 was found or -- excuse me, I want to be sure I'm clear on this
12 and not misstating anything. Seventeen nanograms, 17, one
13 billionths of a ounce and 5.2, what form were those in before
14 they were ingested by child [REDACTED]?

15 A At the time of the affidavit I did not know.

16 Q All right, so you didn't know whether it was residue,
17 dust, pill form, liquid form? You had no idea what it was?

18 A No, sir. We just knew that she was not prescribed that
19 and should not have ingested that.

20 Q Thank you. I appreciate that. All right. Now, the
21 nanograms or the nanograms involved in this particular case,
22 they could potentially had been present in an automobile, right?

23 A Possibly.

24 Q Okay. They could have been present on a car seat,
25 correct?

1 A Yes, sir.

2 Q They could have been present prior to ingestion at 644
3 Simpson street, right?

4 A Yes, sir.

5 Q Okay. They could have is been on a sofa, yes?

6 A Yes, sir.

7 Q Or a bed?

8 A Yes, sir.

9 Q They could have been on somebody's hand and transferred
10 to a milk bottle. She was given a milk bottle that day,
11 correct?

12 A She was.

13 Q They could have been present on an adult's clothing
14 that she came in contact with?

15 A At the time of the search warrant I did not know the
16 answer to that.

17 Q Well, I am just giving you possibilities. They could
18 have been present on an adult's clothing, correct?

19 A Potentially, yes, sir.

20 Q You don't know where they came from, right? Where
21 those nanograms came from. You don't know what the source was
22 at the time that you drafted this affidavit, you had no idea
23 what the source of those nanograms were?

24 A Right. No, sir, we did not.

25 Q Okay. That gets to it. You also don't know when, at

1 the time you drafted this affidavit, those nanograms were
2 ingested by child ?

3 A We did not know at the time of the warrant, no, sir.

4 Q You don't know whether she ingested them a day earlier,
5 that morning, at Simpson Street, while she was in the car to
6 and from Simpson Street or Amanda Lane. You have no idea,
7 correct?

8 A We did not at the time of the warrant, no, sir.

9 Q All right. Now, in the affidavit -- I am looking at
10 the affidavit. There is nothing in the affidavit that states
11 that this Fentanyl came from Amanda Lane, correct, or had any
12 evidence that the Fentanyl came from Amanda Lane?

13 A We did not know.

14 Q Let me repeat the question so I get an answer. The
15 affidavit says nothing whatsoever or suggests in any way that
16 the Fentanyl came from Amanda Lane, does it? I will make it
17 easy for you. I'll just read it.

18 "It is the belief of this affiant" -- that would be you,
19 correct?

20 A Yes, sir.

21 Q "That the information gained from the search was
22 necessary to assist investigators in determining the cause and
23 manner of death", right?

24 A Yes, sir.

25 Q While the cause of death was the ingestion of Fentanyl,

1 right?

2 A We did not know at the time of this affidavit what the
3 cause was.

4 Q Well, with all due respect, at the time you drafted
5 that affidavit you knew two things. Number one, child
6 had died. You knew that as of March 29th of 2017, right?

7 A That's right.

8 Q You also knew that she had Fentanyl in her system and
9 you also referenced that there had been an autopsy done,
10 correct?

11 A Yes, sir.

12 Q All right. So are you saying at the time you drafted
13 the affidavit you had no idea of how she died or why she died?

14 A We knew she had a large amount of Fentanyl and
15 Norfentanyl. We did not have a finalized autopsy and the
16 pathologist had not been talked to about the toxicology report.

17 Q Fair enough. All right. You also said the affidavit
18 was necessary to show who was present at the time leading up to
19 her death. That was listed in your search warrant, wasn't it?

20 A But it was two different variations of what happened
21 and we weren't sure who was being honest.

22 Q All right. Okay. Fair enough. Fair enough. But the
23 affidavit does not list any basis to suggest that there was
24 Fentanyl at Amanda Lane which was the target of the search
25 warrant, right?

1 A I listed where I knew she had been that day.

2 Q That's not my question. The affidavit does not suggest
3 that there was Fentanyl or would be Fentanyl found at Amanda
4 Lane does it?

5 A Not specifically, no, sir.

6 Q Well, let's try un-specifically because I want to go
7 through it with you. All right.

8 First paragraph after you're Agent Baird and you have lots
9 of training. On March 27th at 5:56 p.m., EMS is dispatched to
10 [REDACTED] Simpson Street, right?

11 A Yes, sir.

12 Q Okay. And then it talks about how Juliana White is
13 unconscious. She's taken to Piedmont Medical Center and she is
14 pronounced deceased, yes?

15 A Yes, sir.

16 Q That paragraph does not mention Fentanyl at all?

17 A No, sir.

18 Q Nor does it mention that there is going to be evidence
19 of any crime found at Amanda Lane, right? I'm looking at that
20 paragraph. Does it mention Amanda Lane at all?

21 A No, sir, not in that paragraph.

22 Q Second paragraph, according to go Juliana White's
23 father Yolanda Adams picked the twins up at his house at Amanda
24 Lane at approximately 10 or 12 -- excuse me, 11 or 12 and took
25 them to her residence at [REDACTED]. Later in the afternoon he went to

1 the house. Found child asleep. child 2 was playing with
2 Adams' friend, Willette Baird. Adams was not home. He, meaning
3 Harold White, left the residence, correct?

4 A Yes, sir.

5 Q That paragraph does not mention Fentanyl?

6 A No, sir.

7 Q Nor does it mention in that paragraph there is any
8 reason to believe that there will be evidence of any crime
9 found at Amanda Lane, correct?

10 A No, sir.

11 Q Next paragraph. According to Adams, her neighbor,
12 Jasmine Rawlinson picked up the twins from Harold White.
13 Brought them to her the house around lunchtime. Fed the twins
14 each a bottle with formula mixed with infant cereal, right?

15 A Yes, sir.

16 Q Then three of them laid down, went to sleep. Adams and
17 child 2 both woke up got out of bed and left child
18 sleeping in the bed. Adams got her children ready for the
19 doctor's appointment. Asked Amanda Jo Pettrey, who resides at
20 the residence to watch child and child 2 while she took her
21 children to the doctor. When she came home Adams was told
22 child was still asleep. She went to check on her, found
23 her unresponsive. She brought child to Julisa White who
24 arrived at the scene some point prior to Adams arrival. Amanda
25 Pettrey started CPR. Called 911. Darrell Rodney Ross was

1 asleep in one of the bedrooms for most of the day.

2 That paragraph does not mention Fentanyl at all, does it?

3 A No, sir.

4 Q Nor does it mention that there is going to be any
5 fruits of any crime or any evidence that a crime was even
6 committed or evidence of a crime would be found at Amanda Lane,
7 does it in that paragraph?

8 A No, sir.

9 Q All right. Next paragraph. An autopsy was performed
10 on March 30, 2017. The toxicology report from NMS Labs revealed
11 the 17 milligrams of Fentanyl was in child in her blood
12 at the time plus 5.2 nanograms of Norfentanyl?

13 A Yes, 17 nanograms.

14 Q Right, 17 nanograms and 5.2 nanograms of Norfentanyl.
15 That paragraph does not mention anything about Amanda Lane
16 whatsoever, does it?

17 A No, sir.

18 Q Okay. Last paragraph. It is the belief of the affiant
19 the information gained from the search is necessary to assist
20 investigators in determining the cause and manner of death which
21 you said you didn't know at the time, right?

22 A Right.

23 Q Okay. Because you didn't have the complete autopsy
24 report?

25 A Right, and again, the pathologist had not been

1 consulted about the toxicology report.

2 Q Okay. Fair enough. And that's where you're going to
3 get the cause and manner of the death is from the autopsy and
4 from the toxicologist and/or the pathologist, right?

5 A Along with the coroner, yes, sir.

6 Q Okay. None of whom reside at Amanda Lane?

7 A No, sir.

8 Q Okay. The individuals who were present at the time
9 leading up to her death and time line of events surrounding her
10 death. But that paragraph does not suggest that there is
11 anything that is potentially criminal that is going to be found
12 at Amanda Lane or that a crime had been committed at Amanda
13 Lane, right?

14 A Well, we knew that the nine month old should not have
15 Fentanyl and had to have ingested in some way.

16 Q Fair enough. But my questions is, does that paragraph
17 suggest that any crime had been committed at Amanda Lane or that
18 a month later, April 16th -- almost a month later after this
19 incident took place -- we're now at April 17th, that you're
20 going to find any evidence of a crime at Amanda Lane? The
21 paragraph does not state anything to that effect, does it?

22 A In totality of everything in the affidavit that is what
23 I was explaining, the nine-month-old should not --

24 Q Well, I understand that's what you were explaining.

25 MS. JOYNER: Can she complete her answers, Your

1 Honor?

2 THE COURT: Yes, let's go ahead.

3 A Again, so we got the toxicology report and got the
4 affidavit and everything scheduled for the search warrant as
5 quickly as we could because at the time of death we did not know
6 anything about the Fentanyl. So as soon as we did we acted on
7 that to try and determine where **child** would have ingested this
8 Fentanyl, but no nine month old should have outside of the
9 orders of the doctor. So we, based the affidavit, went to
10 Amanda Lane with the search warrant because that's the house
11 that she had been to that day but we also did the same thing for
12 Simpson Street.

13 Q And I understand that, but let me go back to my
14 question.

15 A Okay.

16 Q In that last paragraph it does not suggest that there
17 is a reason why you are going to find Fentanyl at Amanda Lane
18 other than the fact that **child** lived there and to your
19 knowledge started her morning out at Amanda Lane, is that
20 correct?

21 A Yes, sir.

22 Q That's all I have on that issue. Thank you.

23 THE COURT: Madam witness, hand me the search
24 warrant please.

25 MS. JOYNER: Your Honor, I have a clean copy that

1 I can hand up to Your Honor.

2 THE COURT: That would be great. That way the
3 witness can keep it. (Handed)

4 Thank you.

5 Q So moving along on the affidavit, there is nothing in
6 the affidavit that suggests that the Fentanyl that was
7 ultimately found in child's system, those nanograms was
8 in fact ingested at Amanda Lane? Nothing at all other than the
9 fact that she just happened to live there, correct?

10 A Right, and came from there.

11 Q And came from there. Started the day, right?

12 A Yes, sir.

13 Q Nothing in your search warrant suggests or in the
14 affidavit suggests that any of the residents of Amanda Lane
15 would have any knowledge or any reason to have any knowledge of
16 Fentanyl, correct?

17 A No, sir.

18 Q All right.

19 MR. WELLBORN: That's all the questions I have.

20 Thank you very much.

21 THE COURT: Thank you, Mr. Wellborn. Any redirect
22 of this witness?

23 MS. JOYNER: We don't have any additional
24 questions for Detective Baird.

25 THE COURT: All right, thank you, ma'am. You may

1 step down.

2 Does the State have any other witness on the
3 motion to suppress?

4 MS. JOYNER: I do not, Your Honor.

5 THE COURT: All right. Let's hear argument first
6 from -- well, first from you Mr. Wellborn and then I
7 will come back to you at the end after the State has a
8 chance to rebut. It's your motion to suppress.

9 MR. WELLBORN: Thank you, Your Honor.

10 I will be referring to multiple cases. I have
11 copied them. I am happy to present to the Court a
12 copy with each one of these cases. I also have a copy
13 for the State.

14 THE COURT: Okay, that will be great if you can
15 hand them up.

16 MR. WELLBORN: Give me one second. I've collated
17 these so I can just hand them to everybody en mass.

18 Your Honor, may I approach?

19 THE COURT: Certainly. All right.

20 MR. WELLBORN: Thank you. Your Honor, it's well
21 settled law that where there is no oral
22 supplementation of a search warrant we are limited or
23 the viewing Court is limited to the four corners of
24 the search warrant, specifically the affidavit to find
25 whether or not probable cause is in fact supported.

1 The constitutional requirements of probable cause are
2 supported under the Fourth Amendment. Coincidentally
3 Article One of the South Carolina Constitution also
4 has a provision that is similar to the Fourth
5 Amendment in terms of what is required,
6 constitutionally. Also, I would point out under South
7 Carolina we have a stronger standard because we have a
8 specific constitutional right to privacy which would
9 include one's home under the South Carolina
10 Constitution. But the case that stands for the four
11 corner's proposition is State versus Alphonso Chaves
12 Thompson. That was decided or filed on February 22,
13 2017.

14 Specifically page four of the the opinion says
15 quote, "In determining whether a search warrant is
16 supported by probable cause, the crucial element is
17 not whether the target of the search is suspected of a
18 crime, but whether it is reasonable to believe that
19 the items to be seized will be found in the place to
20 be searched.

21 Also at the bottom of that paragraph it says,
22 quote, "If no supplemental oral testimony is taken, an
23 issuing judge's probable cause determination is
24 limited to the four corners of the search warrant
25 affidavit." End quote. Citing State versus Kinloch,

1 found at 767 S.E.2nd 153, which is a 2014 opinion. So
2 that would be the first case.

3 There's no question that we don't have oral
4 supplementation. That has been stipulated to by the
5 State. So we are stuck with the affidavit and only
6 the affidavit in this case.

7 Now, the next case that deals with what we're
8 really going to get into in the meat of this, is
9 whether or not we have something beyond mere
10 affirmation of suspicion. Mere affirmation or
11 suspicion is not enough. That was -- that's been the
12 law at least since 1933. Your Honor has a copy of
13 Nathanson verses United States, which is U.S. Supreme
14 Court opinion. It's Nathanson versus United States
15 found at 290 U.S. 41, Supreme Court 11, 78 lawyers
16 edition, 159.

17 In Nathanson on page two of the opinion, bottom
18 paragraph it says, quote, "Here we are dealing with a
19 warrant to search a private dwelling said to have been
20 authorized by the Tariff Act." That was the federal
21 basis for the warrant. "It went beyond a mere
22 affirmation of suspicion and belief without any
23 statement of adequate supporting facts." And on last
24 page it says, "But we think nothing in these statutes
25 indicates" -- and that's the first paragraph of the

1 page three of the opinion. "We think nothing in these
2 statutes indicates that a warrant to search a private
3 dwelling may rest upon mere affirmation of suspicion
4 or belief without disclosure of supporting facts and
5 circumstances."

6 Last paragraph, "Under the Fourth Amendment an
7 officer may not properly issue a warrant to search a
8 private dwelling unless he can find probable cause
9 therefore from facts or circumstances presented to him
10 under oath or affirmation. Mere affirmation or belief
11 or suspicion is not enough. And in that case the U.S.
12 Supreme Court reversed Mr. Nathanson's conviction for
13 that very reason.

14 South Carolina has also addressed this issue in
15 multiple cases. The first case that I am going to
16 address or present, is State versus Smith. That case
17 was decided May 29, 1990 and the cite for that is 392
18 S.E.2nd 182. In that case it's kind of interesting.
19 This case involves an alleged armed robbery and the
20 search warrant affidavit in that case said that
21 approximately on May 12th at 11:45 Reginald Smith went
22 into the Master Inn in Charleston and he robbed the
23 manager at knife point. He had been staying at a Host
24 of American Room 216 since January 1st. Every reason
25 to believe the weapon and clothes used would be

1 located in this room. This information was confirmed
2 in person by Sergeant Sherman.

3 Now, that affidavit has a lot more in it then that
4 affidavit to suggest they're going to find evidence of
5 a crime in a place to be searched, i.e. this hotel
6 room. It alleges first of all Mr. Smith committed the
7 crime. That a crime was in fact committed. That Mr.
8 Smith committed it and they have reason to believe
9 that there evidence of this particular crime is going
10 to be found at this particular place. Our Supreme
11 Court looking at this, reversed or remanded because
12 they cited in the next to last paragraph, "Mere
13 conclusory statements which give the magistrate no
14 basis to make a judgement regarding probable cause are
15 insufficient. His action cannot be a mere
16 ratification of the bare conclusions of others."
17 Citing Illinois versus Gates: "Here, the affidavit
18 sets forth no facts as to why the police believed Mr.
19 Smith robbed the Master Host Inn." Basically they
20 just say he did it. His stuff is going to be in hotel
21 room therefore we want to be able to search it.
22 Again, I would argue that search warrant affidavit has
23 a lot more in it that would give probable cause then
24 our search warrant in this particular case. Smith was
25 followed up by State versus Kelvin Weston. That was

1 decided December 15, 1997. And the cite of that is
2 494 S.E.2nd 801. Once again, this is Justice Toal
3 held that a "Search warrant affidavit which failed to
4 set forth any facts as to why the police believed
5 defendant committed the crime alleged in the affidavit
6 was insufficient to support a finding of probable
7 cause." And that case involved Mr. Weston's car.

8 Now again, that affidavit at least said that they
9 believed that Mr. Weston had committed a crime. Our
10 affidavit does not suggest that Mr. White committed a
11 crime or there's any reason to believe that he
12 committed a crime. Just that something was suspicious
13 and they wanted to check it out. So, looking at this
14 opinion, page three out of five -- if we turn to page
15 three out of five in this opinion, the affidavit in
16 the Weston case said, quote, "There's every reason to
17 believe the weapon and clothes used in the robbery
18 will be located in this room." It's almost a carbon
19 copy of the previous case. "We held that the
20 affidavit was defective because it set forth no facts
21 as to why the police believe Smith" -- that's where
22 they're addressing the Smith case. This is the Weston
23 case. The affidavit failed to set forth any facts as
24 to why police believed Weston committed the Crumlin
25 crime. The first three sentences of the affidavit

1 were mere conclusory statements. While the fourth
2 sentence provided Weston linking him to his car at the
3 time of the incident. That's it. Mere conclusory
4 reviews statements. But again, they're at least
5 conclusory statements. In our case we have no
6 conclusory statements in the affidavit that suggests
7 that Harold White or his wife, A, committed a crime or
8 B, why evidence of such crime would be at Amanda Lane.

9 It's one thing to say the statements are mere
10 conclusory or merely conclusion, it's another thing
11 when you don't even have such statements in the
12 affidavit.

13 The next case in order is 2018 opinion, James
14 Clyde Dill Jr. The cite for that is 816 S.E.2nd 557.
15 Again, this is our Supreme Court reversing Mr. Dill's
16 conviction. Page two of the opinion addresses the
17 affidavit in that particular case. The Laurens County
18 Sheriff's Department has received information in the
19 last 72 hours that at the above location listed an
20 active methamphetamine lab is in operation. A
21 confidential informant working in an undercover
22 capacity with the Laurens County Sheriff's Department
23 was at this location and did see numerous items that
24 were used in manufacturing methamphetamine. Then they
25 go to what the testimony was in the suppression

1 hearing. Sergeant Moody evidently testified that he
2 supplemented his affidavit with oral testimony to the
3 magistrate. We don't have that in this case.

4 Specifically, that the individual who provided the
5 information was reliable and had been used in two
6 prior cases in which arrests had been made. So that
7 was basis for the search warrant evidently in that
8 particular case.

9 Page five, the Court gets to whether they are
10 going to uphold this warrant or not. They did not.
11 That was our Supreme Court, and said, "The task of the
12 issuing Magistrate is to make a practical,
13 common-sense decisions, including veracity and basis
14 of knowledge of persons, that there is a fair
15 probability that contraband or evidence of a crime
16 will be found in a particular place.

17 Next paragraph, citing of course Illinois versus
18 Gates and citing state versus Smith and Weston, which
19 I already presented to Your Honor. Mere conclusory
20 statements which give the magistrate no basis to
21 making a judgement regarding probable cause are
22 insufficient. Once again, I would point out we don't
23 even have such conclusory statements in this case. We
24 have nothing in that affidavit that even rises to the
25 level of conclusory statements which are not enough.

1 The next case in line that I present -- and I
2 apologize, this case actually predates. This is
3 State versus Baccus, John Roosevelt Baccus, 625
4 S.E.2nd 216, decided December 8, 2008, and this again
5 was before our Supreme Court. And Baccus on page five
6 of that opinion the Court says, "This affidavit fails
7 to set forth any facts as to why the police believed
8 the Appellant committed the crime. The language lacks
9 specificity and contains conclusory statements. Given
10 the totality of the circumstances, we conclude the
11 issuing magistrate did not have the substantial basis
12 to find probable cause. The trial court erred in
13 admitting evidence seized pursuant to the search
14 warrant.

15 Again, these are cases especially Baccus and the
16 one that I cited earlier, where not only do we have
17 mere conclusory statements but we don't even have
18 anything that suggests that the person in this case,
19 Mr. White, committed a crime or evidence of such crime
20 if in fact even committed, would be found at Amanda
21 Lane. We don't even have a conclusory statement.

22 The last case I would bring up is the one that was
23 most recently filed by our supreme -- let me just make
24 sure. Yes, by our Supreme Court April 13th of this
25 year. It is a state case involving a lot to do with

1 cellphones and whether or not evidence is admissible
2 and whether or not the cellphone evidence is going to
3 be admissible. What's interesting about this case is
4 -- and these pages are not numbered so what I'm going
5 to do is, it's on page six of the opinion, middle
6 paragraph, last sentence. And I'll wait until Your
7 Honor is there because I know these are not numbered
8 the way it printed out and I apologize.

9 "Probable cause exists for the facts and
10 circumstances within the officer's knowledge, which
11 they had reasonable trustworthy information, are
12 sufficient to blah, blah, blah, warrant a man of
13 reasonable caution of the events is or has been
14 committed. The affidavit attached to this warrant
15 provided the magistrate no facts or circumstances
16 whatsoever, only the conclusory statement that some
17 unnamed person named Warner (phontics) as a suspect
18 based on provided information.

19 The reason -- and then three pages from the end of
20 the opinion before the paragraph that begins chapter
21 -- or part three, Neil versus Biggers hearing. If the
22 trial Court determines the affidavit was not
23 supplemented -- which is the case here -- and thus the
24 warrant lacked probable cause the trial court should
25 also consider whether to apply the exclusionary rule.

1 Well, that case is what they've done, the Supreme
2 Court remanded because the record was devoid as to
3 whether there was any oral supplementation or not. We
4 don't have that problem here because we now know as a
5 matter of -- well, judicial notice and stipulation
6 that there was no oral supplementation. So that's the
7 law that applies. And now we need to really take a
8 look and kind of a deep dive into the search warrant
9 that is at issue in this particular case. Bare with
10 me one second.

11 You heard testimony from Officer Baird regarding
12 the search warrant, regarding the affidavit and no
13 where in this warrant does it allege that Harold White
14 or his wife or anybody at the residence at Amanda Lane
15 committed a crime. No where in that warrant does it
16 allege that. One could take a stab and say, well,
17 it's possibly they might have committed one and if we
18 look, we might find such evidence. But that's not
19 even there. There is not even a conclusionary
20 statement that says a crime was committed. All it
21 says that Juliana White died almost a month earlier.
22 And that later there was a lab report and there was
23 Fentanyl found in her system. The officer had
24 testified under oath that at the time she sought this
25 affidavit she did not know the cause of death, nor did

1 she allege such cause of death in the affidavit. Nor
2 is there anything to suggest in the search warrant
3 that there is going to be any fruits of a crime found
4 at Amanda Lane. Had they said that, if the officer
5 suspects that we will find Fentanyl at Amanda Lane
6 that would have been conclusory. That would fallen
7 right in line with all these cases that I cited, but
8 the officer didn't even put that in there. It's
9 completely devoid. All that's in there is, we think
10 that if we get this search warrant it will help us in
11 determining the cause and manner of death of Juliana
12 White. Officer Baird testified under oath that
13 wouldn't have come from the search warrant anyway.
14 That would come from a later toxicology or autopsy
15 report from the pathologist which they were awaiting.
16 So that part simply is most charitably put is
17 incorrect. It will also determine individuals who are
18 present at the time and leading up to child's
19 death. That doesn't suggest that any of these
20 individuals committed a crime or why searching the
21 house is going to do that. It doesn't suggest that.
22 Even if it did it would be conclusory at best. And
23 the timeline of events surrounding her death. A
24 search warrant isn't enough. It isn't enough if you
25 want a search warrant to say we just like to know the

1 timeline of where you were that day, therefore we want
2 to search your house. You have to at least allege
3 that a crime has been committed and then you have to
4 go further according to our law, not only the U.S.
5 Supreme Court but all the South Carolina Supreme Court
6 cases, you have to go through why you think you are
7 going to find evidence of a crime or fruits of a crime
8 at an a particular location. This warrant is
9 completely devoid of all of that.

10 Therefore, under our law, not only under the
11 constitution and the Fourth Amendment provision in our
12 constitution, but also under our enhanced right to
13 privacy, but also under our case law. This warrant is
14 on its face is invalid, and so I'm seeking to suppress
15 any and all fruits that were gathered as a result of
16 this search warrant that was issued on 17th of April
17 2017 for the address of my client which was that
18 address on Amanda Lane.

19 THE COURT: Including subsequent search warrant,
20 Court Exhibit 2.

21 MR. WELLBORN: Yes, because the subsequent search
22 warrant would be a fruit of the poisonous tree.

23 THE COURT: Anything?

24 MR. WELLBORN: That's correct.

25 THE COURT: Anything that comes in after that?

1 MR. WELLBORN: That's correct.

2 THE COURT: Madam solicitor, what is your brief
3 legal response to that.

4 MS. JOYNER: Thank you, Your Honor. I will hand
5 up to the Court and to Mr. Wellborn the case of State
6 versus Fletcher, 363 S.C. 221. This is a South
7 Carolina Court of Appeals decision. It does have
8 negative treatment on it, Your Honor. It was
9 overturned on separate issue, but the search warrant
10 portion was not implicated by that reversal. I think
11 that State versus Fletcher is as close --

12 THE COURT: Turn your microphone on.

13 MS. JOYNER: State versus Fletcher is as close a
14 factual scenario as we can get in search warrant cases
15 to our case. And I just want to briefly go through
16 those facts. I will draw some parallels to our case.

17 State versus Fletcher was a homicide by child
18 abuse case. Factually on September 21st of 2000 at
19 1:15 p.m. a nine month old child is brought into the
20 ER in full cardiopulmonary arrest. He is placed on a
21 ventilator. He's medicated to maintain his blood
22 pressure and they repetitively attempt to resuscitate
23 him but he's pronounced dead at 4:20. There is an
24 extensive external injury to abdominal are. The law
25 enforcement investigation they talk first to the

1 mother and she lays out the timeline of the day. She
2 says the child fell from the bed. She comforted him.
3 She noticed something wrong when they were out running
4 errands and as she was leaving the dentist and after
5 her live in boyfriend, who is Fletcher, performed CPR
6 as they rush them to the hospital the defendant gives
7 two statements. The first of which corroborates the
8 mother's statement. Second statement he admits to
9 hitting the child. The report or the case doesn't
10 specify when he is alleged to have hit the child.
11 Admits some horseplay.

12 Police execute a search warrant at the house that
13 is shared by the mother and Fletcher and they seized a
14 pair of handcuffs. They go into the attic they take
15 photographs of the residence. When Fletcher goes to
16 trial he moves to suppress the search warrant and the
17 affidavit. The opinion says, Your Honor, this is page
18 eight under the search warrant heading. "During the
19 investigation, the police obtained a warrant to search
20 the home of Perry and Fletcher, seeking photographs of
21 the residence and any evidence of abusive behavior
22 towards the children of the residence. The affidavit
23 did not specify police suspected child abuse, but it
24 specifically described the situation. Perry brought
25 nine month old Jaquan to the hospital. The child

1 arrived in respiratory arrest. The child died. Perry
2 told investigators Jaquan fell from the bed. Perry
3 later noticed Jaquan was not breathing. Examination
4 of the child revealed bruises on his back and abdomen.
5 The cause of death was unknown and police believed
6 examination of the residence might lead to the
7 discovery of information that would assist
8 investigators in determining the child's cause of
9 death.

10 So the defendant moved to suppress. He alleged
11 lack of probable cause of particular evidence would be
12 found at the residence and a lack particularity as to
13 what items would be sought. The Court upheld the
14 search warrant affidavit in this case.

15 Your Honor, on page ten the first full paragraph.
16 "Based on the totality of the circumstances, the
17 affidavit provided the magistrate with a substantial
18 basis for finding probable cause to search the home of
19 Fletcher and Perry. The affidavit edifies: One, that
20 Perry claimed Jaquan fell out of bed in the morning
21 and was brought to the hospital because he stopped
22 breathing; and two, that there were bruises on the
23 child." It goes on to say, "The suspicion of child
24 abuse is not only implicit but is verifiable. This
25 suspicion supported the magistrate's finding of

1 probable cause. Thus the warrant is valid. Because
2 investigators searched the residence pursuant to a
3 valid warrant, the trial court properly refused to
4 suppress the evidence including handcuffs and
5 photographs found in the search?

6 Now the defense in this case also attacked the
7 scope of the warrant in Fletcher and although I think
8 Mr. Wellborn specifically did that, I think the
9 language is helpful to his argument that, according to
10 Mr. Wellborn the State should allege in order to get
11 the search warrant there's going to be Fentanyl. That
12 that is a requirement. But that's not a requirement.
13 And when you go on page ten, scope of the search
14 warrant, the warrant in the instant case was limited
15 to evidence of abusive behavior to the child. The
16 exact characteristics of the evidence were unknown to
17 investigators. However, requiring a more detailed
18 description would unreasonably thwart an
19 investigation." And so I think that Fletcher is as
20 close as we can get. I think that Special Agent Baird
21 laid out an affidavit trying to give all the
22 information they had at that time.

23 THE COURT: And I also have your arguments you
24 presented Judge McKinnon from back then.

25 Ms. Joyner: Yes, sir.

1 THE COURT: When Mr. Wellborn was arguing I was
2 briefly reviewing some of his arguments as well as the
3 states reply arguments as to the motion to suppress.

4 Ms. Joyner: And so that would be essentially the
5 State's argument. I think that if you look at the
6 affidavits in the cases Mr. Wellborn has presented
7 they are very short affidavits. They just don't
8 compare and we believe Fletcher controls.

9 THE COURT: All right, thank you. Any brief
10 reply?

11 MR. WELLBORN: Yes, I do. I'm looking at Fletcher
12 under the paragraph in my copy which is on page 17
13 under search warrant. And what it says first of all
14 number one, the officer testified he may have told the
15 magistrate police suspected child abuse and that he
16 gave the magistrate this information. That would be
17 an oral supplementation. So that's the first thing it
18 suggests.

19 The second thing in Fletcher, this issue was in
20 fact not before the Court arguably because there's no
21 motion made to object to the evidence that was
22 gathered. That was there. There's no contemporaneous
23 objection. But finally, I'm looking at this Fletcher
24 opinion and I'm not finding the actual affidavit. I
25 don't know if Miss Joyner has a copy of Fletcher that

1 --

2 THE COURT: Wasn't the affidavit provided in the
3 opinion?

4 Mr. Wellborn: In the Fletcher case I wasn't able
5 to find it in reading the opinion.

6 MS. JOYNER: No, but it goes on to say that --

7 THE COURT: It just says what the Court should
8 look at.

9 MS. JOYNER: The affidavit did not specify that
10 police suspected child abuse, but is specifically
11 described the situation and then it goes on to
12 describe what was in the affidavit without quoting it.

13 THE COURT: Okay.

14 MR. WELLBORN: So in 2006 the Court of Appeals
15 dealt with Fletcher. We don't have the affidavit in
16 front of us. We do obviously have a fair amount of
17 cases from the Supreme Court that post date 2006 that
18 are very specific on what an affidavit is required.

19 I would also point out that you probably devine
20 from reading the transcript that I was not in a
21 position where I was able to actually lay out in the
22 detail that I laid out here.

23 THE COURT: Right.

24 MR. WELLBORN: In the trial in front of Judge
25 McKinnon. Judge McKinnon with the greatest deference

1 to the Court respectfully kind of cut me off and
2 basically said --

3 THE COURT: He had a lot of question and answer
4 stuff.

5 MR. WELLBORN: Right. But we didn't actually get
6 into all the cases and develop it as much as we
7 developed it here. So that is basically what I would
8 say in response. We do have a fair amount of South
9 Carolina Supreme Court opinion that is very, very
10 specific. We do have this particular affidavit.
11 There's know question what is in the affidavit.
12 There's no question of what is not in the affidavit
13 and we know there was no oral supplementation.

14 THE COURT: I'll take this matter under advisement
15 I don't need to hear anything else from the State.

16 It's now time for our lunch recess. We'll
17 reconvene 2:15 because I think you have a bond
18 hearing.

19 MR. WELLBORN: I do sir. Thank you for
20 accommodating me on that.

21 THE COURT: I will be back earlier. I have a
22 matter that need to be on the record from Lancaster
23 County. So we will start back at two.

24 (WHEREUPON, the court was in recess.)

25 THE COURT: State versus Harold Jean White III.

1 All right. I had a opportunity to thoroughly review
2 the case law handed up by both the defense as well as
3 the State. Based upon the totality of the
4 circumstances and upon my review of the search
5 warrant, the four corners of the search warrant, as
6 well as the testimony and arguments presented I find
7 that the search warrant is sufficient to establish
8 probable cause. It's signed by the magistrate and
9 therefore your motion to suppress is respectfully
10 denied Mr. Wellborn.

11 MR. WELLBORN: Your Honor, thank you.

12 THE COURT: You're protected in the record as to
13 any fruits of the poisonous tree as well as to search
14 warrant, or Court Exhibit Two.

15 MR. WELLBORN: And on an additional ground, I
16 would also argue the search warrant was invalid as to
17 a staleness issue given the time of the search.

18 THE COURT: All right, what's the State's response
19 to the staleness issue.

20 MS. JOYNER: The staleness issue. Can he
21 articulate what exactly he is referring to.

22 MR. WELLBORN: Sure. The concept of staleness is
23 that whether given the time between the alleged events
24 and the time of the search warrant whether what they
25 are looking for is going to be found at the residence.

1 THE COURT: I.E. the death of child.

2 MR. WELLBORN: Correct.

3 THE COURT: The search warrant not being signed
4 until April 17th.

5 MS. JOYNER: I have some cases, Your Honor. I
6 thought we were done with it so let me go back in.

7 THE COURT: I mean, what's your position, do you
8 think it's stale?

9 MS. JOYNER: I don't think it's stale.

10 THE COURT: I agree with the State that motion is
11 suppress and staleness issue is denied as well.

12 MS. JOYNER: Thank you, Your Honor.

13 MR. WELLBORN: Thank you.

14 THE COURT: Any other issues pretrial.

15 MS. JOYNER: No, sir. I did speak with Mr.
16 Wellborn regarding Miss Pitt and provided them a photo
17 copy of the handwritten notes and I think he is
18 satisfied with that issue.

19 THE COURT: Is that correct?

20 MR. WELLBORN: That is correct.

21 THE COURT: Okay.

22 MR. WELLBORN: And there will be I believe
23 evidence potentially introduced which rather than
24 taking up the time pretrial we can just object to it
25 on any issue. There's going to be issues potentially

1 to Lyle/404B, foundational issues, other issues, but
2 we can address those as they --

3 THE COURT: Contemporaneously.

4 MR. WELLBORN: Yes.

5 THE COURT: Sounds great to me.

6 MS. JOYNER: Just for the Court's scheduling
7 purposes, based on the time of being almost 2:20, we
8 anticipate hopefully being able to call three SLED
9 agents; one chain witness and the chemist because the
10 chemist was already on the way. Miss Pitt is the
11 other chain witness and if she is necessary she will
12 be back tomorrow morning. We will calling her out of
13 order. So I think that will caru us through the
14 afternoon.

15 THE COURT: Yes.

16 MS. JOYNER: And we're looking at Webex testimony
17 in the morning.

18 THE COURT: Do you agree with that Mr. Wellborn?

19 MR. WELLBORN: Yes.

20 THE COURT: Sounds good to me. Let's get it
21 rolling. Okay. All right, tell me about the case.

22 MS. JOYNER: Thank you, Your Honor. Just briefly
23 by way of introduction, the Court has already heard
24 during pretrial, this is a case where during execution
25 of a search warrant that Your Honor has ruled upon,

1 SLED Agent Rick Hubbard, recovered a quantity of
2 oxycodone in the defendant's bedroom in a top draw
3 which contained identifying information specific to
4 Mr. Harold White. They also recovered a quantity of
5 cocaine. They recovered 88 hydrocodone pills in that
6 same drawer and they recovered underneath the mattress
7 a larger quantity of marijuana. A total weight I
8 believe its 473 grams and he is charged today with
9 possession with intent to distribute marijuana,
10 possession of cocaine, possession with intent to
11 distribute hydrocodone and possession with intent to
12 distribute oxycodone.

13 THE COURT: Mr. Wellborn, anything from the
14 defense from the defense for what will be coined an
15 opening?

16 MR. WELLBORN: No, sir.

17 THE COURT: Thank you. Call your first witness.

18 MS. JOYNER: We call Charity Chappelera.

19 CHARITY CHAPPELERA, called as a witness, having
20 been duly sworn by the Court, was examined and
21 testified as follows:

22 DIRECT EXAMINATION

23 BY MS. JOYNER:

24 Q Please state your full name for the record.

25 A Charity Chappelera.

1 Q How are you employed?

2 A I am self employed now. Retired from SLED.

3 Q And is SLED South Carolina Law Enforcement Division?

4 A Yes, ma'am.

5 Q When did you retire from SLED?

6 A November 15, 2021.

7 Q And so at the time of August April 17th of 2017 were
8 you working for SLED?

9 A Yes, ma'am.

10 Q How many years total did you work for SLED?

11 A 13, I believe.

12 Q In what capacity?

13 A Special Agent in the Special Victims Unit, child
14 fatalities in the same unit.

15 Q And prior to going to SLED did you have any other law
16 enforcement experience?

17 A Yes, ma'am. I worked for Greenville County Jail for a
18 brief period right out of college and Spartanburg County
19 Sheriff's Office for ten years.

20 Q Now, the South Carolina Law Enforcement division does
21 that have state wide jurisdiction?

22 A Yes, ma'am.

23 THE COURT: Remember I'm not a jury. I know what
24 SLED is. I know they have state wide jurisdiction.

25 Q All right. Back on April 17th of 2017, did SLED agents

1 where body cameras at that point?

2 A No, ma'am.

3 Q On that date were you involved in the execution of a
4 search warrant on [REDACTED] Amanda Lane?

5 A Yes, I was on the team.

6 Q Was that a residence?

7 A Yes, ma'am.

8 Q And is that located within Rock Hill?

9 A Yes, ma'am.

10 Q Is that within York County, South Carolina?

11 A Yes, ma'am.

12 Q Now, when SLED executed the search warrant in a
13 jurisdiction do you notify that jurisdiction Law Enforcement
14 Agency?

15 A Yes.

16 Q And did you do that in this case?

17 A Yes, I did.

18 Q Was that Rock Hill Police Department?

19 A Yes, ma'am.

20 Q And did they provide an officer to assist you with your
21 search warrant?

22 A Yes, ma'am.

23 Q Please tell the Court if you remember what law
24 enforcement officer were on scene?

25 A We had a couple SLED agents. I think maybe three

1 including myself and a Rock Hill police officer. I think he was
2 on uniformed patrol.

3 Q Now, what was your role on scene?

4 A I was supervisor on scene.

5 Q And did you participate in the search of the house?

6 A I did not.

7 Q Did you have opportunity to walk through the house?

8 A I did.

9 Q What was in general the condition of the home?

10 A Cluttered in general.

11 Q All right. Do you remember who was there when you guys
12 arrived on scene?

13 A Mr. and Mrs. White was there and two or three children.
14 I can't remember exactly how many.

15 Q And were they made to leave the residence?

16 A Yes, ma'am. We wanted them to be outside.

17 Q And as your role as supervisor were you primarily
18 involved with kind of supervising the White family?

19 A Yes, ma'am. I was standing outside most of the time
20 speaking with them while the other agents searched the home.
21 Executed the search warrant.

22 Q At any point was any member of the White family allowed
23 back into the house?

24 A Yes, ma'am.

25 Q What was the purpose of that going back into the house?

1 A Best of my recollection, was maybe water or something
2 to drink. Maybe something for the children. I can't remember
3 exactly, but I do remember walking back in there to the kitchen
4 with them and coming back out at some point.

5 Q Were they ever allowed into the home to your knowledge
6 unsupervised?

7 A No, ma'am.

8 Q Did anyone else besides the White family arrive on
9 scene?

10 A Some grandparents I believe arrived on scene at some
11 point during the execution of the search warrant I believe.

12 Q Were they also at different points allowed in the house
13 for the kids or drinks?

14 A Honestly I can't remember about the grandparents if
15 they went inside or not.

16 Q And while were you there on scene did you participate
17 in the search at all?

18 A No, ma'am.

19 Q Did you observe -- at any point did you add anything to
20 the scene? Did you place any items at the scene?

21 A No, ma'am.

22 Q On scene did you take possession of any items of
23 potential evidence?

24 A Miss White handed me her phone and so I took possession
25 of that and then handed it to another SLED agent at some point

1 and I believe I also had Mr. White's phone at some point. I
2 think maybe the Rock Hill police officer maybe handed that to me
3 and I handed that off to another SLED agent at some point.

4 Q Who was that other SLED agent?

5 A Skipper.

6 Q Is that Malissa Wallace?

7 A Yes, it is.

8 Q Everybody calls her Skipper?

9 A Yes, ma'am. I'm sorry, I drew a total a blank.

10 Q And as part of your role in this scene did you explain
11 or read the search warrant to the White family?

12 A Yes, ma'am.

13 MS. JOYNER: Beg the Court's indulgence.

14 Q I am going to show you what has been marked for exhibit
15 purposes as State's Exhibit 38 and ask if you recognize this
16 exhibit.

17 A I don't. I don't recognize that phone specifically.

18 Q Okay, but you did receive a phone from Harold White?

19 A I did.

20 Q And the phone that you seized from Harold White did you
21 at any point open the phone or manipulate the phone?

22 A No, ma'am.

23 Q Would you have the ability to do that?

24 A Not that I know of, no, ma'am.

25 Q Okay. And the phone when you received the phone, you

1 said that you believe the Rock Hill officer received the phone
2 first and gave it to you?

3 A I believe so. I remember getting the phone from --
4 receiving the phone, her phone, Mrs. White's phone but I believe
5 that's how it was with Mr. White's phone.

6 Q That it came from the Rock Hill officer?

7 A Yes, ma'am.

8 Q And you gave it to Skipper Wallace, Melissa Skipper
9 Wallace?

10 A Yes, ma'am.

11 Q And the two phones that you describe the only phones
12 that you recovered on scene?

13 A Yes, ma'am.

14 MS. JOYNER: Thank you, very much. Please answer
15 any questions that Mr. Wellborn has.

16 THE COURT: Mr. Wellborn.

17 MR. WELLBORN: I have no questions.

18 THE COURT: Thank you, ma'am, you may step down.
19 State call its next witness.

20 MS. JOYNER: Your Honor, we call Melissa Wallace.

21 MELISSA WALLACE, called as a witness, having been
22 duly sworn by the COURT, was examined and testified as
23 follows:

24 DIRECT EXAMINATION

25 BY MS. JOYNER:

1 Q Can you please state your name for the record?

2 A Malice Skipper Wallace.

3 Q How are you employed?

4 A I am employed by South Carolina Law Enforcement
5 Division.

6 Q How long have you been with SLED?

7 A Almost 17 years.

8 Q And in what capacity? What is your current job at
9 SLED?

10 A I'm a lieutenant assigned to the Piedmont Regions with
11 investigative services.

12 Q Were you working with SLED on April 17th of 2017?

13 A I was.

14 Q In what capacity were you working with SLED then?

15 A I was agent assigned to the Piedmont region.

16 Q On April 17th of 2017 were you involved in the
17 execution of a search warrant at [REDACTED] Amanda Lane?

18 A I was.

19 Q And can you tell the Court what law enforcement
20 officers you recall being on scene?

21 A At the onset of the search warrant it was myself,
22 Lieutenant Chappelera, Captain Wells and then Dalton Taylor with
23 Rock Hill PD.

24 Q When you approached the residence did all of you go to
25 the front door?

1 A No, ma'am.

2 Q Where did you go?

3 A I went to the back door.

4 Q And you know based on what you could see at the scene
5 who went to the front door?

6 A I couldn't see through the house but I know Captain
7 Wells went to the front door.

8 Q Okay. And what was the purpose of you going to the
9 back door while he was at the front?

10 A Just standard for execution a search warrant. Cover
11 all an entrances and exits.

12 Q Now, do you recall who other than the law enforcement
13 officers you described were present at the residence when you
14 executed the search warrant?

15 A I'm sorry, can you repeat that.

16 Q Other than the law enforcement officers you described,
17 who else was present at the house when you did the search
18 warrant?

19 A Mr. White, his wife, Julisa and three kids.

20 Q Okay. And do you recognize Mr. White in the courtroom
21 today?

22 A I do.

23 Q Can you please point him out?

24 A He's the gentlemen sitting at the defense table in the
25 white shirt.

1 MS. JOYNER: Let the record reflect she's
2 identified the defendant.

3 THE COURT: So noted.

4 Q Now, when you first arrived, was Detective -- did Wells
5 and Dalton Taylor go into the house and clear the house to
6 insure there was nobody else inside the home?

7 A I know Captain Wells did. I'm not sure about Dalton
8 Taylor.

9 Q Were you part of that process?

10 A No, ma'am.

11 Q All right. Once the house was cleared what was your
12 role with the search warrant?

13 A My role was to photograph the residence and help with
14 the search.

15 A When you photograph a residence and doing a search
16 warrant, do you photograph before you search?

17 A Yes, ma'am.

18 Q And then you sometimes photograph after you search?

19 A Yes, ma'am.

20 Q Is that what you did in this case?

21 A Yes, ma'am.

22 Q So I am going to start with what has been marked for
23 exhibit purposes as State's Exhibit Three. Tell me if you
24 recognize State's Exhibit Three?

25 A I do.

1 Q And what is that a picture of?

2 A State's Exhibit Three is a exterior photograph of the
3 front of that a residence at 1635.

4 MS. JOYNER: We moved State's Exhibit Three into
5 evidence.

6 THE COURT: Any objection?

7 MR. WELLBORN: No.

8 THE COURT: Without objection introduced.

9 (WHEREUPON, State's Exhibit Three was received in
10 evidence.)

11 Q Now, can you give the Court a brief explanation of the
12 general layout of the home?

13 A The residence from the front entrance was sort of a
14 split level residence. Upon entry through the front door there
15 was a half a flight of stairs going up into the main and a half
16 flight going down into the basement area. Basement area
17 consisted of a partially liveable area, kind of game room. Some
18 closets, a half bath and then a garage. If you went up a flight
19 of stairs there was the main living area of the house living
20 room, dining room, kitchen, three bedrooms, two baths, closets.

21 Q Okay. Let me show you what has been marked for exhibit
22 purposes first as 4A. Is that -- not to scale, but an accurate
23 representation of the layout of [REDACTED] Amanda Lane, that upper
24 level?

25 A Yes, ma'am.

1 MS. JOYNER: I move 4A into evidence Your Honor.

2 MR. WELLBORN: Without objection.

3 THE COURT: Without objection, introduced.

4 MS. JOYNER: Thank you.

5 (WHEREUPON, State's Exhibit 4A was received in
6 evidence.)

7 MS. JOYNER: Also showing you 4B. Is that --
8 again not to scale, but an accurate representation of
9 the layout of the ground floor at 1635 Amanda Lane.

10 MS. JOYNER: Move 4B into evidence.

11 MR. WELLBORN: Without objection.

12 THE COURT: Without objection introduced.

13 (WHEREUPON, State's Exhibit 4B was received in
14 evidence.)

15 Q I am going to show you what has been marked as 5A, 5B,
16 6A through F. If you can take a look through those photographs.

17 Were those all photographs that you took for the execution
18 of the search warrant that day?

19 A They were.

20 Q And going to 5A and 5B, can you tell me what those
21 photographs depict?

22 A States 5A is a photograph looking down that landing
23 from the front door. The open doorway leading into that
24 liveable area and State's 5B is a photograph like partially down
25 those stairs there was a closet beneath the stairwell off to the

1 left hand side.

2 MS. JOYNER: I would move State's 5A and 5B.

3 MR. WELLBORN: I would object on the grounds of
4 relevance.

5 MS. JOYNER: We're showing pictures of the home,
6 Your Honor.

7 MR. WELLBORN: With all due respect, pictures of
8 home are great, but they need to be relevant. They
9 have to either tend to show or prove or disprove that
10 my client is guilty of something that he's on trial.
11 Not just that there are messy floors in a messy house.

12 THE COURT: So what's the relevance of this madam
13 solicitor?

14 MS. JOYNER: Well, I do intend to introduce
15 pictures from each room of the house to show where the
16 officers searched. They are going to locate a small
17 quantity of marijuana not in those pictures obviously.

18 THE COURT: How about just introducing photos
19 where drugs were allegedly found? All right.

20 MS. JOYNER: Okay.

21 THE COURT: Objection sustained.

22 Q Let me show you again, beginning with 6A. Do you
23 recognize where that photograph was taken?

24 A Yes.

25 Q And where is that photograph taken?

1 A Six A is in that game room area in the basement
2 portion.

3 Q That's a photograph that you took?

4 A Yes, ma'am.

5 MS. JOYNER: Okay. We move State's 6A into
6 evidence.

7 MR. WELLBORN: Do you mind if I look at it first.

8 MS. JOYNER: I've shown this to you Chris.

9 MR. WELLBORN: I just want to see exactly what you
10 are showing.

11 THE COURT: Without objection?

12 MR. WELLBORN: Without objection.

13 THE COURT: All right, admitted.

14 (WHEREUPON, State's Exhibit 6A was received in
15 evidence.)

16 Q I am going to move to 6D. Can you tell me what that is
17 a photograph of?

18 A States 6D is another photograph of that living area in
19 the basement. There are some tables, couches. There's some
20 kind of game table black and white bag on it.

21 MS. JOYNER: We move 6D into evidence, Your Honor.

22 MR. WELLBORN: Once again I would request the
23 relevance of 6D.

24 MS. JOYNER: It's a different angle.

25 MR. WELLBORN: It shows a messy room. There's no

1 testimony that there is anything 6D that is relevant.

2 THE COURT: What's the purpose of offering this
3 photo?

4 I haven't ruled on it's admissibility yet. Of
5 course remember I will determine whether it is
6 credible, but what is purpose of that photo?

7 MS. JOYNER: Your Honor, it just better captures
8 the layout of the room. It's a similar picture but it
9 shows just the table with alcohol and other items..

10 THE COURT: Does the other picture show alcohol?

11 MS. JOYNER: No, sir.

12 THE COURT: Objection overruled.

13 MS. JOYNER: Thank you, Your Honor.

14 (WHEREUPON, State's Exhibit 6D was received in
15 evidence.)

16 Q I am going to show you what's marked for exhibit
17 purposes as State's 10A? Do you recognize that photograph as
18 one that you took during the execution of the search warrant?

19 A I do.

20 Q What room is that?

21 A That is part of the actual garage. There is a hallway
22 that ran on the back side of the garage leading to that common
23 area.

24 Q Is into part of the main floor, the bottom floor?

25 A The bottom floor.

1 Q Is that a truthful and accurate reflection of the
2 photograph you took?

3 A Yes.

4 MS. JOYNER: I move 10A into evidence.

5 MR. WELLBORN: Once again, as to relevance.
6 There's nothing in there that tends to prove or
7 disprove that my client is guilty of any crime other
8 than having a messy garage.

9 THE COURT: All right, what's the relevance?

10 MS. JOYNER: There will be some testimony that
11 there is some phones recovered that ultimately
12 couldn't be processed, but they were in this room that
13 was searched and there was some phones recovered from
14 that table.

15 MR. WELLBORN: Well, if the phones weren't
16 processed then they don't tend to prove or disprove my
17 client's guilty of anything other than owning phones
18 or having possession of phones that weren't processed.
19 Again, not a crime.

20 THE COURT: Objection sustained.

21 Q I am going to show you what has been marked for State
22 purposes as 11B. Do you recognize that photograph?

23 A I do.

24 Q And what do you recognize that photograph as?

25 A From the top of the landing going up to the main living

1 area, it's is photograph to the left which is the entryway to
2 the master bedroom area.

3 Q And were you present during the search of the residence
4 of this master bedroom?

5 A Yes, ma'am.

6 Q And did you observe drugs being located --

7 MR. WELLBORN: I am going to object as to leading.
8 She can testify as to what she observed without Miss
9 Joyner telling her what she observed.

10 THE COURT: Objection overruled. I will allow
11 both sides to facilitate the presentation of testimony
12 pursuant to rule 6-11 of the South Carolina Rules of
13 Evidence. Go ahead.

14 MS. JOYNER: Thank you.

15 Q Did you observe drugs present in that bedroom?

16 A I did.

17 Q Okay.

18 MS. JOYNER: We moved 11B into evidence Your
19 Honor.

20 THE COURT: Same objection?

21 MR. WELLBORN: Yes.

22 THE COURT: Objection overruled.

23 (WHEREUPON, State's Exhibit 11B was received in
24 evidence.)

25 Q Moving to what's been premarked as 19 A, B, C, D, E,

1 and F. Can you please take a look at those photographs and tell
2 me if you recognize them?

3 A I do.

4 Q And do you recognize those as photographs you took
5 during the execution of the search warrant at [REDACTED] Amanda Lane?

6 A Yes, ma'am.

7 Q And if we can begin with 19A. If you can tell me what
8 specifically that picture depicts?

9 A State's 19A is a photograph standing in the doorway of
10 the master bedroom suite. It captures the opposite corner of
11 the room, front window, TV along the left hand wall as well as a
12 chest of drawers, bed.

13 MS. JOYNER: Your Honor, we move 19A into
14 evidence.

15 THE COURT: Same objection?

16 MR. WELLBORN: Same objection. Of course, also
17 preserving our earlier objection. It is still our
18 position that photograph was obtained as result of
19 invalid search warrant.

20 THE COURT: Absolutely. You're protected in the
21 record as to search warrant issue.

22 All right, that objection is overruled.

23 (WHEREUPON, State's Exhibit 19A was received in
24 evidence.)

25 Q Looking at 19A -- actually take a look at State's

1 Exhibit 19B. Is that a truthful and accurate representation of
2 a photograph that you took?

3 A It is.

4 Q Okay. And what is depicted in 19B?

5 A State's 19B is a photograph also from the same doorway.
6 It's along the left hand side wall. It shows the doorway to the
7 bathroom, the TV and same chest of drawers.

8 MS. JOYNER: We move 19B into evidence.

9 MR. WELLBORN: Same two objections. Again, the
10 relevance of the doorway leading to a bathroom doesn't
11 tend to prove or disprove that my client was in
12 possession of any item he is on trial for.

13 THE COURT: Yes, sir. Objection noted. Objection
14 overruled.

15 MS. JOYNER: Thank you.

16 (WHEREUPON, State's Exhibit 19B received in
17 evidence.)

18 Q Did you make any personal observations while you were
19 in this room as part of the search of any significance to this
20 chest of drawers that's depicted with the TV on top in 19B?

21 A The top drawer contained miscellaneous prescription
22 medications as well as some other suspected drugs at the time.

23 Q Moving to 19C. Again, is that a photograph you took?

24 A It is.

25 Q And what is depicted in that photograph?

1 A It's also from the doorway of that master bedroom suite
2 and that is a photograph along the right hand side of the wall
3 it also includes a photograph of the bed, a dresser and a closet
4 doorway.

5 Q Okay.

6 MS. JOYNER: Your Honor, we move 19C into evidence

7 MR. WELLBORN: Without objection.

8 THE COURT: Without objection, 19C is admitted.

9 (Whereupon State's Exhibit 19C was received in
10 evidence.)

11 MR. WELLBORN: And Your Honor, just for the record
12 when I say without objection without any objection
13 other than --

14 THE COURT: Understood.

15 MR. WELLBORN: Okay. Well, and I understand you
16 have me, and I don't at all -- I get it. We're all
17 intelligent. We all understand the process, but
18 unfortunately, because of the existing rules I have to
19 contemporaneously object.

20 THE COURT: Absolutely. And again, the transcript
21 can't, you know, pick up what's actually going on in
22 the courtroom. I got you. You're protected in the
23 record. Objection noted. Objection overruled.

24 MR. WELLBORN: Thank you. That would be the same
25 objection regarding search warrant to exhibit 21. We

1 may be able to short circuit this if Miss Joyner going
2 to perhaps hand me all the exhibits she intends to get
3 in and I can go through the process. I can object to
4 all of those specifically on that ground. We can
5 argue that's contemporaneous and we can move on.

6 THE COURT: That's a great idea.

7 Everything you were planning to to introduce
8 through this witness let's do that. So let's take a
9 brief moment of time while we do it. Okay.

10 And again, I know you all are used to trying
11 things in front of a jury. I get it. I don't mean to
12 be pushing you all or make you do things. It's so
13 much easier doing a bench trial as far as introduction
14 of evidence. And I appreciate you all's patience as
15 well.

16 Q I hand you a stack of photographs. If you can just
17 look through those briefly. And going through those are
18 numbered for exhibit purposes as items 21, 19 D, E and F, 22 A
19 and B, 23 A, B and C, 24 A and B, 25 A, B and C, 26, 27, 28, 29,
20 30, 31 and 32.

21 Did you take all these photographs?

22 A I did.

23 Q And are these photographs truthful and accurate of what
24 you observed at [REDACTED] Amanda Lane on April 17th of 2017?

25 A Yes, ma'am.

1 MS. JOYNER: Your Honor, we move these into
2 evidence.

3 THE COURT: Same objection?

4 MR. WELLBORN: Yes, and a just so the record is
5 clear I object to exhibits 21, 19D, 19E, 19F, 22A, 22B
6 23A, 23B, 23C, 24A, 24B, 25A, 25B, 25C, 26, 27, 28,
7 29, 30, 31 and 32 as all of fruits of the poisonous
8 tree as a result of a bad search warrant.

9 THE COURT: Thank you. You're protected under the
10 record. The objection is overruled.

11 (WHEREUPON, State's Exhibits 19D, 19E, 19 F, 21,
12 22A, 22B 23A, 23B, 23C, 24A, 24B, 25A, 25B, 25C, 26,
13 27, 28, 29, 30, 31 and 32.)

14 Q All right. Going back to what was previously entered
15 as 19C. The doorway that is shown at the far corner of that
16 photograph, what does that lead to?

17 A The closet.

18 Q And State's Exhibit 21 is that the closet that is
19 depicted with this doorway?

20 A Yes, ma'am.

21 Q And during the search of the residence was anything
22 illegal or potentially illegal inside the closet which is shown
23 in State's Exhibit 21?

24 A Yes, ma'am.

25 Q To your knowledge what was located?

1 A It was a bag of suspected marijuana from a man's sport
2 coat pocket.

3 Q So 23A, B and C is that the sport coat that you were
4 referring to and the marijuana in the pocket?

5 A Yes, ma'am.

6 Q Whose hand is that in the -- I think it's 23C that has
7 the hand?

8 A My hand is in 21A -- I'm sorry, 23A, 23B and 23C.

9 Q You're the one holding the marijuana?

10 A Yes, ma'am.

11 Q Now, going to 19F and 19E is there only one bed that's
12 located in this bedroom?

13 A Yes.

14 Q Is that a size like a double or bigger?

15 A I would say it's probably a queen at least.

16 Q And were you present when -- and did anyone search
17 underneath that mattress, between the mattress and the box
18 springs?

19 A Yes, ma'am.

20 Q And were you present for that search?

21 A Yes, ma'am.

22 Q Did you photograph what was found beneath the mattress?

23 A Yes, ma'am.

24 Q And I am going to show you what has been marked as 24A
25 and 24B. If you can tell us what are in those photographs.

1 A States 24A is a photograph of two pistols located on
2 the box springs underneath the mattress and then there's also a
3 bag. It's an orange bag. 24B is another photograph. It has
4 parts of one pistol in it. One of the pistols completely and
5 the contents of that orange bag after it was dumped out which
6 was a big bag of suspected marijuana.

7 Q So going back to 24A. Who is the person that appears
8 to be holding up the mattress furthest away?

9 A That's Captain Wells.

10 Q And do you know who this other person is in the blue
11 uniform?

12 A That's Dalton Taylor with Rock Hill PD.

13 Q Did he assist in holding up the mattress?

14 A Yes, ma'am.

15 Q And going back to 24B you said the suspected marijuana
16 is out of the bag. Do you recall who removed the suspected
17 marijuana from that orange colored bag?

18 A That was Captain Wells.

19 Q Did you witness him do that?

20 A Yes, ma'am.

21 Q I am going to show 19D. And what is depicted in 19D?

22 Q States 19D is a photograph from in front of that closet
23 int that master bedroom. It's a photograph that captures the
24 TV, the chest of drawers, the door way to the bathroom, part of
25 the bed, the contents surrounding the door and the front window?

1 Q Now, regarding the contents around the door this
2 passage way from the bed or from that front door around that
3 chest of drawers to the bathroom door, what was the condition of
4 that floor?

5 A It was a narrow walkway. There were things piled up at
6 foot of the bed all the way to the wall and up to the doorway of
7 the bathroom.

8 Q Okay. Now on the floor -- did you take photographs of
9 anything that was on that floor?

10 A I did.

11 Q I am going to show you what has been entered as 25A.
12 Do you recognize that photograph?

13 A I do.

14 Q And what is that photograph of?

15 A States 25A is a photograph of a Luv's diaper box that
16 was at the foot of the bed.

17 Q And is there something significant or some reason that
18 you took that particular photograph?

19 A There were pill bottles, prescription pill bottles in
20 that box.

21 Q I am going to show you 25B and 25C. Are those
22 photographs that are connected to 25A?

23 A Yes, sir. Those are close up photographs of those pill
24 bottles in 25A.

25 Q Were those pill bottles empty to your recollection?

1 A I don't remember.

2 Q If they had pills in them would they have been
3 recovered?

4 A Likely.

5 Q Now going specifically to 25C. What is the name on
6 that pill bottle?

7 A Yvonne Davis.

8 Q While were you present on scene did you encounter
9 anybody named Yvonne Davis?

10 A No, ma'am.

11 Q And what's that prescription purported to be for, that
12 bottle?

13 A Hydrocodone, Acetaminophen.

14 Q Thank you. And are you able -- going back to 19D, are
15 you able to see where that Luv's box is in relation to?

16 A So it is the box that is furthest out in the walkway,
17 meaning the easiest to access from the walkway and it's there.
18 Its several from that doorway.

19 Q Now, again going back to 19D and this tall chest of
20 drawers with a TV on top. Did you photograph the top drawer of
21 that chest of drawers?

22 A I did.

23 Q I'll show you what has been marked as 27. What has
24 been entered as 27. What is in that photograph?

25 A State's 27 is a close up photograph of a passport

1 belonging to Harold Jean White, III.

2 Q And where was that passport located?

3 A That top drawer of that chest of drawers.

4 Q And does that appear to be the same person in that
5 photograph that were you dealing with on scene?

6 A Yes, ma'am.

7 Q Now within that same drawer, were there also debit
8 cards and credit cards that you photographed?

9 A Yes, ma'am.

10 Q I'm going to show you what's been entered as 28. And
11 can you tell me, are you able to read the names on some of those
12 credit cards?

13 A I am. There's one card listed as Harold White, III. A
14 Visa card debit card limited as Harold B. White, III. Another
15 Visa debit card that says Harold G. White, III it looks like. I
16 can't read the other one. It's a master card, debit card.

17 Q Okay. Was that in the same drawer again as that
18 passport?

19 A Yes, ma'am.

20 Q And when you first encountered -- let me show you this,
21 26, is that the drawer in question?

22 A Yes, ma'am.

23 Q When your going about and searching and photographing a
24 drawer, do you have a particular kind of process you go through
25 when you are kind of sifting through different things?

1 A Yes, ma'am. It's photographed as is when we start
2 things out, before we do any searching. And then as we search
3 we continue to take additional photographs close-up throughout
4 the search so we can identify items that we found.

5 Q I am going to show you 29. Is that from that same top
6 drawer

7 A It is.

8 Q And is that an article of clothing right there?

9 A It appears to be a tie.

10 Q Okay. Is that a pill bottle in that top drawer?

11 A Yes, ma'am.

12 Q And are you able to see what the name of that
13 prescription -- on that prescription is?

14 A It says Harold White.

15 Q I am going to show 30. Is that the same pill bottle
16 that was just depicted in 29?

17 A It is, and the one -- two of the debit cards are also
18 in the picture.

19 Q Okay. And I'm going to point out in the middle this --
20 there's some white pills at the top. And there's a plastic bag
21 kind of in the middle?

22 A There is.

23 Q Is that containing a white powdery substance?

24 A It appears to be. And item -- picture of 31, is that a
25 picture of that same drawer?

1 A It is.

2 Q And finally item, or photograph 32. Is that a
3 photograph of that pill bottle we have seen in previous
4 photographs having been in the drawer?

5 A It is.

6 Q And the picture of those pills were those the pills
7 that were in that bottle when you found that?

8 A It is. That's why a photograph was taken.

9 Q Is that addition?

10 A It was loose in the drawer.

11 Q Loose in the drawer, the small tablet. I'll look loop
12 back into this game table in shown in 6d and 6E. I am going to
13 show you pictures 22A and B. Tell me what is depicted in those
14 photographs?

15 A States 22A and B both show the top of that game table
16 with that black and white bag opened up. There was suspected
17 marijuana inside the bag and 22B is once we removed it it was
18 easier to see.

19 A Now, going back to 6D we see beer bottles, kind of
20 liquor bottles in that game room. Is that a fair statement?

21 A Yes, ma'am.

22 Q And when you were down there were you able to notice
23 whether these were old or new?

24 A I don't remember.

25 Q Okay. Now the items -- when you do a search your

1 photographing, you're helping Jason Wells search, is that
2 correct?

3 A Yes, ma'am.

4 Q Who was on point to be the person who would recover
5 whatever was located during the search?

6 A Captain Wells.

7 Q Now, while you were on scene and assisting with the
8 search, at any point did you is recover any evidence? Did you
9 take possession of any potential evidence while you were on the
10 scene?

11 A Yes, ma'am.

12 Q And what was that potential evidence?

13 A It was the two phones recovered from Harold White and
14 Julisa White.

15 Q And who did you receive those from?

16 A Lieutenant Chappelera.

17 Q And when you received those phones at any point did you
18 turn them on or turn them off or manipulate them or do anything
19 to the data on those phones?

20 A No, ma'am.

21 Q Do you know how to do that?

22 A Not really, no.

23 Q When you received them from your colleague, did you
24 hold them the whole time?

25 A No, ma'am. She had them in her hand and she had to go

1 do something outside so she handed them to me and I sat on the
2 bannister where we had other things that we were kind of getting
3 ready to collect at the top of the stairs so everything would be
4 together.

5 Q And going back to 11B, would that bannister have been
6 just on the other side of where this photograph is?

7 A To the left, yes.

8 Q Okay. Other than laying those phones down there, did
9 you go back and pick them up and retrieve them from that
10 location?

11 A I don't remember if it was me or Captain Wells.

12 Q Okay. If I were to show you what has been marked as
13 State's 38. Do you recognize State's 38.

14 A Yes.

15 Q And what do you recognize it as?

16 A That is the phone from Harold White.

17 A And at some point after receiving it you said you
18 turned it over to who?

19 A I sat on the bannister and I don't know if myself or
20 Captain Wells picked it back up for collection from the scene.

21 Q At some point did you come back into contact with
22 Harold White's phone, State's 38?

23 A I did.

24 Q And how did you come to come back in contact with it?

25 A Captain Wells signed those phones -- that phone over to

1 me the following day at the SLED Piedmont office in Greenville.

2 Q That would have been done on April 18th?

3 A Yes, ma'am.

4 Q And what did you do with this phone?

5 A I delivered it to Captain Baird the following day in
6 York County.

7 Q At which location?

8 A I met her at the coroner's office.

9 Q Okay. From the time that you received the phone from
10 Jason Wells to the time that you delivered them to Captain
11 Baird, were they in your continuous custody and control?

12 A Yes, ma'am.

13 Q At any point did you do anything to manipulate the
14 phone?

15 A No.

16 Q Did you deliver other phones to her as well?

17 A Yes, ma'am.

18 Q And did you on scene, did you complete the return?

19 A I did.

20 Q Of all the items?

21 A Yes, ma'am.

22 Q Okay.

23 MS. JOYNER: Can you publish Mr. Porter's laptop.

24 Your Honor, the foundation will be laid for this

25 at a future date, but this is from State's Exhibit 37

1 marked for exhibit purposes.

2 Q I would ask if you can look up at the screen and tell
3 me if you recognize the room that is depicted in this imagine?

4 A I do.

5 Q And what do you recognize this room to be?

6 A It was the living room, of the residence on Amanda Lane
7 and that captures part the front entry way and then the opening
8 to the spare bedrooms.

9 Q Do you recognize the individuals in that photograph?

10 A I recognize him.

11 Q I'm sorry, can you say that again?

12 A I recognize him.

13 Q As him, who do you recognize that to be?

14 A That is Harold White.

15 Q And is that the ledge behind Harold, is that the ledge
16 where you laid the phones?

17 A Yes, ma'am.

18 Q All right.

19 MS. JOYNER: I have no further questions. Please
20 and any questions Mr. Wellborn has.

21 THE COURT: Mr. Wellborn your witness.

22 MR. WELLBORN: Thank you, Your Honor.

23 CROSS EXAMINATION

24 BY MR. WELLBORN:

25 Q Looking at State's Exhibit 25C, did you recover

1 anything from that pill bottle?

2 A No, sir.

3 Q So it was empty?

4 A I guess so.

5 Q Well, if it was not empty nobody opened it up because
6 nothing was recovered from it, right?

7 A There was nothing recovered from that bottle.

8 Q Okay, that answers that question. So you have an empty
9 pill bottle shown in State's Exhibit 25C, correct?

10 A Correct, yes, sir.

11 Q Do you know how the pill bottle, the empty pill bottle
12 that you took a photograph of, do you know how it wound up at
13 the location where you found it?

14 A No, sir.

15 Q Do you know who brought it there?

16 A No, sir.

17 Q Or when it was brought?

18 A No, sir.

19 Q Or why it was brought?

20 A No, sir.

21 Q I am going to show you State's Exhibit 25B which seems
22 to be two pill bottles. Was anything recovered from either of
23 these pill bottles shown in this exhibit?

24 A One of those is the pill bottle you just asked me
25 about.

1 Q Okay, what about the other pill bottle?

2 A No, there was nothing in it.

3 Q So State's Exhibit 25B shows two empty pill bottles.

4 Do you know how they got to that residence?

5 A No, sir.

6 Q Or when they got to the residence?

7 A No, sir.

8 Q Just that they were empty?

9 A That's correct.

10 Q Okay. I assume the same thing would apply with 25A,
11 which just seems to be another photograph, different angle?

12 A Different angle, correct.

13 MR. WELLBORN: I seem to be missing some of these
14 exhibits. Did all of them wind up front or are they
15 out of order. They must be out of order. Let me see
16 if I locate these since they are not in order.

17 Q Here we go. Okay, State's Exhibit 29 shows a pill
18 bottle where the pill bottle -- the person it's prescribed to is
19 Harold White, right?

20 A Right.

21 Q And do you recall what was in that pill bottle?

22 A It was mixed pills.

23 Q Mixed pills. Okay. And do you know what those mixed
24 pills were?

25 A No, sir.

1 Q Okay. Do you know who put the mix pills in the pill
2 bottle?

3 A No, sir.

4 Q Do you know what the pill bottle -- what the
5 prescription was on the pill bottle, what it was for?

6 A I don't remember off the top of my head.

7 Q Would it be on your list; State's Exhibit 29, 30 and
8 32?

9 A I don't see anything that says what that prescription
10 was for.

11 Q Okay. But there was a pill bottle at one point contain
12 pills that were prescribed according to the pill bottle to Mr.
13 Harold White?

14 A Correct.

15 Q Okay.

16 MR. WELLBORN: That's all I have thank you.

17 THE COURT: Any redirect?

18 MS. JOYNER: No, sir, Your Honor.

19 THE COURT: Thank you. Thank you, ma'am. You may
20 step down. Who's the next witness?

21 MS. JOYNER: We'll call Doug Robinson.

22 THE COURT: Before we do that let's go hang on and
23 go off the record.

24 (Whereupon, there was an off the record
25 discussion.)

1 DOUGLAS ROBINSON, called as a witness, having been
2 duly sworn by the Court, was examined and testified as
3 follows:

4 DIRECT EXAMINATION

5 BY MS. JOYNER:

6 Q Mr. Robinson, can you please state your name for the
7 record?

8 A Douglas Robinson.

9 Q How are you employed sir?

10 A I am a forensic chemist involved with South Carolina
11 Law Enforcement Division commonly known as SLED.

12 Q And do you work for the drug lab at SLED?

13 A I am assigned to the drug analysis department, yes.

14 Q How long have you worked at SLED?

15 A A little over 14 years.

16 Q Has it always been in the capacity as a drug analysis?

17 A Yes. I have been in drug analysis department, yes.

18 Q Okay. And have you ever worked anywhere else in drug
19 analysis other than SLED?

20 A Not in forensics, no or drug analysis, no.

21 Q Can you tell the Court a little bit about your training
22 and education?

23 A Certainly. I received my Bachelor of Science and
24 Chemistry from the University of South Carolina. After
25 graduating I spent approximately three years performing chemical

1 analysis in the environmental chemistry field. Upon being hired
2 at SLED I received law and legal training from the South
3 Carolina Department of Criminal Justice Academy, as well as
4 in-house training on the analysis of controlled substances
5 through the drug and analysis department and I attended the drug
6 enforcement administration forensics seminar as well.

7 Q And can you tell the Court your duties as a drug
8 analysis briefly?

9 A Generally speaking we're tasked with performing
10 analysis on submissions that are suspected to contain controlled
11 substances. Since early 2018 I've been tasked with developing
12 and implementing new testing protocol procedures in response to
13 some changes in the South Carolina Hemp status. So marijuana
14 testing predominantly for the last few years.

15 Q And just at SLED lab are those testing techniques and
16 standard procedures they use are they accepted in the scientific
17 community?

18 A Yes, ma'am

19 Q Have you ever been qualified in court as an expert in
20 drug identification and analysis?

21 A Yes.

22 Q How many times?

23 A Thirty-six.

24 MS. JOYNER: Your Honor, we offer Doug Robinson as
25 an expert in analysis and identification of drugs and

1 controlled substances?

2 THE COURT: Any further voir dire?

3 MR. WELLBORN: No, sir.

4 THE COURT: All right, I do find he is qualified
5 to testify as an expert in that field.

6 Q Now Mr. Robinson, were you were working with SLED back
7 in 2017?

8 A I was.

9 Q Back on April 21st of 2017, did you become involve in
10 -- let me show you. Back in April of 2017, were you asked to
11 test substances that had been obtained from a search warrant at
12 [REDACTED] Amanda Lane in Rock Hill?

13 A I'm not aware of the specific where they would have
14 originated from.

15 Q Okay. I'm going to show you what has been marked as
16 State's Exhibit One. Do you recognize any part of that exhibit?

17 A I do.

18 Q And how are you able to recognize that?

19 A So there are several factors I am looking at here. The
20 outer plastic package that I am holding is what we refer to as a
21 KPAC. It is simply a heat sealable plastic container. On two
22 different locations my initials are on here along with a date
23 that corresponds with a seal that I made. This is just
24 packaging we routinely put evidence in to contain it after
25 analysis had been performed.

1 Within that outer KPAC there is a SLED BEST bag. BEST is an
2 acronym that stands for best evidence sample testing. It's a
3 uniform bag that we distribute throughout the State to law
4 enforcement agencies so they have a uniform way of submitting
5 drug evidence to us.

6 There is also my writing seal intact with my initials and the
7 date. There is also a unique bar code that is our SLED lab
8 number and the SLED bag that I referred to has a unique control
9 number as well.

10 Q Okay. So going back you said to the bottom where you
11 see dates where you have sealed.

12 A Yes.

13 Q Can you tell us what those dates were that you had
14 sealed that package?

15 A The initial seal was made on 4/21/17 and the second
16 seal was made on 5/21/18.

17 Q Do you recall that you reopened that packaging at the
18 states request to do some weights on pills?

19 A I do.

20 Q So did your initial testing take other substances in
21 that bag take place prior to -- prior to the first seal, the
22 April of 2017?

23 A The initial drug analysis would have, yes. That seal
24 is was when re-closed the evidence between doing the initial
25 analysis and issuing the report.

1 Q Okay. We would like to go ahead and open this. Do you
2 any issue with us opening this and taking it apart piece by
3 piece?

4 A It's your evidence.

5 Q I am going to start -- I am going to show you what has
6 been marked for exhibit purposes as State's Exhibit 35. Do you
7 recognize State's Exhibit 35.

8 A This is a copy of the report that I issued on this case
9 after that initial analysis we talked about.

10 Q So if we could begin by removing from the bag there are
11 two small quantities of marijuana. Now, let me ask you, there
12 is the BEST bag inside. When you initially received everything
13 inside that State's Exhibit One was it all contained in the BEST
14 bag?

15 A Correct. The evidence was all sealed. I even got the
16 word sealed intact on the outside which is routine that we do
17 that. So yes, all of it was sealed -- properly sealed inside
18 the BEST bag.

19 Q And those individual baggies of marijuana, were they
20 sealed in those additional bags at the time that you received
21 them?

22 A In the -- I would have to refer to my notes. Is that
23 okay?

24 Q That's fine.

25 A Okay, so item 1.7 which is this bag was originally

1 received in a plastic sandwich bag. So that plastic, the
2 original container is folded and placed inside of this ziploc
3 bag with the plant material to prevent any kind of cross
4 contamination. We make sure we have it in a container that
5 can't reopen after the fact.

6 A Okay.

7 Q So 1.8 which was of course the other bag, was received
8 in a ziploc bag containing a plastic sandwich bag containing
9 plant material. In this situation the ziploc, the other out
10 ziploc here in my hand is what I received it in.

11 Q Out of the original?

12 A Yes.

13 Q One 1.7, the ziploc 1.7 actually has the word bag and
14 1.8 does not.

15 Q Okay.

16 A So that signifies I added this outer ziploc bag to the
17 evidence during the analysis.

18 Q Okay. So those are identified by you within your
19 report as 1.7 and 1.8

20 A That's correct.

21 Q And they are also indicates on the outside of those
22 plastic bags as 1.7 and 1.8?

23 A Correct.

24 Q Okay. In your testing of those items did you determine
25 what items 1.7 and 1.8 were.

1 A They were both determined to be marijuana.

2 Q Okay. Now you mentioned earlier that your work since
3 2008 has been dealing with the implementation of the hemp
4 statute. These came before the implementation of the hemp
5 statute, correct?

6 A 2018. Correct. In 2017, I believe it was May 10th of
7 2017, the governor signed the South Carolina Industrial Hemp
8 bill creating a distinction between marijuana and hemp in South
9 Carolina. Prior to that everything that was cannabis was
10 considered legally marijuana.

11 Q Now, if you can kind of put those items right there.
12 Do you see inside the bag something marked item 1.6.2?

13 A So what I am holding here is 1.6.2 which is a powder
14 substance BIZ bag. It looks like after having sat here for a
15 few years there is transfer of the ink.

16 Q Okay.

17 A So this other bag is not legible as far as what the
18 item number is. But I have two bags of white powder in my hand,
19 one of which is clearly 1.6.1.

20 Q Which one is marked 1.6.1?

21 A (Indicating)

22 Q Okay. And that's the only other item bag of white
23 powder? There should only -- well, there is one other bag of
24 white powder contained in State's Exhibit One, correct?

25 A If I can refer to my notes. That is correct every

1 other item within this submission is either the plant material
2 we just talked about or the pharmaceutical preparation of a
3 tablet or capsule.

4 Q So within your testing the item that is clearly marked
5 as item 1.6.1, did you detect any controlled substance in that
6 white powder?

7 A I did not.

8 Q Okay. The second bag of powder that was contained in
9 item one, what did your analysis show about that item?

10 A Could you repeat that question please.

11 Q So item 1.6.1 was not a controlled substance?

12 A Correct.

13 Q The other bag of white powder that is mentioned in your
14 report that you analyzed that substance.

15 A Yes, that was itemized as 1.6.2 and the result was
16 cocaine C.2 found in the sample tested. One tested net weight
17 0.81 grams.

18 Q If you could put that one down. If you could put those
19 two bags up here to get those out of your way.

20 Now moving on. Do you see a prescription pill bottle in item
21 one in the bag?

22 A Well, I see multiple. I see two prescriptions.

23 Q Could you please pull those prescription pill bottles
24 out.

25 A Okay.

1 Q So there's a larger and a smaller. Is that a fair
2 statement?

3 A Yes.

4 Q Okay. The larger pill bottle, can you tell me what it
5 says on the outside of that larger pill bottle?

6 A As in my markings or as in the label?

7 Q As in the label.

8 A Okay. It is labeled with the name Harold White. It's
9 marked as Ibuprofen 800 milligram tablets.

10 Q Okay. And what is the date that that -- according to
11 the pill bottle that it was filled?

12 A The date on the top right corner is April 7, 2017.

13 Q And when that pill bottle came to you in item one, are
14 you aware from your report or otherwise what was contained
15 inside the pill bottle?

16 A So this particular pill bottle was marked during
17 analysis as item 1.4. Inside of it were three different types
18 of -- two different types of tablets and one type of capsule.
19 So item 1.4.1 one was identified as 37 Ibuprofen tablets that
20 were indicated. So they were not confirmed to be Ibuprofen.

21 Q Would that be consistent with what's on the outside of
22 the pill bottle?

23 A It would.

24 Q Okay.

25 A The second one was described as four green capsules

1 containing a powder substance. They were tested but the result
2 were inconclusive.

3 Q Okay.

4 A Item 1.4.3 was described as 15 round white tablets and
5 those were identified as Oxycodone C.2 found in the sample
6 tested. One tested.

7 Q If you can place these right here. We are running out
8 of room.

9 MS. JOYNER: Madam clerk, do you have a extra pair
10 of gloves.

11 THE CLERK: Let me check. Yes. (Handed).

12 Q Now, you mentioned item 1.4.3 which was found to be
13 Oxycodone. Could you please pull out that from the bag and
14 place it on the ledge.

15 A 1.4.3.

16 Q And that handwriting, is that your handwriting marking
17 it as 1.4.3?

18 A That is. That's got the lab number, the item number,
19 my initials, and again, the word bag added. It's a sealable
20 container to house the evidence after analysis.

21 Q All right, and there is one of these pills that was cut
22 in half. Was that done as part of testing?

23 A Yes, we have to take a representative sample in order
24 to do extraction and put it on the instrumentation to do the
25 confirmation, so yes.

1 Q So that 1.4.3 is as represented in your report as
2 Oxycodone?

3 A Yes, ma'am.

4 Q And is that a controlled substance two?

5 A That's correct. It is a C-2.

6 Q All right. If you can please pull from item one the
7 second pill bottle.

8 A Okay. The other I think you referred to as the smaller
9 bottle, is labeled as item 1.5.

10 Q What's the name on outside of that pill bottle?

11 A It looks to be Douglas Smart.

12 Q And what does the outside of the bottle indicate it
13 would be a prescription for?

14 A Cyclobenzaprine.

15 Q And were there any pills that you found inside that
16 pill bottle as part of your testing?

17 A Yes. A representative sample was taken and it was
18 found to be cyclobenzaprine.

19 Q Is a that prescription?

20 A Yes, it is a prescription.

21 Q Okay. Are the pills still inside or are they
22 separately packaged?

23 A They are separated.

24 Q And that 1.5, again, that's your writing as well?

25 A Yes.

1 Q Okay.

2 A This bag is marked identically as 1.5. Same format as
3 before; case number, item number, initials and bag added.

4 Q Okay. So now going to item 1.1 according to your
5 report.

6 A Okay.

7 Q Did you test these pills?

8 A I did. Took a representative sample of one of the
9 population, yes.

10 Q And what did that testing determine?

11 A It was described ziploc bag containing oval white
12 tablets with imprint label of 88 of Watson 3203. The result was
13 hydrocodone and Acetaminophen found in one tested.

14 Q All right, and do you have item 1.2

15 A I do.

16 Q And did you conduct testing on item 1.2

17 A I did.

18 Q And what is item 1.2

19 A 1.2 was a ziploc bag containing two round peach tablets
20 and the result of the test confirmed Alprazolam C-4 found in the
21 sample tested.

22 Q Okay. And that writing again designating it as 1.2 and
23 all the initials that's your writing?

24 A It is. This one is slightly unique. I have in my
25 notes one whole tablet was taken in analysis. So there is one

1 remaining. One whole tablet remaining in the bag.

2 Q And then item 1.3?

3 A 1.3 was described as ziploc bag containing fifty oval
4 white tablets with an imprint IBU 800 and it was indicated to be
5 Ibuprofen.

6 Q Is that also consistent with that other item 1.4.1, IBU
7 800?

8 A Correct. It's the same imprint. Same tablet.

9 Q Okay, so you testified that all of these originally
10 came sealed in that bag. So am I correct that when you pick it
11 up you would break it out and you would create this 1.1, 1.2,
12 1.3 and so forth?

13 A Correct. The advantage to a BEST bag, again, is a
14 uniformed submission tool. Everything is put inside the BEST
15 bag. The seal can be created in the field by the officer and
16 then it can flow through the chain of custody and we can have
17 confidence in the integrity of the seal by the security
18 mechanisms in the bag. And it was in fact properly sealed when
19 I received it.

20 Q Okay. And when you returned it back to evidence you
21 put all this together, you sealed the bag and returned it back
22 into evidence?

23 A Correct.

24 Q And did this package prior to us opening with you in
25 court, did it appear exactly as it appeared the last time that

1 you had seen this package?

2 A There is one additional seal that is marked with a
3 J.W., March 4th of 2019. That is an additional seal since the
4 last time I did the analysis, but I was in a conference with
5 Jason Wells and yourself as we looked at it. So I was present
6 when that seal was made.

7 Q Okay. Thank you. And the final item two which was a
8 manila envelope.

9 A Yes, 1.2 was described --

10 Q I'm sorry. That is 1.6.1.

11 A So what is remaining in this bag currently is a ziploc
12 1.6 which would end up being a separate item because it contain
13 multiple items that we had to break out separately. I have a
14 small manila envelope which is marked 1.6.1, which would have
15 been part of the original packaging from the item 1.6.1.

16 Q Which was the no controlled substance?

17 A Correct.

18 Q Okay.

19 Q Item 1.4.1 remains in the bag in a ziploc that I added
20 to the case and those are more of the tablets marked IBU 800.

21 Q Okay.

22 A And then the capsules that make up item 1.4.2

23 Q Okay. All right. Thank you. I am going to show that
24 box up there is marked as State's Exhibit Two. I will ask you
25 if recognize State's Exhibit two?

1 A I do.

2 Q And how are you able to recognize that exhibit?

3 A This has the a bar code that bears the same SLED lab
4 item. It's just marked item two rather than item one. It also
5 has a couple of pieces of evidence tape across the top which
6 bear my initials and that initial analysis date of 4/21/17 and
7 that evidence tape would have been placed on after initial
8 analysis to secure the evidence after analysis.

9 Q All right. So I am going to ask you to hand me back
10 that report.

11 A Yes.

12 Q All right. If you can take a look at what has been
13 marked as State's Exhibit 34. Do you recognize State's Exhibit
14 34?

15 A Yes, I do.

16 Q And what do you recognize it to be?

17 A This is a copy of the report issued for item two in
18 this case.

19 Q If you would be so kind to open this item two.

20 A Okay.

21 Q And did you conduct analysis on the contents of that
22 plastic bag?

23 A I did. This is a black bag. It is another what we
24 refer to as a repack bag. It has at lab number, the item number
25 of 2.1, my initials and the word bag added.

1 Q And what did your testing determine this item 2.1 to
2 be?

3 A Item 2.1 was described as a plastic bag containing
4 compressed plant material. The results were marijuana C-1 found
5 in the sample test. One tested. Net weight 473 grams 16.69
6 ounces.

7 Q Okay. So from the time that you -- before today, was
8 this repackaged as you -- let me rephrase. After you analyzed it
9 you sealed and returned it to evidence, correct?

10 A Yes, ma'am.

11 Q And it was opened at the same conference, the same
12 meeting that you discussed a moment ago?

13 A Correct.

14 Q From the time that you sent it back to evidence to the
15 time of that meeting in 2019, when you saw it again in 2019 was
16 it packaged as it had been when you returned it to evidence?

17 A Yes, when we meet for that conference my initials seals
18 post analysis were still intact the way it was when it left me
19 after analysis.

20 Q Okay. Does it appear as it did in 2019 when you last
21 saw it before you opened it? Was it still intact?

22 A Multiple pieces of evidence tape. Yes, so the outermost
23 seal made with evidence tape has the same date of 3/4/19 that we
24 just reference with that meeting.

25 Q Okay. I will will take that.

1 MS. JOYNER: Beg the Court's indulgence.

2 Q So just to wrap up, at the time that you received
3 State's One and State's Two initially from evidence were all the
4 seals intact?

5 A Yes, they were.

6 Q Okay. At any time that you opened these boxes, these
7 exhibits, either today or prior to today, had they appeared to
8 be tampered with in any way other than the openings that you
9 know about to test and for that meeting in 2019?

10 A They do not appear to be tampered with.

11 Q Okay. When you received them they were completely
12 sealed?

13 A Yes, ma'am.

14 Q From the time that you received them from evidence and
15 took them to your lab, until you returned them back to evidence
16 were they continuously in your custody and control?

17 A They were. They were either physically in my custody
18 or we have a secured vault within our department which is
19 further contained inside a secured facility. We use that vault
20 upstairs for short term storage when it is not actively being
21 worked. But any time it's even in short term storage it's under
22 seal. So the seal was broken for the analysis and before it
23 left my physical custody it would have been resealed.

24 MS. JOYNER: Those are all questions we have for
25 you. Please answer any Mr. Wellborn has.

1 THE COURT: Mr. Wellborn.

2 MR. WELLBORN: Thank you.

3 CROSS EXAMINATION

4 BY MR. WELLBORN:

5 Q Hydrocodone is a prescription drug, right?

6 A It is.

7 Q And there are various names under which it comes,
8 right? How it is identified, right?

9 A That's correct.

10 Q There is what, Anexia, are you familiar with that?

11 A I'm not as familiar with all the -- are referring to
12 trade names?

13 Q Yes.

14 A We don't deal in trade names in the lab. We base it on
15 the active ingredient so we would put Hydrocodone Acetaminophen

16 Q I am just getting to the point there are multiple
17 prescription forms of Hydrocodone out there with multiple trade
18 names?

19 A Yes, I can tell you based on the manufacturer it may
20 have different names.

21 Q Ceta Plus, are you familiar with that?

22 A I'm not familiar with that.

23 Q Co-Gesic?

24 A Again, that's -- we're not pharmacists. We don't deal
25 in the trade names. We deal in the chemical compound.

1 Q Are you familiar with Vicodin or Lortab or Lorcet?

2 A Those are all common prescription drugs. Again, I'm
3 not going to testify that all those are Hydrocodone combinations
4 right now.

5 Q In terms of your training and analysis you are familiar
6 that there are multiple -- somewhere around eight to ten --
7 probably about ten different prescription versions of
8 Hydrocodone that are prescribed, right?

9 A As I stated, based on the manufacturer certainly there
10 are different trade names that would that Hydrocodone
11 Acetaminophen combinations, yes.

12 Q Have you ever heard of Percodan or Percocet?

13 A Those are not necessarily the same combinations.

14 Q My question is, have you ever heard of them?

15 A Certainly.

16 THE COURT: Yes or no.

17 A Yes.

18 Q Okay. Excellent. Those would be common prescription
19 names for Oxycodone, right?

20 A I am going to take your word for it. But again, we
21 deal in the controlled substances, not the trade names.

22 Q This I understand. But would you concede there are
23 multiple prescription versions of both Oxycodone and
24 Hydrocodone?

25 A Based on the manufacturer there are multiple trade

1 names in which virtually any prescription drug may be dispensed.

2 Q What is Watson 3203? What is it if you know?

3 A Well, again, I am going to refer to my notes.

4 Q Please do.

5 A Watso 3203 is a combination of Hydrocodone and
6 Acetaminophen.

7 Q Okay. Who manufactures it?

8 A I assume Watson. I don't have all of the --

9 THE COURT: All right. Now's a good time to
10 break.

11 MR. WELLBORN: That's all I have.

12 THE COURT: We will see you all tomorrow morning
13 at 9:30 in the morning. Be ready to go. We're in
14 recess.

15 MS. JOYNER: Your Honor, is he released from his
16 subpoena?

17 THE COURT: Mr. Wellborn, are you through?

18 MR. WELLBORN: Yes, Your Honor.

19 THE COURT: You are released from your subpoena.

20 (WHEREUPON, we were in recess until April 21, .

21 THE COURT: Is the State ready?

22 MS. JOYNER: Yes, Your Honor.

23 THE COURT: Call your next witness.

24 MS. JOYNER: We call Doris Yarborough.

25 DORIC YARBOROUGH, called as a witness, having been

1 duly sworn by the Court, was examined and testified as
2 follows:

3 DIRECT EXAMINATION

4 BY MS. JOYNER:

5 Q Good morning. Can you please state your full name for
6 the record?

7 A Doris Yarborough, Y-a-r-b-o-r-o-u-g-h.

8 Q And Miss Yarborough, are you currently employed?

9 A I'm not. I am now retired.

10 Q Where are you retired from?

11 A From the South Carolina Law Enforcement Division
12 commonly known as SLED.

13 Q And how long have you been retired?

14 A For 19 months.

15 Q So going back to April of 2017 were you employed at
16 that point by SLED?

17 A I was.

18 Q Have you always been employed in the evidence
19 department?

20 A I was for a little over 12 years.

21 Q And going back to April of 2017, can you tell the Court
22 just very briefly about how you would receive in evidence and
23 what would happen to that evidence?

24 A We were commonly known as evidence control technician.
25 In 2017 we implemented a program where officers and agencies

1 could bring their evidence in and put it in locker and then they
2 lock it before they leave. They could access the room where the
3 lockers were only by a key card or by somebody opening the door
4 for them, and then once they put their evidence in the locker
5 with their paperwork some time during the day we go back and
6 retrieve it.

7 Q Okay. And going back to April 19th of 2017, I am going
8 to ask you about two different exhibits that have been entered.
9 I'll start with State's Exhibit one and ask you --

10 MR. WELLBORN: Your Honor, may we approach?

11 THE COURT: Yes.

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

14 THE COURT: All right. Thank you all right.

15 MS. JOYNER: So Your Honor, with that we will
16 place that stipulation on the record that defense
17 stipulated the chain. We ask that we dismiss Miss
18 Yarborough and Miss Pitts from there subpoenas.

19 THE COURT: Is that correct Mr. Wellborn?

20 MR. WELLBORN: That is correct.

21 THE COURT: The defense stipulates to the chain of
22 custody there. There is no issue as to the chain of
23 custody, correct Mr. Wellborn?

24 MR. WELLBORN: That's correct.

25 THE COURT: Sounds great. You may step down.

1 Enjoy your retirement.

2 Is Miss Pitts here?

3 MS. JOYNER: Yes.

4 THE COURT: All right. See you.

5 MR. PORTER: May it please the Court, Your Honor.

6 THE COURT: Yes, sir.

7 MR. PORTER: The State calls Investigator Dana
8 Gatti.

9 THE COURT: Okay.

10 DANA GATTI, called as a witness, having been duly
11 sworn by the Court, was examined and testified as
12 follows:

13 DIRECT EXAMINATION

14 BY MR. PORTER:

15 Q Good morning Investigator Gatti. Can you please state
16 your name for the record?

17 A Danielle Gatti.

18 Q And where are you presently employed?

19 A I'm an investigator of the York County Sheriff's Office
20 Multi-jurisdictional Drug enforcement Unit.

21 Q Is part of that job street level drug interdiction and
22 confidential informant and things of that nature?

23 A Yes, sir.

24 Q Did you have any prior experience in narcotic's
25 investigation prior to working for the Drug Enforcement Unit?

1 A I've been back here for approximately four and a half
2 years and before that I worked on the street crimes unit with
3 Rock Hill Police Department.

4 Q And that's street level drug interdiction?

5 A Yes, sir.

6 Q Have you you been to any classes with respect to street
7 level drug interdiction, drug buys, drug lingo?

8 A Yes, several classes.

9 Q About how many?

10 A I have done four specifically with that. I've also
11 done investigative classes, deceptive behavior classes and
12 investigative classes. But there have been four or five
13 specific narcotic's classes.

14 Q Is part of your duties your interacting with
15 confidential informants, drug defendants, using street lingo?

16 A Yes, sir.

17 Q And do you have experience in what the common slang
18 terms are for particularly Oxycodone, marijuana and Alprazolam?

19 A Yes, sir.

20 MR. PORTER: At this point we would offer
21 Investigator Gatti as an expert in drug slang terms.

22 THE COURT: Mr. Wellborn.

23 MR. WELLBORN: Yes, a couple of questions.

24 THE COURT: All right.

25 CROSS EXAMINATION

1 BY MR. WELLBORN:

2 Q These classes that you took -- by the way, how many
3 classes did you take that specifically dealt with drug slang
4 terms?

5 A That's part of most drug classes that you take. It is
6 part of it just like case law, search and seizure. There is a
7 portion of most drugs class that include that in there.

8 Q A portion of most drug classes. Well, did you take any
9 classes that were specific to slang terms or was it just
10 included in everything, the law, criminal procedure?

11 A Yes, sir. These courses were -- several of them were
12 40-hour hour courses. So they implemented a lot of things. I
13 haven't taken one specifically that was just drug slang.

14 Q How many in drug lingo?

15 A I couldn't tell you without looking at the curriculum.

16 Q Where did you take the classes?

17 A I have taken one in Asheville. It was a Desert Snow
18 class. It's a very well known narcotic training class.

19 Q And when was that class?

20 A I'm sorry.

21 Q When was that class that you took in Asheville?

22 A Approximately a year ago.

23 Q So 2021?

24 A I believe so. I would have to pull up my training
25 records.

1 Q Okay. And then in that class you took in Asheville
2 how much time is devoted to drug lingo?

3 A Again, I would have to look at my training curriculum.

4 Q Okay. And prior to that you took another class that
5 had drug lingo portion?

6 A Yes, sir, basic narcotics class.

7 Q Where was that?

8 A That was here in York County.

9 Q So that was here in York County?

10 A Yes.

11 Q And who taught that course?

12 A It was gentleman, he was a member of law enforcement
13 from the west coast.

14 Q All right. So do you remember where on the west coast
15 this gentleman was from?

16 A I don't. I can actually call my training sergeant if
17 you would like and get those certifications. Unfortunately, I
18 am not able to answer those specific questions for you.

19 Q And when was that class taught?

20 A Approximately a year and a half ago.

21 Q Okay, so some time in 2020 or 21?

22 A Correct.

23 Q Okay. All right. Prior to that did you have any
24 classes that dealt with drug lingo?

25 A Yes, sir. I done interrogation, search and seizure

1 course. I would have to pull up my training records.

2 Q Approximately when was that class?

3 A Approximately three years ago.

4 Q So some time around 2019 or 2020 -- 2018?

5 A I would say 2018, yes, sir.

6 Q All right. And where was that class taught?

7 A That was taught -- I want to say Greenville, but
8 again, I would have to pull up all my training logs.

9 Q Greenville or Greenville?

10 A Greenville.

11 A I'm sorry, Greenville, South Carolina.

12 Q Greenville South Carolina?

13 A Yes, sir.

14 Q And who taught that class?

15 A It's going to be part of that LAPD. If you go on the
16 training log it has all those on there who teaches those.

17 Q So it's taught by somebody from the Los Angeles Police
18 Department?

19 A No, sir. Is this was a different. It's not Desert
20 Snow and it wasn't the LA officer. I would have to pull those
21 training records.

22 Q Okay. All right. So you had three courses of which a
23 portion of which dealt with some drug lingo, right?

24 A Correct.

25 Q And the latest one you had was last year, correct?

1 A Yes, sir.

2 Q And then the one before that was also some time last
3 year, may be a year before?

4 A Yes, sir.

5 Q And then the first one was you said 2000 what?

6 A The third one it was 18 or 19.

7 Q 18 or 19. Okay. All right. So other than what these
8 people have told you about, that's where you learn basically,
9 quote, drug lingo, right?

10 A That and several years of actually this profession
11 being on the drug unit we deal with day-to-day.

12 Q Okay. I will have other questions for you later but
13 that's all the questions I have regarding qualifications.

14 THE COURT: All right. Is there any objection
15 then by the defense to this witness being classified
16 as -- or designated as an expert in the field of what,
17 drug jargon?

18 MR. PORTER: Drug slang, drug jargon.

19 THE COURT: Drug slang, drug jargon.

20 MR. WELLBORN: Your Honor, yes, and for a couple
21 of reasons. Number one, I don't think that this
22 particular field requires expertise. I think this
23 could be something that is commonly -- that is going
24 to be defined readily from the language that is posed.
25 But I think that it's not a recognized area of -- to

1 the extent that this is a recognized field of
2 expertise I don't think taking multiple classes of
3 which a small portion of which address drug lingo
4 would apply. And to that end if you give me a little
5 leeway I would like to develop that further.

6 THE COURT: Yes, go ahead.

7 MR. WELLBORN: Thank you.

8 CROSS EXAMINATION

9 BY MR. WELLBORN:

10 Q Now the one gentlemen that taught was -- I believe this
11 is the one that is in Asheville was from the west coast and I
12 think you later suggested Los Angeles, correct?

13 A No, sir.

14 Q Okay. Do you know where on the west coast he was from?

15 A Again, sir, I apologize. I can't answer many questions
16 as far as the details of these courses, just what the relevant
17 information was included.

18 Q Sure. I mean it would come to know surprise to you
19 having taken this course might be very different in Los Angeles
20 then it is in Chicago, then it is in New York, then it is in
21 South Carolina, correct?

22 A No, sir. Typically the trends are very common.

23 Q So the same words used all across the country verbatim?

24 A Not necessarily. There can be variations.

25 Q Okay. I guess that gets to what I was asking. So

1 again, it could be what somebody describes, for instance uses
2 hypothetically describe cocaine, might be referred to in a
3 different way in Georgia then it is in Alaska on the west coast,
4 right?

5 A It could be potentially.

6 Q And what is a term used for, let's say, cocaine in
7 Alaska in 2022 it might be different terms used now than were
8 used let's say in 1970's, right?

9 A Correct.

10 Q So drug lingo you would admit is a fluid thing, right?
11 It changes. Words change. Description for things change. Do
12 you agree with that?

13 A They can, yes.

14 Q Okay. So it is a constantly developing thing in terms
15 of the language? It doesn't stay stagnant?

16 A It can. I know a term for cocaine is snow. That's a
17 common term that has been used for decades.

18 Q Right, but twenty odd years ago it use to be referred
19 to as blow?

20 A Yes. It is still referred to as blow.

21 Q Okay. It can be blow. It can be snow. So we are on
22 the subject, what else is a term for cocaine?

23 A There multiple. You got --

24 THE COURT: There's devil's dandruff.

25 A Nose candy. There are multiple names for these.

1 Q Okay. All right. So, again drug lingo changes over
2 time, yes?

3 A Yes, sir.

4 Q My point. And there are different terms used in
5 different places for it?

6 A Potentially.

7 Q Potentially. Okay. Let's take Hydrocodone. What are
8 all the terms used for Hydrocodone that you are aware of?

9 A There are several. People call it pains. You can use
10 white ones. I have recently heard Yaps being used for that. But
11 Yaps can also be a term for other thing as well. It's
12 interchangeable. Some are. But those are some of the common
13 ones that we see right now.

14 Q And pains can be any kind of pain medication, right?

15 A It's typically ones that are prevalent in that area.
16 If somebody is asking for pains from a specific person then they
17 typically know what that person has and know what they're
18 expecting.

19 Q Well, that's different then the lingo. I am just
20 talking about the the lingo itself?

21 A I apologize. I thought I was answering your question.

22 Q Pains could be any pain medication, right?

23 A It depends on what that person is asking and who
24 they're asking from.

25 Q Well, so what you're saying is, drug lingo is not an

1 area where you can say this is definitely drug lingo without
2 identifying who the person is who's asking and who the person
3 who is being asked, is that what you're telling me?

4 A No, sir.

5 Q Okay. Let's get back to my question. Pains could be
6 multiple things in terms of pills as it refers to pain
7 medication, right?

8 A You could articulate that, yes, sir.

9 Q Well, I am articulating and I am just asking whether
10 that in fact you agree with that?

11 A Again, it depends on what that person is asking for.
12 If you're going to actual pharmaceutical doctor that can
13 prescribe something and you are asking for a pain pill that
14 could be a varying range of things. Usually opiates. If you
15 were going to say someone who is selling narcotics illegally
16 that person it might a very specific thing that person is
17 requesting.

18 Q And that goes to your statement that it depends on
19 who's asking and who they are asking?

20 A Yes, sir, which is what I just explained.

21 Q I just wanted to clarify that is in fact your
22 statement.

23 MR. WELLBORN: That's all the questions I have.

24 THE COURT: All right. Any follow up as to the
25 qualifications of this witness as a reported expert.

1 CONT'D DIRECT EXAMINATION

2 BY MR. PORTER:

3 Q So the defense has asked you quite a few questions
4 about national drug lingo. In York County drug lingo, go you
5 have been involved in approximately how many confidential
6 informant buys?

7 A Over 150.

8 Q And during those you're reviewing cell phone
9 communication and hearing cell phone communications between drug
10 defendants, confidential informants and things of that nature,
11 correct?

12 A Yes, sir.

13 Q And during that experience you've heard all of these
14 terms used as to York County?

15 A Yes, sir.

16 Q And that's four and a half years of experience an over
17 one hundred buys?

18 A Yes, sir.

19 Q In addition to all the drugs classes?

20 A Yes, sir.

21 MR. PORTER: No further questions Your Honor.

22 THE COURT: All right. I will find that this
23 witness can testify as an expert and establish her as
24 an expert in the field of -- what is it again?

25 MR. PORER: Drug slang is fine.

1 THE COURT: Drug slang/drug jargon and that's over
2 the objection of the defense, whose objection is
3 preserved and that is also pursuant to the -- the
4 recent case involving me from this county: State
5 versus Ostrowski with is opinion number 5872 from the
6 South Carolina Court of Appeals. I don't know if it
7 has been bound yet, but that case just came out
8 November 24, 2021. I was the trial judge and it deals
9 with the very issues dealing with this witness
10 including the Lyle stuff.

11 MR. PORTER: Yes, sir, Your Honor.

12 THE COURT: I hope all the lawyers know about it
13 because I'm looking at it right now.

14 MR. PORTER: Yes, sir, Your Honor, I was present
15 for Ostrowski as well. I am very familiar with it,
16 435 SC 364.

17 THE COURT: So it has been published.

18 MR. PORTER: Yes, sir. And Ostrowski is actually
19 on point that Investigator Gatti was not present for
20 any investigation on this case so her testimony is
21 similar to Investigator King where the Court of
22 Appeals stated that she did need to be qualified as an
23 expert.

24 THE COURT: And I find that she has requisite
25 characteristics to be qualified as an expert. The

1 defense's position is protected on the record.

2 Go ahead and question this witness.

3 MR. PORTER: And Your Honor, just for
4 clarification for record purposes, my qualification of
5 her was very truncated because this is a bench trial
6 and I though implicit in that was quite a bit of
7 experience the Court would be aware of so I do
8 apologize for my brevity of my presentation.

9 THE COURT: That's fine.

10 DIRECT EXAMINATION

11 CONT'D:

12 Q So Investigator Gatti, did you have any involvement in
13 the investigation of Harold White on April 17th of 2017?

14 A No, sir.

15 Q Do you any knowledge of the facts of the case or do you
16 have any knowledge of Mr. White at all?

17 A No, sir.

18 Q You don't know what this case was about in any way?

19 A No, sir.

20 Q Okay. Have you had the opportunity to review some cell
21 phone text messages in preparation of trial today?

22 A Yes, sir. If you would look to your screen. For the
23 record I am referring to what will be hopefully introduced as
24 evidence as State's 37, file is report chat 166 Geter. And
25 we're starting on page one.

1 Investigator Gatti, if you would, if you would review these
2 text messages. We are going to go through page one to page 18.
3 If you would please read these communications. At the relevant
4 point if you would explain to the Court what the significance of
5 these conversations, if any, is.

6 A Yes, sir.

7 MR. WELLBORN: Again, just for the record, Your
8 Honor, I am going to object to all of these as derived
9 from my client's cell phone which our position was
10 seized unlawful pursuant to the search warrant.

11 THE COURT: Yes, sir, you are protected in the
12 record. That is noted and overruled.

13 MR. PORTER: Thank you, Your Honor.

14 THE COURT: These text message are being offered
15 just for this witness to describe to the Court what
16 these terms or slang words may be used.

17 MR. PORTER: That's correct, Your Honor, and it
18 goes to the element of intent which the Ostrowski case
19 dealt heavily with.

20 THE COURT: And I understand this is also going to
21 be objected to by the defense, so I haven't even
22 looked at them yet even though they're up on my
23 screen.

24 Is there something, Mr. Wellborn, you want to
25 explore now as far as improper bolstering or improper

1 -- whatever it's called -- where the State is trying
2 to show your client had a general propensity to
3 traffic drugs as such rely on improper character
4 evidence.

5 MR. WELLBORN: Sure.

6 THE COURT: Let's go ahead and deal with it now
7 because I know where this is going.

8 MR. WELLBORN: Well, the first issue of course is
9 going to be hearsay. So, there's going to be to the
10 extent that there is any conversation that does not
11 come directly from my client, therefore it could not
12 be considered an admission. It's clearly being
13 offered for the truth of matter asserted in it because
14 you can't get to -- obviously these, what I trying to
15 say is, what were in this these statements were true
16 that somebody was seeking to presumably o purchase
17 drugs from my client. My client was in some way
18 responding in a way that suggest that he had such
19 drugs for sale and was willing to do do.

20 So clearly statements being offered or statement
21 by way of this text or phone exchanges for the truth
22 of the matter asserted in them. So then the question
23 becomes what exception do they -- do they meet to make
24 them admissible. And so that burden of course falls
25 upon the State.

1 If the exception is in fact an admission of my
2 client then the State should be limited to those
3 things that are admissions of my client, but not the
4 statements from other parties which are not admissions
5 of, A, not on trial. Not admissions of a party in the
6 case. My client is the only party in the case.

7 Secondly, there has to be a foundation for it in
8 fact showing that somebody actually made the
9 statement. Right now we don't know who, unless we can
10 specifically identify, who the out-of-court declarant
11 is other than my client. Who they claim is my client.
12 You have to at least be able to identify the
13 out-of-court declarant for the hearsay to be admitted.
14 That's before we even get to the 404(b) issues and
15 there are 404(b) issues in play and I will be glad to
16 go through that analysis as well. But I think we
17 should probably address the hearsay portion.

18 THE COURT: First part of the hearsay before I
19 hear the 404(b).

20 MR. PORTER: Yes, sir, Your Honor. The State is
21 not offering for the truth of the matter these
22 statements that were made to Mr. White. We will lay a
23 foundation through Officer Felmet that these are
24 communications that were on the phone and we are only
25 offering them for these are the actual English words

1 that appeared in Harold White's phone and the effect
2 on the listener therefrom. So the blue portions that
3 will be on your screen, on the left hand side, for the
4 purposes of record are strictly offered for the effect
5 on the listener. So to give context to Mr. White's
6 responses. We're not saying that Tatta, Jeter, Nuk,
7 any of these individuals are actually trying to buy
8 these drugs. We are just saying this English words
9 are in his phone and his responses to those to give
10 context to his admissions.

11 THE COURT: All right. What about the lack of a
12 proper foundation being laid prior to me looking at
13 all this? Prior to this witness's testimony?

14 MR. PORTER: Your Honor, we do have testimony in
15 the record that his cell phone was seized and we're
16 taking it out of order because 404(b) -- this is a
17 bench trial and 404(b) and 403 are kind of the crux of
18 whether we need to get Officer Felmet on the stand.
19 We do anticipate there will be additional foundation.

20 In addition, there's evidence on the phone that
21 links Harold, Mr. White to this phone. We have a
22 report that shows accounts that has his name on it.
23 There's additional text messages I didn't intend to
24 introduce that have his name in them. They are in the
25 report. I can prepare those if needed, but some of

1 these conversations also deals with his child's death
2 and people's communications with respect to that. So
3 there are several ways we can identify this as
4 Harold's phone. That he was in possession of it
5 during this communications and the reason that I have
6 all of these here is for foundational that I have all
7 of these text messages we are going to go through is
8 so the Court can be satisfied that this is indeed
9 Harold communicating with these individuals, so that
10 we don't have an authentication problem in the future.

11 THE COURT: Okay, coming back to you briefly on
12 the hearsay issue, Mr. Wellborn.

13 MR. WELLBORN: And that's great they can lay a
14 foundation that this is Mr. White's phone. But that
15 still doesn't address the foundational requirement of
16 identifying the out-of-court declarant. Whether you
17 are offering it for an exception or not you have to at
18 least identify who the declarant is. They're
19 supposedly offering saying some unknown person sent
20 something to somebody we think was Harold White
21 because it was his phone. We don't know whether
22 Harold White was using his phone or not at that point.
23 There's no testimony that is going to be presented in
24 that regard. So the other end of the conversation is
25 we don't even know that's Harold White responding, but

1 assuming it is. Certainly have Harold White's phone
2 is responding, a foundation will have to be laid for
3 that. If you are going to have an exception of the
4 hearsay rule and say this goes to the state of mind on
5 other dates, at other times, or maybe goes to his
6 state of mind. It's possible it goes to his state of
7 mind because we think that whoever was responding was
8 doing. Whether it was Harold White or not. You have
9 to at least be able to identify who the person is who
10 is sending this message to Mr. White. We don't know.
11 We have a -- in fact, if they're not going to
12 introduce the inquiry that came in to Mr. White's
13 phone because they can't identify the declarant, which
14 they can not do, and they're going to simply say,
15 well, Mr. White's state of mind on "X" date must have
16 been this because his phone responded in this way to
17 an unknown declarant. That does not suffice.

18 The hearsay rule -- the reason there are
19 exceptions for the hearsay rule is because our courts
20 for years over body of common law have said that
21 hearsay by itself is unreliable. However, certain
22 exceptions meet the test of reliability. One of those
23 tests that meets the requirement of reliability is to
24 show someone's state of mind, but you still have to go
25 through the foundation piece to get there. And the

1 foundation piece requires if someone is responding to
2 a conversation from an out-of-court declarant they
3 have to at least know who the declarant is. The
4 declarant can't be nobody. It can't be, well, it
5 could have been, you know, hundreds or thousands of
6 people in York County who had access to this phone
7 number. We have a hearsay situation where we don't
8 know the out-of-court declarant. We have no idea who
9 these people were. We have no idea whether or not on
10 the date in question these texts or messages were sent
11 to this phone whether in fact Mr. White responded at
12 all, because that foundation can not be laid who was
13 using the phone. So you have basically a phone
14 responding to out-of-court declarant who is unknown
15 and that is what they're attempting to introduce for
16 the purpose of showing Mr. White's intent which they
17 are saying is the exception to the hearsay rule.

18 THE COURT: All right. I'm looking at the
19 indictments here and of course intent could be just a
20 mere possession of it based upon the weight. Does the
21 State believe they meet that almost as well?

22 MR. PORTER: Yes, sir, Your Honor.

23 THE COURT: And then address his arguments.

24 MR. PORTER: So, there is no inference level for
25 Hydrocodone or for Oxycodone, so this case is very

1 similar to both Wilson and King, or Wilson
2 specifically -- State versus Wilson -- where we don't
3 have inference level for hydrocodone and oxycodone.
4 So intent is critical in this case with respect to
5 possession with intent to distribute hydrocodone and
6 oxycodone. Mr. Wellborn's argument presumes that
7 these statements offered on the left happened side of
8 your screen are indeed hearsay and they are not,
9 because we are offering them for the effect on the
10 listener. We are not offering for the truth of
11 matter. We are offering that any English speaking
12 human being would see these words and then Mr. White's
13 statements are a statement of party opponent. So
14 we're not saying anything as to whether there was a
15 human being that was intending to buy drugs. We are
16 saying that the effect -- certainly for the effect on
17 the listener these English words appeared on his phone
18 and then the subsequent response from Mr. White
19 clarify what he was saying when he responses in the
20 green on the right hand side of the screen. So these
21 are not hearsay statements and they should not be
22 excluded for that reason.

23 THE COURT: All right. The defense's objection is
24 overruled. I will give these statements the weight
25 and credibility it deserves. I will take a brief

1 recess at this point in time and then when we come
2 back do you want to make your 404(b) now or when we
3 come back.

4 MR. WELLBORN: Well, 404(b) arguments will take a
5 little bit of time so if you need to take a break
6 right now might be preferable.

7 THE COURT: Yes, let's go ahead and do that.

8 (WHEREUPON, court was in recess.)

9 THE COURT: All right. We are back on the record.
10 Mr. Wellborn.

11 MR. WELLBORN: Yes, sir. Well, I have been
12 provided a copy of all the communication --

13 MR. PORTER: Not all.

14 MR. WELLBORN: Most of the communications that the
15 solicitor intends to introduce and what I am going to
16 suggest to make this go faster is that they simply put
17 up what they intend to introduce and then I can
18 register my objections at the end, or we can do it
19 piece by piece. But I will object to everyone of
20 these. I think that quite frankly Ostrowski is going
21 to be very instructive on this issue because I'm
22 looking at what I've been produced so for the latest
23 dates seem to be -- and I may be wrong about this, but
24 the latest dates seem to be March 17 of 2017, which
25 predated by a couple of weeks the death of Julisa

1 White -- excuse me, [child] who was referenced
2 in search warrant and predates by two months the
3 search warrant being served at my client's home in
4 which the drugs that are the predicate for this case
5 or these cases were found. So that's going to be an
6 issue. Obviously there is going to be an issue
7 regarding the intent and whether that intent based on
8 these conversations or alleged conversations what that
9 intent is. Some of these conversations in the
10 documents that I provided seem to do no more than
11 indicate if one were to couch it in that way, that my
12 client might -- and I emphasis "might" be interested
13 at some point in selling something. And obviously the
14 drug lingo will come in as to what that something was.
15 Some of it is not even -- does not even relate to any
16 of the drugs found in my client's house.

17 Furthermore, because we are obviously going to
18 have the propensity issue. That's going to loom
19 large, but the temporal issue is going to be quite
20 interesting to especially given the Ostrowski case and
21 the subheading heading under Ostrowski section B of
22 the Court's analysis identity and intent. So I think
23 it's probably a little premature for me to argue this
24 now, but I am certainly prepared to go through it
25 based on what I have been provided. I understand

1 there maybe other things that the State will introduce
2 and I guess we will have to go through that analysis
3 again. But I am prepared to do that item by item
4 right now if the Court wishes or we can -- you can
5 look at it perhaps yourself first and then in light of
6 that I can go through it item by item.

7 THE COURT: I like the subsequent argument you
8 just made there the way to deal with this since this
9 matter is being tried nonjury and I'm the fact finder
10 as well as the judge of the law. I mean, if I know
11 something -- I'm not -- not my decision, whatever, as
12 to guilt or not guilt is not going to be tainted by
13 evidence which is in admissible.

14 MR. WELLBORN: And I understand that.

15 THE COURT: So we can handle everything like you
16 suggested Mr. Wellborn. I wanted the record to be
17 clear that I am aware of, number one, the Ostrowski
18 case because I was trial judge there.

19 Number two, the Lyle and the 404(b) issues
20 involved in this case, involved in this piece of
21 evidence and you can make your argument at the
22 appropriate time. Then I can consider everything and
23 decide whether or not it is admissible. And if it
24 is -- if I determine it is admissible under as an
25 exception to Lyle or hearsay -- or whatever the case

1 may be, then I will give it the weight and credibility
2 it deserves understanding what your legal arguments
3 are.

4 MR. WELLBORN: Thank you. And what I intend to do
5 -- this is as a courtesy to the Court as we get to
6 that point I will go through item by item because
7 there are apples and oranges and all kinds of things
8 in here. Some of which may in fact be relevant. Some
9 of which may not be relevant. Some of which may
10 arguably show propensity and may show something very
11 different.

12 THE COURT: Okay. Sound good.

13 MR. PORTER: I am not entirely sure what we just
14 decided.

15 THE COURT: Turn your microphone.

16 MR. PORTER: I'm sorry. We are going to go
17 through each one piece by piece and then at the end
18 handle all the objections?

19 THE COURT: Correct. That's what he said. I
20 think that's the best way to handle it to move the
21 testimony forward, and then of course we can have the
22 legal arguments on everything. As the judge of the
23 law I can determine whether or not what I just looked
24 at is even admissible or even something that I can
25 consider.

1 MR. PORTER: And Your Honor, the reason that some
2 of this stuff is in here is so my cell phone expert
3 can actually authenticate these things.

4 THE COURT: Understood.

5 MR. PORTER: And I did take into consideration
6 that you are the fact finder and the judge of the law.
7 So I felt like it was better to have the full report
8 in case there was something the defense wanted in for
9 context purposes in fairness to the defense we could
10 all handle it at one time.

11 THE COURT: That's fine. As the judge of the law
12 doing this the way we're doing it. Obviously, you
13 know, whatever sticks when you throw it up against the
14 wall. That's the analogy I am going to use. That's
15 fine. I know what the legally can come in verses
16 what's credible evidence which I get to judge as well.
17 Okay.

18 MR. PORTER: Thank you, Your Honor.

19 THE COURT: All right, thank you, y'all.

20 DIRECT EXAMINATION

21 CONT'D BY MR. PORTER:

22 Q Investigator Gatti, before I was talking to you, if you
23 would go through what's on the screen. Just read it. As you're
24 going if you will tell the judge in your training and an
25 experience what your seeing as we go through each item please.

1 A Yes, sir. The first text on the screen says, "Smoke
2 good homie." Smoke is a common term for marijuana.

3 Q And if you would ignore the duplicative text message
4 please.

5 A Yes, sir. The next one is, "You can get some of them
6 tonight?" He says -- the defendant responds saying, "Trying to.
7 Good looking." He's then asked, "Can you get the blue?" Blue
8 is a common term used for Roxycodone as well as clandestinely
9 manufacture Fentanyl pills.

10 Q In your training and experience are blues exclusive to
11 Roxycodone or is it just kind of general lang term for pain
12 pills in general?

13 A It a has been a general slang term but the Roxycodone
14 stamp is commonly seen on even the Clandestinely manufactured me
15 fentanyl pills.

16 Q In your experience when drug dealers have oxycodone
17 that may not indeed be blue do they substituted those two? Are
18 they kind of interchangeable in street level dealing?

19 A Yes, sir.

20 Q So now we are on page three. The response to "You can
21 get the blues?"

22 A "Yeah, give me a sec." Jeter says "K".

23 Q I believe we can skip that and then on to page four.

24 A "Waiting on my boy. I got you." That is standard for
25 waiting to get the source, but he's saying he does have them.

1 Q And that's on what date?

2 A That is on March 1, 2017. He asks: Where are you at
3 that? That is 74." That could be a term of the location where
4 he is at or a price.

5 Q So that's ambiguous?

6 A Yes. The defendant says, "Okay." Jeter responds, "Yo"
7 Jeter asked the defendant for Yaps. This is a term that can be
8 MBNA pills as well as Hydrocodone. He's still asking. It's in
9 question marks.

10 Q Page seven.

11 A The defendant responds, "Yo, yes" as that he has them.
12 "Oh, and how you looking on the other? Can I get 20?"

13 Q So would that be purchasing another type of drug?

14 A Potentially, yes.

15 Q Okay.

16 MR WELLBORN: Slow down a little bit. I am trying
17 to make notes.

18 MR. PORTER: Sure. Sure. Back up just a little
19 bit. And Your Honor, this should be the longest set
20 of text messages we go through in this situation.

21 Q The defendant reaching out to Jeter's phone? And we
22 are on page eight.

23 A Saying Yo a couple of times and then "Yo, are you ready
24 for me yet?"

25 Jeter's phone responses to the defendant's phone, says,

1 "He's asleep." The defendant's phone send Jeter a text, "I'll
2 tell him. Holler when he gets up."

3 Q And based on the context, what do you believe this
4 conversation to be about?

5 A It sounds like someone was using Jeter's cell phone
6 letting them know that Jeter is actually asleep. And then the
7 defendant is asking that person that he was just speaking to to
8 have Jeter call him when he gets up.

9 Q Page nine.

10 A Jeter's phone says "K". "Yo, are you ready for me?"

11 Q And that's text from the defendant's phone?

12 A To Jeter, yes. Jeter asks, where you at?

13 Q On page ten.

14 A Jeter asking for a pine and yaps. Pine is a common
15 term for marijuana. Yaps again can be referred to as
16 Hydrocodone or MBNA pills. The defendant's phone says, "Yup,
17 yup" which would appear he's saying yes to pine as well as yes
18 to Yap?

19 Q That's on page 11.

20 A Jeter asks the defendant, "What's up with blues?"
21 Asking if he has any Roxycodone or any clandestinely
22 manufactured Fentanyl pills. Says, "Oh my God". Again. The
23 defendant says, "You know, I ain't. Next day air." This could
24 based on my experience this very much could mean he doesn't have
25 it right now but he gets it the next day. He will the next day.

1 Q So potentially that would be, I'm about to have some
2 but I don't have it yet?

3 A Correct. Jeter responds, "Which it was." Meaning he
4 wished he have some today.

5 The defendant responds, "You're not the only one." In
6 context it appears as if he also wishes that he had it today.
7 It says, "Forty for this" and there's an emoji of a flex. It
8 looks like they're lining a price for dope he has. Flex is a
9 common emoji just like a gas tank for what they determine is
10 good product. Good quality product.

11 Q So when you see an emoji for a flexing arm that would
12 indicate he's interested in a certain quality of product?

13 A Correct. "Okay, cool. Where do you want me to come?"
14 Jeter asks the defendant.

15 Q And 14.

16 A The defendant says. "Moms." Jeter responds he is about
17 to be there. Jeter is asking for blues. Again, the Roxycodone
18 or Fentanyl pills.

19 Q And that appears to be a separate conversation about
20 four days apart?

21 A Correct. The defendant responds: "Not yet" to the
22 blues comment.

23 Q And what would that indicate to you?

24 A That he has some coming but does not have them yet.
25 Jeter asked the defendant "when?" He continues to ask him.

1 Respond by saying "Yo".

2 Q On page 16?

3 A Yes. Again Jeter asks the defendant for blues.

4 Q And that's on March 15 of 2017?

5 A Correct. The defendant responds, "Waiting on you. You
6 got that 170. Got you. "

7 Q That's on page 17. What does that indicate to you?

8 A They are lining up a price. Jeter asks, "What's up?
9 Where are you?" The defendant responds, "At Mommas". Jeter
10 says, he's on the way. The defendant says, "Bet", a common term
11 for okay.

12 Q All right.

13 MR. So that's going to be extent of what we offer
14 the Jeter's conversations.

15 So for the purpose of the record we will now move
16 to on to what has been marked for identification as
17 State's 37, a file named report chat 168 Nadeen,
18 N-a-d-e-e-n, and I am going to go straight to page
19 five.

20 Q Starting on page five if you would do the same thing
21 that we have just been doing?

22 A Nadeen texted, she said she will let go 20. The
23 defendant asks for one. Nadeen says she want three apiece.
24 Nadeen says she will let go of 20. She gets her refill in a
25 couple of days.

1 Q And what would that signify to you?

2 A This would be prescriptions. An actual pharmacy filled
3 prescription.

4 Q In your opinion this would be talking about
5 pharmaceutical grade pills and sourcing them by the defendant?

6 A Correct. The defendant said I don't eat them.

7 Q Page seven. What does eat mean?

8 A Ingest use. He's not actually taking them as
9 prescribed, like a doctor would prescribe them.

10 Q So your testimony would be this is saying Mr. White is
11 not actually consuming these pharmaceutical pills?

12 A Correct. Correct. Nadeen says, okay, you wanted to
13 know.

14 Q Moving to page eight.

15 A The defendant texted Nadeen and says, "I'll do two
16 blues for 20. I will tell her." His response, "I will tell
17 her". The defendant says, "Okay".

18 Q That's the extent for Nadeen. Moving to State's 37,
19 report chat 221, Kiesha. We're going straight to page two. If
20 you would skip the K. I don't believe that's necessary. We
21 will start at the text that appears in front of you.

22 A Kiesha says, "Do you want some hydrocodone?"

23 Q This may sound ridiculous, but what is hydrocodone?

24 A Hydrocodone is a pharmaceutical pain pill.

25 Q Okay. And on to three.

1 A The defendant asks, "Good price?" Kiesha responds,
2 "You want some hydrocodone?"

3 Q And that's February 19, 2017?

4 A Correct.

5 A Kiesha says, "They got 30 fives for 50 cash. You don't
6 smoke."

7 Q What would fives be?

8 A Fives. That's going to be referring to hydrocodone
9 five milligram.

10 Q That's a commonly available pharmaceutical grade
11 version hydrocodone?

12 A Yes, sir.

13 Q So moving on to page four.

14 A The defendant responds, "I want them. On the way."
15 Kiesha says, "K".

16 Q On to page five.

17 A Kiesha says, "K. How long?" The defendant responds,
18 "15 minutes". Kiesha says, "K". The defendant says, "Come on".

19 Q Okay. That will complete Kiesha. Now moving on to
20 Malikkk report, States number 37, report chat 259, Malikkk,
21 M-a-l-i-k-k-k. We are going to move to page five. If you would
22 start at the top there?

23 A Malikkk texts beans and roxies. Beans is a common term
24 for MBNA pills, methamphetamine pills and roxy is interchangeable
25 with blues. It could be Roxycodone or clandestinely

1 manufactured Fentanyl pills.

2 Malikk says, "They think I'm flexing them."

3 Q Flexing would be?

4 A Like showing them. The defendant says, "I'm on the
5 way."

6 Q On to page six.

7 A Malikk says, "I", which means okay. Malikk says, "Yo".
8 Malikk asks if the defendant has left yet.

9 Q So we are on page seven.

10 A The defendant texted Malikk and says, "Come on out
11 here." The defendant says, "Yo, I'm about to go."

12 Q Page eight.

13 A Malikk says, "Tell them to type in GPS Waterford
14 Terrance Apartments."

15 Q On to page nine.

16 A Malikk says, "Yo."

17 Q Now we are at March 3rd of 2017 based on what you are
18 seeing in front of you?

19 A Correct. The defendant responds, "Yo" on the same day,
20 March 3rd. Malikk says, "I'm going to need some beans on my
21 break." Again, bean is MBNA ecstasy meth pills.

22 Q So we will skip over the bean conversation because
23 that's not relevant to this case. So I'm skipping to page 13.
24 We've just scanned passed an ongoing conversation with Malikk.
25 Page 13. What do you see?

1 A Page 13 starts with a text messages from March 11,
2 2017. Malikkk asks the defendant if he still has -- if you
3 still got those perkies.

4 Q What's a perky?

5 A Perky is a common term for percocet prescription pills.
6 The defendant responds, "Na." Malikkk asked if he has -- he
7 says, "I know you got some beans."

8 Q So we are back into methamphetamine there?

9 A Correct.

10 Q So we will skip passed -- we are at page 15 at the
11 bottom. If you read at the top of the screen there.

12 A March 16, 2017 Malikkk asked if the defendant is
13 straight. This is a common term to ask someone if they have
14 product. If they have, you know, product to sell.

15 Q Product being?

16 A Narcotics. The defendant responds, "Seeing blues."
17 This is a term for that he does have blues available. Malikkk
18 said, "You can't sell me a -- them, my pick me ups?"

19 Q That could be referring to beans in fairness?

20 A Correct.

21 Q Methamphetamine is an upper, so it would make sense for
22 that juxtaposed against a downer.

23 A Yes.

24 Q It would make sense he would be referring to
25 methamphetamine then, so we will leave that out. So now we are

1 on page 17.

2 A Malikk asks, "What's the move?"

3 Q What is that? What is the significance of that, if
4 any?

5 A That's them arranging the sale and purchase of
6 narcotics, it's an also referred to as play. It is there
7 current plan of action in terms of narcotics sales.

8 The defendant asks Malikkk, "What do you need?" Malikkk
9 asks, "However many beans and eight Roxies. He is asking for
10 MBNA methamphetamine pills and eight Roxy blues.

11 Q So we're on page 18 of the report and that is March
12 17th of 2017?

13 A Yes. Malikkk says, Come on, I know you can sell me
14 five." The defendant responds, four, 25, which would be four
15 for 25 dollars. Malikkk asks the defendant, "Where's the
16 pines?" That's marijuana. The defendant responds, "My momma's
17 house." Malikkk responds, "I'm at the house." The defendant
18 says, "Give me a minute."

19 Q Moving on to another day, March 20th of 2017 on page
20 20.

21 A Malikkk reaches out to the defendant and says, "Yo."
22 And that's the conclusion of those communications. So we will
23 move on to State's 37 file name report chat 264 T-A-T-T-A,
24 Tatta. We are going to go straight to page 15 of that report.
25 What do you see there?

1 A On February 23, 2017 Tatta says, "All blue boys
2 please."

3 Q So when someone is asking for "blue boys" they are
4 stating a specific preference. Are they saying a specific
5 preference as to what type of pain pill they want?

6 A They want the Roxycotin stamp on the actual blue pills.

7 Q It could be pressed Fentanyl as well?

8 A Correct.

9 Q And the next communication from Tatta?

10 A "Please bro." The defendant said, "Nah, I'm done
11 tonight." Meaning he's not selling any more for that day.

12 Q And then on to page 10. This is February 23rd of 2017
13 I believe.

14 A Tatta says, "Bro, got any?" Asking if he has any.

15 Q Page 16 -- I'm sorry. Page 16 for the record.

16 Defendant responds, "No." Tatta asks, "What's Pete's number?"

17 Q What would that significance be giving the context?

18 A Asking for another source of supply.

19 Q Okay.

20 A Tatta asks, "What's up. Do you still need some blue
21 boys -- or do you still got some blue boys?" Sorry.

22 Q Got?

23 A Yes. The defendant responds, "Yeah. What's up?? Tatta
24 says, "hey, big homie. I'll see you in like an hour." The
25 defendant confirms and says, "Yeah."

1 Tatta says, "I'm on the way." Tatta says, "Three blue boys.
2 Ten white one."

3 Q Could you expand on that particular text message a
4 little bit?

5 A She's asking for three blue boys. Typically the
6 Roxicodone stamped. It could be Roxicodone or the pressed
7 clandestinely pressed Fentanyl pills and ten white ones is
8 referring to the hydrocodones.

9 Q Could it also be white oxycodone pill?

10 A It could be.

11 Q And that's on February 24, 2017?

12 A Yes, sir.

13 Q Moving on. Same day. A couple seconds later. What do
14 we see on top of page 20?

15 A It looks like she is either adding to her previous
16 order or adjusting her previous order. She's asking for five
17 blues and then six white ones. The defendant responds, "Wait,
18 you got hun it?" Which is typically a hundred.

19 Q What would that be specifically?

20 A That would be him telling the price for what she just
21 requested.

22 Q So cash price of what she is requesting?

23 A Right. Tatta responds, "Momma got 80. She going to
24 get eighty on her tab the first."

25 Q The significance of that being?

1 A The defendant asking for one hundred and Tatta is
2 responding that she has got eighty.

3 Q So is it fair to say she's going to give eighty and
4 then have 20 and then hit him back on the first?

5 A Correct.

6 Q So 21, the response to that?

7 A The defendant says, "Here we go." Next is "I"

8 Q So agreeing to the transaction?

9 A Yes. "I" is standard for okay.

10 Q Okay. And then we will move from Tatta to State's 37
11 report chat 141, Nuk, N-u-k on page one?

12 A Nuk texts and says, "This is Nuk." The defendant says,
13 "That's what's up? What have you got for me?"

14 Q Is that on March 6th of 2017?

15 A It is. Nuk responds, "Pine and little snow." That's
16 going to be marijuana and cocaine.

17 MR. PORTER: And Your Honor, just for the purposes
18 of the record, under Ostrowski we're not intending to
19 offer that for the possession of cocaine because I
20 think Ostrowski is specifically on intent, using an
21 intent to establish possession. We are not asking
22 that snow to establish possession of cocaine in this
23 case because I think Ostrowski would rule. We are
24 just talking about pine with respect to this portion
25 of the exhibit.

1 THE COURT: Okay.

2 A The defendant texted, "You got some strong two for
3 thirty-five or less."

4 Q And strong -- what types of drugs do they typically
5 refer to the strengths of?

6 A You got marijuana, meth, you got your Roxicodone, your
7 blues, your clandestinely manufactured blues and you got
8 cocaine.

9 Q So fair to say anything that is non-standard? Anything
10 that is non-pharmaceutical grade --

11 A Correct.

12 Q -- could be referred to with respect to strength?

13 A Correct.

14 Q So in this context would it be fair to say that it's
15 marijuana?

16 A Yes.

17 Q And possibly the cocaine?

18 A Correct, because he just previously asked for both.
19 Nuk responds, "Nah, this is some" and he has the strength, the
20 flex sign and a gas tank. This is common for people to say it's
21 good quality. Strong. Good quality.

22 Q Does gas typically refers to marijuana exclusively?

23 A Often times it is, but not exclusively.

24 Q What else could it refer to?

25 A Cocaine as well as meth.

1 Q Okay. Moving on to page three. We will skip over that
2 portion of the snow, but then going to the bottom of page three
3 on the right hand side of your screen.

4 A March 6, 2017, the defendant says. "What's the
5 tickets?" Nuk responds, "On what?" The defendant responds,
6 "Both." Nuk responds, "28-P dot, dot, dot, zip."

7 Q And based on context of the previous conversation what
8 would you interpret this text message to mean?

9 A It looks like 28-P is referring to the price of the
10 marijuana. It looks like 11 zip -- zip a common term for ounce.
11 It looks like in this case it is going to be a ounce of cocaine.

12 Q And around April --

13 MR. PORTER: And Your Honor, I beg the Court's
14 leniency with respect to this question.

15 Q March of 2017, were you involved in narcotics
16 enforcement at all?

17 A I was assigned to street crimes unit. We did deal with
18 street level narcotics.

19 Q Are you familiar with the price of cocaine around that
20 time?

21 A Yes.

22 Q Would 11 hundred an ounce be an appropriate price for
23 cocaine at that time?

24 A Yes, it would.

25 Q So given there is two options here, 11 zip would be

1 appropriate price for cocaine and therefore the 28-P would be
2 for marijuana?

3 A Correct.

4 Q Thank you. And again, on the right hand side on page
5 five.

6 A The defendant says, "I'll hit you later on the 11."

7 Q Okay.

8 A Nuk says, "Bet." Nuk says, "Let me hit your point."
9 The defendant says, "What?? Nuk asks for the address. Nuk
10 says, "I need them."

11 Q This is April 12th of 2017?

12 A Correct.

13 A The defendant says, "I might can work one. I'll call
14 you in a minute."

15 Q If you would skip any profanity that comes up I would
16 appreciate it. I'm sure you would as well.

17 A Yes, sir.

18 Q Thank you. We will skip that text message. Suffice to
19 say the text message on the top of page eight is asking if they
20 are going to be able to meet up.

21 A Correct.

22 Q So we will start back up. What is on top of the screen
23 there?

24 A Nuk says, "LOL. What you mean? Let you in how." The
25 defendant says, "Buying good number."

1 Q Based on little context do you any idea what that would
2 be?

3 A It appears as though he's asking if Nuk will allow him
4 to get a good price, a good amount. Nuk responds " LOL. I will
5 do what I can." Confirming he can potentially help him out.

6 Q On page nine in the middle.

7 A The defendant says, "What you have in mind? I will
8 call in a minute." Nuk says, "On what? Have you found
9 anything?" The defendant responds, "I think so. Hold on."
10 Says you found something.

11 Q And that last exchange, do you ever any opinion as to
12 what that was?

13 A It appears as though he came into a source of supply.
14 He potentially found something.

15 Q So either buying or selling?

16 A Correct.

17 Q Okay.

18 MR. PORTER: Your Honor, I think that would be the
19 extent of text messages that we intend to offer going
20 to intent or possession with intent to distribute.

21 THE COURT: All right. Any questions for this
22 witness?

23 MR. WELLBORN: I do, and it is going to take some
24 time.

25 THE COURT: Let's go ahead and get started.

1 MR. WELLBORN: Do you mind if I take a quick
2 bathroom break.

3 THE COURT: Yes, sir. Let's do that.

4 (WHEREUPON, there was a brief recess.)

5 CROSS EXAMINATION

6 BY MR. WELLBORN:

7 Q So officer, we are going to go through the same order
8 as you did.

9 A Yes, sir.

10 Q So I would like to refer to the first ones that were
11 presented. This text came from somebody identified as Jeter on
12 March 1st, 2017, correct?

13 A Yes, sir.

14 Q All right. Fair enough. And so who is Jeter? Do you
15 know or did you know?

16 A I am not a part of this case, no, sir.

17 Q So you have no idea who Jeter is?

18 A No, sir.

19 Q Okay. And for that matter you have know idea who sent
20 the text just came from the phone identifying it as Jeter,
21 correct?

22 A Correct. I believe how Cellebrite works is Jeter is
23 the name assigned to that number by the defendant's phone.

24 Q Okay. Fair enough. But we have no idea whether
25 somebody named Jeter sent this text or somebody else is using

1 this phone that was assigned an identification of Jeter,
2 correct?

3 A Correct.

4 Q So it could have been anybody, right?

5 A I wouldn't know sir.

6 Q All right. And the first one we have, the first page
7 is smoke good homie. What does that mean to you?

8 A Marijuana. Smoke is a common term for marijuana.

9 Q Does that mean that smoke that this phone or this
10 person sending this text asks is good? Is it a question or do
11 you know?

12 Q Texts don't always have the best punctuation in there
13 so if I had to guess he's either saying that the smoke he has is
14 good or he's asking for good smoke.

15 Q So it could be one or the other, right?

16 A Correct.

17 Q Let's go to the next. Move up a little bit. Now, you
18 can get some of them tonight. Is that a statement saying this
19 this smoke could be provided today or is that question can you
20 get some tonight?

21 A Again, lack of punctuation typical in text is
22 difficult.

23 Q So again, the correct answer would be you don't know?

24 A It could be either.

25 Q Okay. But since it could be either you don't know

1 which one it is, right?

2 A No, sir.

3 Q Thank you. Let's go to the next one please. There is
4 a response, quote, trying to good looking. This was a response
5 that was sent to Jeter on the first of March 2017. Okay. Does
6 that mean the person who sent this is trying to get the smoke or
7 they have some for sale. Do you know?

8 A Either.

9 THE COURT: It is either a yes, no, or I don't
10 know and then you can you explain your answer.

11 A Without punctuation I don't know.

12 Q Thank you. Let's go to the next one. Quote, you can
13 get the blues. This is from the phone identified as Jeter's
14 phone on March 1st, 2017.

15 The reason I bring this date up of course is because that
16 is two and a half months prior to a search warrant being served
17 on Mr. White's home on Amanda Lane. A month and a half before.
18 Excuse me. Thank you for the clarification.

19 Now is that a question saying can you get blues or is you
20 can get blues a statement?

21 A I don't know.

22 Q All right. Again, tell us what blues can be?

23 A It can Roxycotin, pharmaceutical grade Roxycotin or
24 it can pressed -- clandestine manufactured pressed Fentanyl
25 pills. Those Fentanyl pills have previously contained heroin as

1 well as just fentanyl. It includes that range.

2 Q All right. Thank you for that. So we can skip the
3 next one which is the same statement. Response, yeah, give me a
4 second. Again, does that mean that the person who sent that
5 text wishes to purchase or has some available to sell? Do you
6 know?

7 A In the previous, in context, it appears as though he is
8 saying he does have some to sell.

9 Q Do you know that for sure or are you just guessing?

10 A I don't.

11 Q You don't know that. Thank you. Let's go down. K. K.
12 Which you said means okay. Yo. Continuing down. Yo. Quote,
13 waiting on my boy. I got you. Does that mean that the person
14 who sent that text is waiting on a supplier or waiting on a
15 source of income to purchase what is for sale from the phone
16 identified as Jeter? Do you know?

17 A It appears as though he's is waiting on a source. A
18 supply.

19 Q It appears. That appears to you?

20 A Correct.

21 Q Okay. Fair enough. Where you at. Seventy-four.
22 Continue please scroll down. Okay. Yo. Yo. Yo. Yaps. What
23 are yaps?

24 A We've seen yaps be referred to MBNA pills,
25 methamphetamine pills as well as hydrocodones.

1 Q Okay, so it could be methamphetamine, correct?

2 A Yes, sir.

3 Q Or it could be hydrocodone?

4 A Yes, sir.

5 Q And you don't know which one Jeter was referring to or
6 the phone identified as Jeter was referring to, correct?

7 A No, sir.

8 Q All right. Let's continue down. And by the way this
9 is March 5th, right?

10 A Correct.

11 Q Question, question. Yo. Yeah. On March 5th. And
12 then, oh, how do you -- how do you looking on the other? Can I
13 get 20? That sounds like somebody is trying to purchase some,
14 correct? Can I get 20?

15 A I don't know.

16 Q Well, okay. All right. So you don't know what it
17 means. You don't know whether it's somebody offering to sell or
18 offering to buy. All you know is the text says, can I get 20
19 without a question mark, correct?

20 A Correct.

21 Q The next one down says, yo. Go to the next page. Yo.
22 Yo. Are you ready for me yet? Quote, he's asleep. So, let's
23 stop right there. On March 6th evidently nothing has taken
24 place yet as far as any transaction here other than there's
25 continuing text conversation and somebody who seems to be

1 important is asleep, right? Correct?

2 A I don't know.

3 Q Well, all you know you have a text saying he's asleep,
4 right?

5 A Correct. I don't know if this is ongoing conversation
6 from the previous text you just read.

7 Q So we don't know what context this -- this, he is a
8 sleep comes from, right. No idea. We know that it occurred on
9 March 6th, right?

10 A Correct.

11 Q Let's go one up please. On March 6th, quote, are you
12 ready for me yet? And the response is, he is asleep.

13 A Can you go down just a little bit?

14 Q Sure. He is asleep.

15 A It was an hour later. I don't know if there was any
16 phone conversation in between those two texts.

17 Q So again, you don't know what it relates to?

18 A No, sir.

19 Q Okay. Fair enough. Let's go down. Okay, tell him to
20 holler when he get up. Presumably that means to give me a call
21 or contact me when he gets up?

22 A Yes, sir.

23 Q And this doesn't require any specialized drug lingo to
24 interpret that?

25 A No, sir.

1 Q Okay. Continue down. K. K. Are you ready for me?
2 This is second time that's come out. Where are you at? Keep
3 going. Okay. Now, we get down to -- if you can scroll down.
4 Pine. Pine is marijuana?

5 A Correct.

6 Q You already described that. And yaps can be ecstasy,
7 right?

8 A Correct.

9 Q All right. So we continue down. Yup. Yup. That's a
10 response. Which presumably means yes, yes?

11 A Yes, sir.

12 Q Now question is, do you know whether when pine yaps
13 came out, was that an offer to sell or an offer to purchase?

14 A Can you scroll up please.

15 Q Yeah, let's scroll up. So this came from presumably
16 Jeter's phone assuming the person's name is actually Jeter.

17 All right. Here we are, pine, yaps. Is that an offer to sell
18 or offer to purchase?

19 A I don't know.

20 Q Okay. Since you don't know let's continue down. Stop,
21 right there. Yup. Yup. That's a response. Now that's a
22 response to a text that came in earlier that you don't know what
23 it meant because you don't know whether it was offer to purchase
24 or offer to sell, right?

25 A Correct.

1 Q So the phone than sent this response, yup, yup was
2 responding saying, yes, yes. You don't know what they were
3 saying yes to because you don't know what the original text
4 meant, right?

5 A Correct.

6 Q Thank you. Let's continue down. What up with blues.
7 Let's pause there. Blues are again what?

8 A Clandestinely manufacturer pressed Fentanyl pills or
9 Roxicodone.

10 Q Okay, so they could be Fentanyl or they could be
11 Roxicodone?

12 A Correct.

13 Q Okay. Fair enough. Now what's up with blues. Is that
14 presumably an offer to purchase either pressed Fentanyl or
15 Roxycontin or do you know what actually the context of that text
16 is?

17 A It appears he is asking for blues.

18 Q You say "he", how do you know Jeter is a he?

19 A I don't.

20 Q We don't know. Somebody using this phone it appears
21 they are offering to purchase either pressed Fentanyl or
22 Roxicodone?

23 A Correct.

24 Q Thank you. Let's continue down. By the way, is on
25 March 8th, right?

1 A Yes, sir.

2 Q Okay. Response, "You know it ain't next day air." I
3 guess presuming that stuff can't just happen right away. Is
4 what that means, right?

5 A It appears to be.

6 Q Are they referring to sale of pressed Fentanyl? Are
7 they referring to Roxicodone, do you know exactly what that
8 refers to?

9 A In context it appears it is either one of those.

10 Q It is either one of those?

11 A Blues as they refer to it.

12 Q It might be either one of those?

13 A Correct.

14 Q Okay. That's fair enough. Continuing down. Which it
15 was. Which it was. You ain't the only one. Again on March 8th
16 so presumably there might be other people interested in pressed
17 Fentanyl pills or Roxicodone, right?

18 A Correct.

19 Q Okay. Not now. So let's pause right there. So not
20 now, whoever is using this phone is basically saying they don't
21 have the stuff that's being requested, correct?

22 A Correct.

23 Q Okay. Since they don't have the stuff that's being
24 requested at least on March 8th it wasn't in the possession,
25 presumably, unless the person responding to whoever Jeter was

1 was lying, they simply didn't have pressed Fentanyl pills or any
2 Roxicodone to sell, right?

3 A At that point, yes.

4 Q Okay. Fair enough. Then we continue down. Now this
5 is March 10th and it says forty for this. And what does the are
6 refer to, strength?

7 A Yes, sir, the strength.

8 Q Again, we don't know whether that is referring to the
9 Fentanyl or the Roxicodone, right?

10 A Correct.

11 Q Okay. Continue down. March 10th. Where do you want
12 me to come? Okay. Where do you want me to come? Moms, on
13 March 10th. About to be there. About to be there. Blues.
14 Blues. Oh, wait a minute. Let's back up. One more.

15 Okay. We don't know what happened after these texts on March
16 10th, do we? We don't know whether whoever was using this phone
17 identified as Jeter actually picked up any pressed Fentanyl
18 pills or any Roxicodone, do we?

19 A No, sir.

20 Q We don't know in fact whether the person responding to
21 the text on March 10th had in their possession any pressed
22 Fentanyl pills or any Roxicodone, do we, because we don't know
23 what ultimately happened, right?

24 A No, sir.

25 Q We don't know if a sale took place or a purchase took

1 place on March 10th of 2017 do we?

2 A No, sir.

3 Q All right. Thank you. Let's scroll down. Now we are
4 up to March 14th and there is a one word statement, blues,
5 right?

6 A Yes, sir.

7 Q Now, is that person seeking to purchase blues or
8 offering them for sale, do you know?

9 A I don't know.

10 Q Thank you. Scroll down. Here we go. Not yet. March
11 15th. So evidently on March 15th whoever is responding to Jeter
12 is saying they don't have any blues yet, right?

13 A Yes, sir.

14 Q Okay. Putting it in context. Let's pause right there.
15 But again, we don't know whether this is referring to pressed
16 Fentanyl or Roxicodone?

17 A Correct. Thank you. Let's continue. When. Go down.
18 And again, yo. Yo. Blues question. We're at March 15th now.
19 Blues. Quote. Stop right there. March 17th, which is a month
20 before the search warrant was served on Amanda Lane. Waiting on
21 you. You got that 170. Now, was that 170 going to be the price
22 for the pressed Fentanyl pills or the Roxicodone.

23 A I'm not sure which one.

24 Q All right. Let's continue down. Bet, which you said
25 is good, right?

1 A Okay.

2 Q Okay. March 17th continue down. So, we don't know
3 what happened on March 17th whether any money was exchanged or
4 any pills, do we.

5 A I do not.

6 Q Okay. Nor do you know -- well, since you don't know
7 whether any money was exchanged for any pills, you don't know
8 what kind of pills were being exchanged for money, if any,
9 right?

10 A I do not.

11 Q Okay, thank you. Now, what I would like to do is let's
12 moving out of these series of texts I guess the next one in
13 sequence would be Nadine. Let's go to Nadeen. Okay.

14 Let's starts on page five. Quote. This is from a phone
15 that has identifier as Nadeen, right?

16 A Yes.

17 Q Okay. Who is Nadeen?

18 A I don't know.

19 Q Do we know if Nadeen name is actually Nadine?

20 A No, sir.

21 Q Do we know if Nadeen is a male or a female?

22 A No, sir.

23 Q Okay. Quote. She said she will let go 20. Now that
24 sounds like an offer to sell from whoever Nadine is, right?

25 A Correct.

1 Q Let's continue down. Quote. For one. Is that a
2 question? Not this is coming from the phone identified as
3 belonging to Harold white. For one. Is that a question how
4 much is one or I am only interested in one, or what is the
5 context of for one, do you know?

6 A I don't know for sure but it appears as though he is
7 asking 20 for one.

8 Q So it seems that whoever was using this phone that
9 responded to whoever was using the phone that is identified as
10 Nadine was seeking to purchase, not to sell or distribute,
11 correct?

12 A I don't know for sure.

13 Q So you really don't know one way or the other what this
14 was about?

15 A No, sir, without punctuations.

16 Q All right. So the next thing down for Nadine's phone
17 is, quote, she wants three apiece. That again suggests that
18 somebody is seeking to sell this stuff, right?

19 A Yes.

20 Q And stop right there. That is in response to the
21 question that came from Mr. White's phone for one. So it sound
22 like, again, putting it in context which you were able to do for
23 the solicitor. So I am now asking you to do potentially for me.
24 So whoever was using Mr. White's phone was seeking to purchase,
25 not to sell or distribute, correct?

1 A Per context, yes.

2 Q Thank you. Let's continue down. She will let go 20.
3 She will let go 20. This is all coming from in a Nadeen's
4 phone. She gets a refill. Moving down. Quote. Now this is on
5 March 1st. By the way, this whole conversation is on March 1st,
6 right?

7 A From what I can tell, yes.

8 Q Would you like to go up just to make sure?

9 A Yes, sir.

10 Q Okay. We can back up from beginning just to make sure
11 it starts on March 1st. March 1st, correct?

12 A Yes.

13 Q I didn't want in any way to misrepresent. Okay, so
14 here we are the response is, quote, I don't eat them. Which
15 could be literally I don't take them, right?

16 A Correct.

17 Q It could also mean, I don't just stuff them down my
18 mouth. I don't need 20, I just need one. It could also mean
19 that, right?

20 A I believe it's referring to I don't ingest them. I
21 don't use them.

22 Q I understand that's what you believe. My question is,
23 what do you know? I'm not interested in so much what you
24 believe, what I am interested what do you actually know. Do you
25 know whether this response was referring to someone who was

1 saying, I just don't consume them at high rate and therefore I'm
2 only interested in purchasing a small amount, perhaps one, or is
3 it somebody saying, oh, by the way I don't take this stuff. Do
4 you actually know which one it is?

5 A No, sir, but based on on I don't eat them it is -- it's
6 -- there's not a lot of room in there to understand anything
7 aside from I don't ingest them. I don't use them.

8 Q Well, it's not a lot -- I didn't meant to cut you off.

9 A Your fine.

10 Q So there wouldn't be a lot of room unless you actually
11 had talked to the person who sent the text to understand what
12 they actually meant, right?

13 A Correct.

14 Q Thank you. Let's continue down. You wanted to know,
15 which is basically the person who is using the phone, you wanted
16 to know what the price was. I told you, right?

17 A Yes.

18 Q Now he says -- stop right there. I'll do two blues for
19 twenty. Again, only interested in two pills, right?

20 A Yes.

21 Q Okay. And blues are again Roxicodone or pressed
22 Fentanyl, right?

23 A Yes.

24 Q Thank you. And then response, I will tell her. So
25 let's continue down. Okay, is the response. Okay, fair enough.

1 That takes care of Nadine.

2 Keisha. So we start out with a couple of K's, which is okay,
3 right?

4 A Yes, sir.

5 Q Stop right there. February 19. So we're talking about
6 two months before the search warrant was served on Amanda Lane.
7 Two months and two days. Well, actually two months. February
8 ends on the 28th. There's a -- what appears to be a question.
9 Do you want some hydrocodone? Is that what you would interpret
10 that to mean?

11 A I don't know.

12 Q So, okay. So you don't know what that means?

13 A No, sir. Not without punctuation.

14 Q Okay. All right. Well, it could mean than somebody is
15 offering Hydrocodone, right?

16 A It could.

17 Q All right. Let's continue down. Good price. Is that
18 telling the the person you think using this phone who is
19 identified as Keisha, is there a good price on this Hydrocodone?
20 Is it a question or I have a good price on Hydrocodone? Do you
21 know?

22 A I don't know.

23 Q You don't know. By the the way, who is Keisha?

24 A I don't know.

25 Q Okay. Fair enough. Response, you want some

1 Hydrocodone. Continuing down. This is now on the 19th. Quote.
2 They got thirty fives and four fifty cash. She don't smoke.
3 That seems to indicate that whoever is using Keisha's phone
4 seems to know the price of something for sale, correct?

5 A Correct.

6 Q All right. Which would suggest that Keisha was trying
7 to -- or whoever is using Keisha's phone, was trying to offer
8 for sale something to whoever was using Mr. White's phone,
9 correct?

10 A I don't know.

11 Q You don't know. All right. Let's continue down. I
12 want them. On the way. That's the response. That seems to be
13 indicating that somebody who doesn't have something wants to
14 acquire them, right?

15 A Correct.

16 Q Okay. Which would suggest that whoever was using this
17 phone was trying to purchase versus sell or distribute the
18 Hydrocodone, correct?

19 A Correct.

20 Q Thank you. Moving down. K. K. Along. Along. A few
21 minutes. Come on. That's it. All right.

22 So now we move to Malikkk. Page five I believe is where we
23 started from. All right. Malikkk, beans and roxy. Beans is
24 the methamphetamine, right?

25 A Correct.

1 Q Okay, and roxy is most likely Roxicodone, yes?

2 A Or clandestinely manufactured Fentanyl pills.

3 Q Clandestinely manufactured Fentanyl pills. Thank you
4 for reminding me.

5 Next thing, I think I'm flexing them. What does that mean?

6 A It could mean a couple of things. It could mean that
7 someone thinks that they're selling them. Someone thinks that
8 they're flaunting them.

9 Q It could mean that Malikkk or whoever is using
10 Malikkk's phone is also they think that I'm selling them. That
11 could be what that means too, right?

12 A Yes.

13 Q Okay. We'll move on. That whoever this Malikkk is, if
14 their name is actually Malikkk, whoever is using that phone says
15 other people think Malikkk is selling this stuff, right? Could
16 be that?

17 A Yes.

18 Q Fair enough. And this is on February 9th, yes?

19 A Yes, sir.

20 Q Okay. So we're now talking it's two and a half months
21 prior to the search warrant be served on Amanda Lane, right?

22 A I'm not sure of the actually search warrant.

23 Q Well, I think we can take judicial notice that was
24 served on April 17th off 2017?

25 THE COURT: That's what the indictment says.

1 MR. WELLBORN: Thank you. I believe that's what
2 the search warrant says as well.

3 THE COURT: Yes, sir.

4 Q So, they think I'm flexing them says Malikkk. And
5 response on February 9th is I'm OTW, on the way, right?

6 A Yes, sir.

7 Q Okay. So we don't know whether this response is on the
8 way to purchase the beans and the roxy or I'm on the way to
9 distribute the beans and roxy, do we?

10 A No, sir, we don't.

11 Q And even if we did, we wouldn't know whether the person
12 is on the way to purchase the beans, the methamphetamine or the
13 roxy, would we?

14 A No, sir.

15 Q Or we wouldn't know whether a person was on the way to
16 sell methamphetamine or the roxy? We wouldn't know that either,
17 would we?

18 A No, sir.

19 Q Let's scroll down. LGHT, what does that mean?

20 A It's IGHT. Okay. All right.

21 Q All right. Fair enough. Yo. Yo. You left yet. I'm
22 out here. Out here. Yo. About to go. Okay, let's pause right
23 there. Now we are up to February 28th. So let's scroll up just
24 a little bit. Stop right there.

25 What happened on February the 9th, did somebody meet

1 Malikkk?

2 A I don't know.

3 Q And by the way, we don't know who Malikk is, right?

4 A No, sir.

5 Q And if that somebody did meet Malikkk is that someone
6 Harold White?

7 A I don't know.

8 Q And if that somebody who who we don't know met the
9 other somebody that we don't know, did they purchase anything
10 from that somebody?

11 A I don't know.

12 Q Fair enough. All right. Hang on one second. I think
13 that would end Malikkk. All right. Let's continue down then.

14 Can we go to the next page. So March 11th, you still got
15 them perkies. I'm assuming you think this is a question from
16 whoever is using Malikkk's phone, does somebody have Percocet?

17 A Correct.

18 Q Fair enough. He response is now. Presumably that
19 means no, correct?

20 A Yes, sir.

21 Q All right. Continue down. I know you got some beans,
22 meaning methamphetamine, right?

23 A Correct.

24 Q Okay, continue down. Yeah, what's up. Now the date of
25 that is March 11. Does that mean that this person in fact has

1 methamphetamine?

2 A It appears as though they do.

3 Q Which is not part of this trial because no
4 methamphetamine was found, right?

5 MR. WELLBORN: Would you stipulate to that?

6 Mr. PORTER: Yes, Your Honor.

7 THE COURT: Okay.

8 MR. WELLBORN: Thank you.

9 Q All right. So, let's continue down. This is
10 presumably because it's the same day talking about the beans,
11 right?

12 A Yes, sir.

13 Q March 12th. Yo, what's up. Yo, are you finally going
14 to get the shower. Be straight and you indicated that means do
15 you have any narcotics for sale, right?

16 A Yes, sir.

17 Q Which would range presumably the whole gamut of
18 anything from mushrooms, marijuana, heroin, opioids, uppers,
19 downers, anything, right?

20 A Yes, sir.

21 Q Okay. Let's continue down. All right. So on March
22 17th quote, singing blues. That presumably -- what you said
23 that meant was that whoever has this, or sent this message is
24 referencing the pressed Fentanyl or the Roxicodone, right?

25 A Yes, sir.

1 Q Okay. You don't know which one it was?

2 A No, sir.

3 Q And by the way, does that mean the person is seeking to
4 purchase the blues or sell the blues?

5 A Don't know.

6 Q Don't know. Okay. Question you can't sell me eight,
7 of them my pick me ups. Which Mr. Porter was kind enough to
8 reference the methamphetamine and not the blues, right?

9 A Pick me ups are standard for uppers which would be
10 methamphetamine.

11 Q And the response was now. What's the move. Can you
12 interpret that in context?

13 A Looks like he's asking -- it looks like Malikkk is
14 asking the defendant's phone what's the plan.

15 Q Continue to scroll down please. How many ever -- how
16 many ever beans and eight roxy's. Let's stop right there. So
17 presumably Malikk, or whoever is using Malikkk's phone is
18 interested in purchasing either methamphetamine and eight
19 Roxicodone, correct?

20 A Correct.

21 Q All right. Continue down. Come on, you can sell me
22 five. Let's continue down. Four 25. We're now discussing
23 marijuana. Where's the pine, right?

24 A Yes, sir.

25 Q Before we get there let's scroll back up. In response

1 to the previous text, did whoever was using Mr. White's phone
2 meet up with whoever was using Mr. -- or the phone identified as
3 belonging to Malikkk -- to either sell or purchase any blues,
4 i.e. pressed Fentanyl or Roxicodone.

5 A I don't know.

6 Q Fair enough.

7 MR. PORTER: Your Honor, just to speed this along,
8 can we just stipulate that Investigator Gatti, is
9 unaware as to what was going on the other end other
10 than for what I'm offering this for which is the
11 effect on the listener. So we're not going to
12 continuing going down this road as to who these people
13 are.

14 THE COURT: All right, Mr. Wellborn what is your
15 response?

16 MR. WELLBORN: I'm almost done with this and I'm
17 just trying to establish especially in light of the
18 Ostrowski.

19 THE COURT: Yes, sir.

20 MR. WELLBORN: The predicate for whether this
21 evidence would be admissible to show intent.

22 THE COURT: Go ahead. Finish your cross.

23 Q Let's continue down. Where is the pine. March 17th.
24 My mommas house. Now that presumably means there might be some
25 marijuana of some identifiable amount at, quote, my mommas

1 house, right?

2 A Yes, sir.

3 Q Fair enough. How much marijuana, by the way?

4 A Unidentifiable amount.

5 Q Continue down. I'm at house. I'm at house. Give me a
6 minute. Yo. That is end of it. So we don't know, again,
7 whether any transaction took place at, quote, a momma's house on
8 March -- I believe the 17th?

9 A No, sir.

10 Q Okay. Whether any pine was distributed or not. We
11 have no idea, do we?

12 A No, sir.

13 Q That's all the questions I have and I think the last
14 one is Tatta.

15 MR. PORTER: Tatta and Nuk.

16 Q All right. Let's go to Tatta. All right, Tatta is
17 interested in blue, right, blue boys?

18 A Yes, sir.

19 Q We don't know who Tatta is, right?

20 A Yes, sir.

21 Q So this is February 23rd Tatta is reaching out about
22 the blue boys, yes?

23 A Yes, sir.

24 Q Okay. Let's continue. Quote, this is the response on
25 February 23rd. Nah, I'm done tonight. It doesn't sound like a

1 sale is going to take place or a transaction is going to take at
2 that time, right?

3 A No, sir.

4 Q All right. The next one down. Boo got any. Who's
5 Boo?

6 A I don't know.

7 Q So it sounds like whoever this Tata is or whoever
8 Tata's phone is being used by wants to know if somebody
9 referenced as Boo might in fact have this item that they weren't
10 able to get from the person using Mr. White's phone, correct?

11 A Correct.

12 Q And response is, no. Okay. Let's continue down.
13 What's Pete's number. So let's stop right there. So now we're
14 going to plan C from Tata if I can't get any from whoever is
15 using Mr. White's phone and I can't get any from Boo, let's try
16 Pete, correct?

17 A Correct.

18 Q Let's continue down. What's Pete's number. Continue
19 down. What up. Still got some blue boys. Same thing.
20 Continue down. Yeah, what up. Does that mean like hey, what up
21 with you? Why are you bothering me? Yes, they he have blue
22 boys because they already said on February 23, Nah.

23 Do you know actually what that response truly meant?

24 A It appears he is responding to her saying yes.

25 Q All right, fair enough. Let's continue. Hey, big

1 homie. See you in an hour. Now this is the next day. We're at
2 February 24th now. Response, yeah. Okay. Continue down. I'm
3 on the way. Three blue boys and ten white ones. That would be
4 three of the blues and ten whites. The whites you identified as
5 could be hydrocodone, correct?

6 A Correct.

7 Q Okay. Continue down. Now we are at five blues and six
8 white ones. Its been changed, the request seems to be. Oh, by
9 the way. Do we know, this next day, whether this is a request
10 to purchase or offer to sell? Do you know either way?

11 A In context she was asking for it the previous day. So
12 it would appear she's asking for it again.

13 Q But we don't know if this is a she, right?

14 A No, we don't.

15 Q Okay. All right. Let's continue down. What you got a
16 hundred is the response on the 24th. Next one down. I got 80.
17 She's going to get 80 on her tab on the first. Twenty-four,
18 here you go. Good to go. Okay. We are on for tonight. Is
19 that a statement or a question do you know?

20 A I don't.

21 Q Okay. So that's Tata. That's it. The last one we go
22 to you is Nuck or Nuk, right?

23 A Yes, sir.

24 Q Okay. First one we have is March 6th. The first thing
25 thing that comes in DIS Nuk, Nuck, whoever that is. That's just

1 basically identifying who they are, right?

2 A Yes, sir.

3 Q And the response is that's up. What have you got for
4 me. Now is that what you got for me in terms do you have
5 something to sell to me. Do you have something to give to me in
6 exchange or just if general, how's it going. What's going on.
7 Do you know what that response means?

8 A No, I don't.

9 Q Oh, wait a minute. Pine and a little snow. Is that
10 Nuk trying to sell marijuana and cocaine to the person using Mr.
11 White's phone or is that an offer to purchase?

12 A I don't know.

13 Q Okay. Let's continue down. You got some strong two
14 for 35 or less. That kind of sounds like a question, doesn't
15 it?

16 A I don't know.

17 Q You don't know. Okay. Let's continue. Nope. And
18 this is -- you said earlier, this next one, now this some arm
19 flex, two gas tanks meant Nuk was describing the quality of the
20 pine, is that correct?

21 A He's asking for the quality or telling the quality.

22 Q It could be either one?

23 A Yes, sir.

24 Q Okay. Fair enough. Let's continue down. I got a
25 little snow for you too. Does that sound like Nuk is maybe

1 trying to sell?

2 MR. PORTER: Your Honor, I don't think that will
3 be admissible under Ostrowski.

4 THE COURT: Okay.

5 Q All right. Okay. So let me just very briefly review
6 before you scroll any further. I guess we are on page four
7 based on my printout, is that correct?

8 MR. PORTER: Yes, page four.

9 Q On what. So that is somebody inquiring what are you
10 asking for on the price on, right?

11 A Would you mind scrolling up.

12 Q Yeah, as for the reference. What's the tickets.
13 That's the response that came from the phone belonging to Mr.
14 White. What does that mean? What's the price, right?

15 A Correct.

16 Q So, that's somebody inquiring what the price to
17 purchase something is, correct?

18 A Correct.

19 Q Not saying, this is what I have to sell and this is how
20 much it is going to cost because obviously they know how much
21 they want if they are trying to sell it, correct?

22 A Correct.

23 Q Okay. So what we're talking about is a potential
24 transaction between somebody using Mr. White's phone attempting
25 to purchase marijuana as opposed to somebody using Mr. White's

1 phone attempting to sell marijuana, correct?

2 A Correct.

3 Q Thank you. Let's scroll down. On what, says Nuk.

4 Both is the response. Then we get a price, 25 P, 11 zip.

5 Continuing down. Then we get this, like. I'll hit you up later

6 on the 11. Continuing down. Bet. Bet. Okay. Okay. Let me

7 hit you up. Now the 12th of April. What. Address. Address.

8 I need them. I need them. Might can work one in. I'll call

9 you in a minute. Okay. Continue. I let a very unfortunate

10 word in. I will let you know. Buying good number.

11 So, is that a question or a statement given the context of

12 the earlier exchanges?

13 A Can you scroll up for the context, please.

14 Q Sure. The context are the earlier statements where we

15 were talking about Nuk was offering pine for sale. It seems to

16 be the whole thing is about Nuk selling stuff to whoever is

17 using Mr. White's phone. Let's see if we can find the context.

18 Do we have anything in the context that suggests whether a

19 person using Mr. White's phone is attempting to purchase or

20 attempting to sell something to Nuk?

21 A If you stop right there it says I need them. I believe

22 that would be.

23 Q I need them. I might can work one in. I'll call you

24 in a minute. So thank you. That suggest to you that

25 potentially whoever was using Mr. White's phone was attempting

1 to potentially sell something to Nuk?

2 A Correct.

3 Q What were they attempting to sell?

4 A I don't know.

5 Q Again, it could have been marijuana?

6 A Yes.

7 Q It could have been blues?

8 A Yes.

9 THE COURT: She said she didn't know. Move on.

10 MR. WELLBORN: Thank you. Let's continue.

11 Q All right. So do you have any idea one way or another
12 whether a person identified as Nuk by the phone ever met with
13 the person who is using Mr. White's phone?

14 A No, sir.

15 Q Okay. And therefore you also you would agree you have
16 no idea whether anything was ever sold by the person using Mr.
17 White's phone to the person using Nuk's phone?

18 A No, sir.

19 Q Okay. That's all I have.

20 THE COURT: Any redirect?

21 MR. PORTER: Just briefly Your Honor.

22 REDIRECT EXAMINATION

23 BY MR. PORTER:

24 Q Investigator Gatti, in your training and experience as
25 a narcotics officer is it fair to say that the drug dealing game

1 is a game of trust? The parties have to trust each other, is
2 that fair to say?

3 A Yes.

4 Q So -- and these are long term relationships where
5 you're sourcing drugs?

6 A Yes, sir.

7 Q And drugs -- is it fair to say that drugs can go both
8 directions in those relationships?

9 A Yes, sir.

10 Q So when you're working a confidential informant, for
11 example, there's a prior relationship with the drug dealer prior
12 to you getting involved to do a confidential buy?

13 A Yes, sir.

14 Q And often times your confidential informants may have
15 sold drugs to the defendant, is that fair to say?

16 A Yes, sir.

17 Q Okay. So if these conversations are ambiguous with
18 respect to whether they are buying or selling, it indicates a --
19 it's fair to say that it indicates a relationship where drugs
20 are exchanged?

21 A Yes, sir.

22 Q And there would be an intent to distribute between
23 them?

24 A Yes, sir.

25 Q Now, I want to just briefly go back to Mr. Malikk and

1 the Percocets. Beg the Court's indulgence.

2 THE COURT: Let the record reflect I'm being
3 extremely indulgent.

4 MR. PORTER: Yes, sir, Your Honor, I understand
5 what you're saying.

6 At this point I have no further questions.

7 THE COURT: Thank you, very much. Any recross
8 based upon that redirect?

9 MR. WELLBORN: No, sir.

10 THE COURT: Thank you ma'am. You can step down.
11 All right, it is now 12:23. Let's go ahead and take
12 our lunch recess. Let's start back at 1:45. Who's the
13 next witness.

14 MR. PORTER: It will be Jason Well.

15 THE COURT: We will hear from that witness and do
16 your argument, or do you want to do your argument
17 first?

18 MR. WELLBORN: However Your Honor wishes to do it?

19 THE COURT: This going to be the witness who does
20 what from the State's perspective?

21 MR. PORTER: We can swap it around. We can do the
22 authentication of the cell phone next if you like and
23 then hold off and do the 403, because I think the
24 defense does have an objection to the authentication
25 of the cell phone.

1 MR. WELLBORN: Look, depending on the 403 ruling
2 the authentication of the cell phone is irrelevant
3 because if we don't let the contents as submitted by
4 the State in who cares if the cell phone is
5 authenticated or not. It seems logically to do the
6 403 argument first.

7 THE COURT: Agreed. 1:45 we'll have legal
8 arguments on where we're going. All right. Thank
9 you. Enjoy your lunch.

10 (WHEREUPON, we were in recess.)

11 THE COURT: All right. I think where we left off
12 in lieu of calling the next witness we were going to
13 deal with the legal arguments concerning whether or
14 not these texts which have been offered -- well, we
15 have an objection as to hearsay. I dealt with that.
16 Then we have an objection as to 404(b) as well as 403.
17 Is that correct Mr. Wellborn?

18 MR. WELLBORN: Yes, sir.

19 THE COURT: Are you ready to be heard on that?

20 MR. WELLBORN: I am.

21 THE COURT: All right. Yes, sir.

22 MR. WELLBORN: So going through the 404(b)
23 analysis slash Lyle analysis first. All of these
24 texts involve uncharged conduct and uncharged
25 therefore un-convicted conduct. So the standard --

1 initial standard has got to be that these acts
2 occurred and that they occurred -- and that we know
3 that they occurred by clear and convincing evidence.
4 That is the standard. So that being said, the other
5 thing is, are these in fact bad acts. So going
6 through this we seem to have a lot of unknown conduct
7 because wasn't really sure what was going on. There
8 certainly seems to be some conversation that involved
9 the potential of either purchase or the potential of
10 sale between an unknown person and my client's cell
11 phone. We don't know, and the testimony is replete
12 that any of these acts actually occurred. Only the
13 conversations leading up to potential acts. So that's
14 the other issue. Do we in fact have bad acts. There
15 is no evidence that any crime was committed, actually
16 committed in any of these conversations. So that's
17 the first issue.

18 The second issue is, there has to be logical
19 connection between these prior acts, if in fact they
20 occurred and if in fact they have been proved by clear
21 and convincing evidence. There has to be a logical
22 connection to the assertion that on April 17th of 2017
23 my client possessed a certain amount of hydrocodone
24 and marijuana and cocaine. So that logical connection
25 has to be shown. I would argue it's not shown. But

1 the other issue is, even getting there -- and I will
2 get to the section of Ostrowski that I think is most
3 relevant -- even if we can show that logical
4 connection -- which I don't think is there -- you
5 still have to figure out which exception to the
6 admission of other act evidence applies.

7 Now, the State has indicated they think it shows
8 my client's intent. Well, presumably it's got to be
9 intent to possess with intent to distribute, but it's
10 got to be the intent to possess with intent to
11 distribute certain drugs. Not any old drug. So we
12 heard about blues, which can be Roxicodone.
13 Roxicodone isn't in this case. We heard about blues
14 which could also be meth -- excuse me, Fentanyl.
15 There is no Fentanyl involved in this case. None. We
16 heard about methamphetamine. There's no
17 methamphetamine in this case. There is an other act
18 if in fact it has been proved by clear and convincing
19 evidence that potentially someone using my client's
20 cell phone was interested in purchasing cocaine. But
21 that doesn't tend to prove or disprove that a month,
22 or a month and a half later or whatever it was, that
23 the cocaine he had in possession was that cocaine.
24 That would at best show -- at best it would show
25 propensity. At best. But again, it has to be

1 propensity to do what. Is it propensity to purchase
2 methamphetamine? Propensity to purchase Oxycodone.
3 The propensity to purchase Hydrocodone. The
4 propensity to purchase marijuana or the propensity to
5 purchase cocaine. Not the propensity -- and in this
6 case what the allegation is he possessed this stuff
7 with intent to sell. So we got all those issues. But
8 now looking specifically at Ostrowski, and I'm reading
9 from note 24 in the Ostrowski under the paragraph
10 beginning identity and intent.

11 THE COURT: Hang on one second. You're at
12 footnote 24?

13 MR. WELLBORN: Yes.

14 THE COURT: Let me get there.

15 MR. WELLBORN: Well, it's not footnote. It's case
16 note 24. I can bring it up on Westlaw, I have in bold
17 identity and intent. I think you are about to be
18 handed a copy.

19 THE COURT: All right, I got it. Let me see.
20 Identity and intent subsection B of the opinion.
21 Okay, got you.

22 MR. WELLBORN: So Ostrowski, the State asserts
23 that the text messages prove the Appellant identity as
24 the owner of the methamphetamine. That's not what the
25 State is seeking to introduce here. His identity is

1 not the issue here presumably from the introduction of
2 these texts. However, no where does the State cite
3 any specific acts or evidence offered at trial that
4 illustrate how the text messages -- even if they do
5 prove a drug trafficking scheme -- connect the
6 Appellant to the specific drugs at issue in this case,
7 citing Lyle. If the Court does not clearly perceive
8 the extraneous criminal transaction and the crime
9 charged, that is, its logical relevancy, the accused
10 should be given the benefit of the doubt, and the
11 evidence should be rejected.

12 Again, we don't have any criminal transactions.
13 What we have in these texts are the discussion of
14 potential criminal transactions. No criminal
15 transactions have been proven, or for that matter has
16 been admitted that they don't have any knowledge that
17 any such transactions took place.

18 Indeed the argument that Appellant owned these
19 drugs because the Appellant is a drug dealer, is the
20 definitional example of propensity evidence. Now
21 remember the State's reason for proffering this
22 evidence or suggesting it is, they quote they wanted
23 to show what my client would have been thinking about
24 at the time of these texts and therefore also what we
25 would have been thinking about on April 17, 2017.

1 There's no evidence.

2 THE COURT: They're offering it to prove that he's
3 a drug dealer.

4 MR. WELLBORN: Correct.

5 THE COURT: And that he had intent to distribute
6 these drugs that he is charged with that were found
7 and discovered on April 17th even though these texts
8 were back from early February and early March.

9 MR. WELLBORN: And involved different drugs.

10 THE COURT: Understood.

11 MR. WELLBORN: Right. So that's correct. So, the
12 inference that the Appellant owned these drugs because
13 Appellant is a drug dealer is the definitional example
14 of propensity evidence which of course is
15 inadmissible.

16 The purpose of the State's use of the evidence
17 appears similar to that articulated by this Court in
18 Campbell -- and I'd have to go back up and find the
19 cite for Campbell but obviously you have the opinion.
20 You can do that.

21 In that case the State was not trying to prove a
22 common scheme or plan. There we go. Thank you.
23 State versus Campbell and that was decided by our
24 Court in 1994. Found at 454 S.E. 899. The Ostrowski
25 Court says that this was what the State is trying to

1 do is similar.

2 THE COURT: The State is not trying to prove a
3 common scheme or plan.

4 MR. WELLBORN: Right. Right. And so the facts in
5 this case are similar to those at issue in Lyle. The
6 defendant was charged with a forgery that resembled
7 similar crimes carried out in the same area on the
8 same day, and those carried out in other, nearby
9 cities on earlier dates. The Court ruled that the
10 crimes carried out on the same day could not -- could
11 be admitted for identity purposes reasoning they were
12 inconsistent with the defendant's alibi. However, the
13 Lyle Court did not allow the earlier crimes to be
14 admitted under the identity exception because there
15 was no connection between the time and place. Again,
16 I recognize this is not an identity issue.

17 What we do have though is we have these messages
18 that are remote. We have some messages starting, I
19 believe, early February. There is a February 9th
20 message I believe it is and the last one that I saw --
21 and I may be wrong about this and I am sure I'll be
22 corrected -- March 17th, which would have been a month
23 before. And in none of these messages, in none of
24 these messages does my client-- and I want to make
25 sure I'm clear on that -- in none of these messages

1 does my client offer for sale Oxycodone. In none of
2 these messages, with the exception of one, does my
3 client -- or if it was my client -- mention the
4 possibility of selling hydrocodone. I think there was
5 one that references that if we accept the drug lingo.

6 With that said, we are still talking about
7 propensity. And so, following up on what the State
8 said in Ostrowski. We decline to say precisely how
9 far back in the history of text messages the State
10 could go, or even if the text messages over a shorter
11 period of time would be permissible in this case to
12 prove that the defendant was the owner of the
13 methamphetamine. That being Ostrowski. We concede
14 the closer the messages were to the date of the
15 Appellant's arrest the closer this case would become.

16 However, we believe that in this case three
17 weeks, three weeks, is too long, and six weeks is
18 certainly too long for the handful of the text
19 messages that fall that far from the appellant's
20 arrest.

21 Now, it's important to remember in Ostrowski these
22 text messages were much more damning in the Ostrowski
23 case than the ones before us today. The text message
24 in Ostrowski were specific that they were talking
25 about methamphetamine and they were talking about the

1 sale of methamphetamine. In this case we got text
2 messages all over the map. Some of which, as the
3 officer said, could be any narcotic. Could be any
4 narcotic. There's methamphetamine. Not an issue
5 here. There's cocaine not being introduced for that
6 purpose here because my client is not on trial for
7 possession with intent to distribute cocaine. There
8 is no oxycodone that was in these text messages or
9 roxy's, but not oxycodone. And there was absolutely
10 -- we had the -- as I recall we had the blues which
11 would have been compressed Fentanyl. No compressed
12 Fentanyl was a found in my client's residence, nor is
13 he on trial for any Fentanyl charge. There was,
14 again, specifically Roxycodone which -- and again, the
15 blues could have been either or. We don't know what
16 those blues are based on the officer's testimony. It
17 could have been one. It could have been the other.
18 The only one that comes close is the marijuana. The
19 only one that comes close is the marijuana. So, if
20 we're going to introduce these texts, first of all we
21 have to show that other act -- an other bad act
22 specifically was proved by clear and convincing
23 evidence other than there were conversations about
24 something that might occur.

25 Number two, we have to show what exception they

1 meet, and saying that my client's state of mind on
2 February 9th was "X" therefore we can assume that's
3 also what his state of mind was on April 17th is some
4 place that no Court has been willing to go, or where
5 none of our Supreme Court, the Courts of Appeals have
6 been willing to go. Ostrowski certainly is very clear
7 about it. So, I would suggest that under 404(b) and
8 State versus Lyle that these texts are not admissible.
9 And the other issue is, let's assume that there is
10 some iota of relevance in these texts that might go to
11 show my client's state of of mind -- which is again
12 why the solicitor is choosing to offer it -- then you
13 have to look at the 403 aspects.

14 THE COURT: Before we move to move 403, are you
15 arguing the second part of the Ostrowski the issue of
16 intent --

17 MR. WELLBORN: I'm arguing the issue under
18 Ostrowski.

19 THE COURT: -- just identity.

20 MR. WELLBORN: Identity is not at play here.

21 THE COURT: Okay.

22 MR. WELLBORN: But intent is, because that is the
23 exception to the general rule of preclusion that the
24 State is choosing to deposit for admissibility because
25 as we know the general rule they're inadmissible per

1 se.

2 THE COURT: Right.

3 MR. WELLBORN: But then there are the exceptions.
4 So I'm arguing it does not meet the intent exception
5 and there is no logical connection, which is the
6 second issue. And then going all the way back to the
7 first one, the other acts have to be proved by clear
8 and convincing evidence that this was A, this was my
9 client who was involved in these text messages. He's
10 not identified by the way in any of these. It's just
11 a phone. His phone. We don't know who used the
12 phone. And we now know after a quite extensive cross
13 examination, we don't know if any of these acts ever
14 occurred.

15 THE COURT: Okay. So, if I overrule your
16 objection to that, then we go to you would say it's
17 not relevant under Rule 403 because it's substantially
18 more prejudicial than it is probative.

19 MR. WELLBORN: 403 is not a relevant standard. 403
20 is the weighing the prejudicial impact versus
21 probative value. And so you first have to make a
22 finding of the fact that these are probative and why
23 they are probative which would take us right back into
24 why does it show my client's intent on April 17th.
25 And you have to make a finding as to the logical

1 connection and what that logical connection is and not
2 just I find a logical connection. That's where we
3 are.

4 THE COURT: Thank you, Mr. Wellborn. Solicitor.

5 MR. PORTER: Your Honor, there's a lot there. I
6 guess I'll start with Ostrowski. Ostrowski was a
7 tracking case where the State intended to use it for
8 identity purposes. Not for intent. So I think
9 Ostrowski is, out of the gate, distinguishable there.
10 The issue here -- and in Ostrowski they go to great
11 length to state that the trafficking statute, although
12 it does actually include intent to distribute in the
13 statute because of the solicitor's closing argument
14 then they turn back and said, well, you should of as a
15 judge identified that as a potential issue by the way
16 the State was going, and not let them in for the first
17 place. So I think it's a bit of a Monday morning
18 quarterback situation for you, Your Honor.

19 Ostrowski does not control because we're talking
20 go about intent to distribute. Now we do have cases
21 that do control. Those are State versus Wilson, 345
22 S.C. 1, it's a 2001 case; and State versus King, 349
23 S.C. 142, a 2002 case, both of which -- one is a
24 Supreme Court -- Wilson is a Supreme Court decision.
25 King -- and have I copies, Your Honor. But the

1 Ostrowski opinion distinguishes those because they do
2 have to do with intent to distribute. Those were both
3 possession with intent to distribute cases. That was
4 a critical element, and in fact, Wilson I think the
5 most on point position because if you go to footnote
6 14 in the Wilson case, on page four, the amount of
7 crack seized in that case was less than one gram where
8 the element of intent was not subject to the prima
9 facie showing. There's no statutory inference level
10 for hydrocodone or oxycodone. So that's going to
11 dovetail a little bit with the 403 argument. But
12 again, King and Wilson are still good law based on
13 Ostrowski because Ostrowski is limited to a
14 consideration of identity for possession only.

15 The Court is very specific that the ruling is
16 limited strictly to possession. They go to great
17 lengths to identify that the State's theory was
18 possession and identity to possess those drugs. That's
19 not what the State is trying to do with these things
20 here. It's strictly to show what the defendant's
21 state of mind was with respect to those drugs in that
22 case. Now --

23 THE COURT: What about Mr. Wellborn's point, that
24 well, all this slang and stuff going back and forth
25 between these cell numbers doesn't talk about what

1 he's indicted for.

2 MR. PORTER: It does talk specifically about
3 perkies and hydrocodone in two situations and it also
4 talks about getting pharmaceutical grade pills and I
5 believe that was in Nadeen. So we're are talking
6 about the sourcing of drugs and that why I redirected
7 briefly Officer Gatti --

8 THE COURT: So the Nadeen text is the only text
9 which reference the drugs that he's indicted for with
10 the intent to distribute?

11 MR. PORTER: The State's position is that the
12 hydrocodone text that's in, the perkies text that's in
13 Malikkk, I think that's around March 11th is when that
14 text came in. There's a conversation of perkies, I
15 believe, and then there is a conversation in Kiesha
16 about hydrocodone specifically, about whether the
17 defendant wants hydrocodone. And then also Nadeen has
18 the disambiguated pharmaceutical grade pills, the
19 pharmaceutical grade items that the defendant is
20 wanting to buy, and that's why I had the redirect of
21 Officer Gatti to establish -- as the Court very well
22 knows this is a trust relationship. Drugs go back and
23 forth. Whoever has them can get them. They source
24 them when they need them. That kind of thing.

25 THE COURT: We got Nadeen, Malikkk and Kiesha.

1 MR. PORTER: Yes, sir.

2 THE COURT: Are the three out of all those texts
3 we went over, those are the three people. Those three
4 limited times that deal with drugs that were
5 specifically this defendant was indicted for.

6 MR. PORTER: And Your Honor, I believe there was
7 some conversation at the bottom of Tata that had to do
8 -- it may have been Malikkk. I'm getting a bit tied
9 up. Tata does whites down at the bottom and Officer
10 Gatti was very clear on that that the white ones would
11 not be the pressed Fentanyl pills. That's on page 19.
12 That's where if the Court remembers where she's
13 adjusting the order. It goes from three blue boys and
14 ten white ones to five -- five.

15 THE COURT: Five blues and six whites.

16 MR. PORTER: And that's up on the screen for the
17 Court.

18 THE COURT: What did the witness testify six
19 whites mean?

20 MR. PORTER: Hydrocodone or Oxycodone. And we have
21 white Oxycodone in this case. And so going back to
22 the State's argument on 404(b) intent to distribute is
23 the crux of this case. We don't have an inference
24 level. In Wilson and King -- in Wilson they
25 allowed --

1 THE COURT: In Ostrowski you did have an inference
2 level?

3 MR. PORTER: We did, and that's why I think
4 Ostrowski is not controlling because the Court does --
5 the Court of Appeals did their best to make it such
6 that that wasn't even considered even though it's in
7 the statute. And the State argued it on appeal and
8 the Court said, well no, the solicitor's closing
9 argument is very odd opinion. But what we have here
10 especially when you consider King -- I believe it's
11 Wilson. The testimony in Wilson.

12 MR. WELLBORN: Do you have a copy of those?

13 MR. PORTER: Yes, absolutely.

14 Would the Court like a copy of Wilson and King?

15 THE COURT: Just argue it to me.

16 MR. PORTER: Yes, sir. I'm trying to get to the
17 relevant portion here. It's King that I am referring
18 to specifically here -- and I'll give Mr. Wellborn a
19 copy of King. (Handed).

20 So King, the Court -- and it is an older opinion.
21 I recognize that. But King they actually allowed the
22 testimony of the witness to include -- now, there
23 isn't a factual summary of what the actual transcript
24 read, but it appears from the context of the opinion
25 that the Court allowed the testimony that the witness

1 had purchased crack cocaine from the defendant 20 to
2 40 times over a period of a year, and so the State's
3 argument with respect to the length of time these text
4 messages are allowed, the Court found in Ostrowski
5 three weeks -- or six weeks was not enough with
6 respect to the issue of identity for possession sake.

7 Now, we have a case here in hand where the Court
8 in 2002 said a year ago, 20 to 40 incidents of drug
9 sales were relevant to prove intent and those are
10 actual deals. As far as clear and convincing evidence
11 goes, Your Honor, we believe that it is established
12 that these communications came through on the
13 defendant's phone in allowable time period and his
14 responses are clear that he is involved in the
15 movement of drugs. That is everything about
16 distribution and I was trying to get out through
17 Officer Gatti. We have to buy the drugs to sell the
18 drugs. These drugs don't just appear out of no where.
19 So the transactions of drug and the development and
20 maintenance of those relationships are germane to
21 proving. The defense went into great lengths to
22 establish we don't know which way the drugs are
23 flowing etc., etc. It is clear and convincing that
24 this defendant was involved in the distribution of
25 drugs back and forth, and that goes specifically to

1 the issue of intent. So for those reasons Your Honor
2 -- if I beg the Court's indulgence.

3 Your Honor, for that reason I believe -- we
4 believe that King and Wilson should guide the Court's
5 decision here and Ostrowski can be put aside.

6 THE COURT: That Nadeen, the little portions of in
7 Nadeen's text, Malikk's text, Kiesha's text and
8 Tata's text, only those which reference, arguably
9 which references the drugs which he is indicted for
10 should come in.

11 MR. PORTER: Yes, sir, Your Honor. Officer Gatti
12 did testify that there is a -- when people are buying
13 pain pills they only go back and forth between the
14 various types.

15 THE COURT: I understand, but he's not indicted
16 for that.

17 MR. PORTER: Since this is an exclusionary rule, I
18 think the safest thing for the Court to do here is to
19 limit it to hydrocodone, perkies, the marijuana, and
20 the white with respect to the Oxycodone. I think that
21 is the safest ruling the Court can make here.

22 THE COURT: Okay.

23 MR. WELLBORN: Your Honor, briefly in response.

24 THE COURT: Yes, sir.

25 MR. WELLBORN: So looking at Wilson and the issue

1 in Wilson was whether or not the evidence of a prior
2 drug transaction was relevant on the issue of intent.
3 I'm not arguing the relevance issue. I'm arguing the
4 straight 404(b) preclusion based on the temporal, the
5 lack of proximity of these transactions. The fact
6 that we don't have clear and convincing evidence of a
7 prior act that is illegal. It is not illegal -- I
8 know this will come as shock for some -- for anybody
9 to discuss the purchase and/or sale of illicit drugs.
10 It's only illegal for them to do it or to undertake
11 some act in furtherance thereof. We don't have any
12 evidence of that. So, King, quote, we have held that
13 the evidence of a prior drug transaction is relevant
14 on the issue of intent when the defendant has been
15 charged with possession of a controlled substance with
16 intent to distribute. Citing State versus Gore.
17 Obviously, we've had a fair amount of law that has
18 come down since King was decided.

19 The case that is even more interesting is the
20 Wilson case because in Wilson the facts are -- where
21 they address it, this is page four of the opinion --
22 they say evidence of prior drug use or distribution
23 must be clear and convincing. Which we all know. The
24 prior act must be clear and convincing to be
25 admissible and then we get to the bottom of the

1 opinion where they say, why, and they're citing Gore.
2 And it said the Circuit Court permitted the State to
3 enter evidence showing that the defendant had sold
4 cocaine from his trailer on previous occasions to
5 establish the defendant's intent regarding the cocaine
6 the police seized.

7 In King, they're saying it didn't meet the
8 standard or that was the assertion. But in that case,
9 again, we're talking about there was prior bad act in
10 King. It wasn't just at some other location at some
11 other time there might have been a drug transaction.
12 Which is what we have here. We have no evidence that
13 in fact a drug transaction occurred. In these other
14 cases Wilson and King they brought in the evidence of
15 actual drug transactions. And in one case citing Gore
16 that it occurred at the location, the very location
17 that they were alleging in the trial. In this case
18 there is nothing in any of these texts to suggest that
19 a transaction occurred at the Amanda Lane residence
20 where the drugs in this case were found. There is
21 nothing to show that in fact any of these transactions
22 actually occurred. All we have is that the closest
23 act was a month proceeding this. These drugs being
24 found. There was a conversation about the potential,
25 a potential transaction and we don't know if that

1 actually occurred. Everything predates that. So what
2 we have is they can certainly argue and I think
3 perhaps credibly argue, that there is indicia that
4 someone using my client's phone had the intent
5 starting -- moving backwards a month before these
6 drugs were found and going all the way back to over
7 two months before these drugs were found -- had the
8 intent to either purchase or sell something that would
9 have been illegal for him to purchase or sell, but we
10 don't know whether in fact those sales occurred. What
11 it at best shows, is that my client has the propensity
12 to discuss on a cell phone the possibility of buying
13 or selling drugs of various sorts. But that violates
14 Lyle to its core. That violates 404(b) to its core.
15 It doesn't matter if my client's sole intent -- if the
16 purpose is to say, gee, he has got intent to talk
17 about drugs and he may have the intent to occasionally
18 sell drugs. Although we don't know whether he ever
19 acted on that intent. But at best this rises to the
20 level of propensity. You have got to show the act
21 actually occurred. Saying my client thought about it
22 isn't enough and trying to make logical connection
23 between date starting as early as February 9th and
24 going to March 17th, to say that he was having
25 conversations and that shows his intent on April 17th

1 as to specific drugs, that logical connection is not
2 there. We might wish it to be there. We might all
3 kind of take a stab at it and say, yeah, between you
4 us chickens we know that's what he was thinking about.
5 But that doesn't meet the standard. It simply does
6 not make the standard.

7 So now what I would like to do is look at these
8 exact texts that were referenced by Mr. Porter.
9 Starting with Tata text. This is the text from Tata
10 that says five blues and six white ones. And the
11 response -- by the way, the date of this is February
12 24th. What you got a hundin. Now that supposedly
13 means, does he have a hundred. And then we go on,
14 man, I got 80 and she's going to give me whatever.
15 And then we get, here we go and then we get a
16 L.I.G.H.T. which supposedly means okay. And that's
17 it. We don't know whether the transaction took place.
18 By the way, we also don't know whether or not we're
19 talking about Fentanyl, which is not involved in this
20 case because they reference blues. Roxycodone which
21 is not involved in this case, and we don't know what
22 the whites are referencing. We simply don't know.
23 But at best, at best, what we got is the possibility
24 that this is a discussion about selling hydrocodone
25 just a little bit over a month -- actually -- excuse

1 me, a little bit over two months from when my client's
2 stuff was seized from my client's home on Amanda Lane.
3 So that's Tata.

4 The Nadeen text that is reference, quote, she gets
5 her refill in a couple of days. We don't know what
6 that refill is. Could have been anything. Could have
7 been oxycodone, hydrocodone. It could have been all
8 kinds of stuff. There are all kinds of prescription
9 drugs out there. For all we know it could have been
10 Adderall. It could have been all kinds of stuff.
11 Quote, I don't eat them. Doesn't reference the drugs
12 involved in this case. Okay. You wanted to know.
13 Okay. You wanted to know. I will tell her. Okay.
14 She said she'd go 20 for one. Three a piece. That's
15 basically everything in the Nadeen reference. We
16 don't know, A, what the drugs were. Are they
17 referencing what my client had in his possession.
18 Parenthetically the date of that conversation is March
19 1st. Again, a month and half from the time that the
20 specific drugs involved in this case were found on
21 Amanda Lane. We also don't know whether anything
22 occurred as a result of this text.

23 Now we go to Malikkk. In Malikkk referring to the
24 Percocet. We still got those perkies. Response nah,
25 which means no. Damn, I know you got some beans which

1 means methamphetamine. Not involved in this case.
2 Yeah, what's up. We agree that that is not involved
3 in this case. So maybe he has methamphetamine. Maybe
4 he doesn't. Maybe he has beans. Maybe he doesn't. I
5 will need 20 for tonight referring in context and in
6 order to beans, the methamphetamine. Where you at.
7 Fit'n to get in the shower. You straight, which
8 according to drug lingo means do you have anything in
9 the world of narcotics potentially to sell. The
10 response to that is singing blues which again
11 reference compressed Fentanyl or Roxicodone. Not
12 involved in this case.

13 So, moving toward on Nadeen, there is nothing in
14 Nadeen that references the drug which he was
15 supposedly --

16 THE COURT: What was the argument as to the
17 Percocets with Malikkk?

18 MR. WELLBORN: My argument of the Percocets when
19 he was asked about Percocets, does he have any, his
20 response was no.

21 THE COURT: What about Kiesha?

22 MR. WELLBORN: Okay, let's go to Kiesha.

23 THE COURT: We already did Nadeen. What about
24 Kiesha.

25 MR. WELLBORN: Let me find Kiesha. Here we go.

1 All right. Kiesha is offering Hydrocodone. On
2 February 19th you want some Hydrocodone. That's an
3 offer. That's doesn't tend to prove or disprove my
4 client had it for sale, first of all. Aside from the
5 facts it's two months before the issue of when the
6 stuff was found. Then she goes into the price. They
7 got thirty fives and forty cash. She don't smoke,
8 whoever she is.

9 Moving to the next page. I want them. This is
10 coming from the phone of Mr. White. I want them. He
11 would like to purchase them perhaps. Perhaps. K, K
12 is the response. Next page. How long. 15 minutes.
13 K. Come on and that's it. There is nothing in there
14 that shows that my client intended to possess with
15 intent to sell any of these Hydrocodone or any of
16 these Percocets if in fact he ever took possession of
17 them, and that's supposedly what this is being offered
18 for. Again, is my client's intent to possess to sell.
19 Not intent to purchase. A very different act. So if
20 we're going to have a logical connection, logical
21 connection has got to be what my client is on trial
22 for, not for just any old thing that might violate the
23 state narcotic laws.

24 THE COURT: All right. Coming back to you briefly
25 and then I can make my ruling.

1 MR. PORTER: Yes, sir. I think we've got as far
2 as bad acts goes, if the defense is saying these
3 aren't completed acts, then they're really not prior
4 bad acts at all and they should be offered just for
5 intent outside of 404(b). I understand that is a bit
6 of a stretch there, Your Honor. But on Nadeen, Kiesha
7 and Tata we have statements from Harold White about
8 wanting to source or sell and completed agreements.
9 Where Tata he has made some statement about completing
10 an agreement. Keisha he's completed an agreement and
11 Nadeen he's completed an agreement about sourcing or
12 selling drugs. So I think with respect to intent
13 those can be considered under clear and convincing
14 evidence standard completed acts or at least an
15 agreement there showing his state of mind and
16 ultimately that's the issue in this case. The
17 defendant's state of mind with respect to these drugs
18 here one trial.

19 There's testimony in the record from Officer Gatti
20 that the drugs go and from in these sorts of
21 situations and so it's certainly circumstantial
22 evidence that this defendant was intending to sell
23 these drugs particularly as considered with the fact
24 that he doesn't eat the the pharmaceutical pills with
25 Nadeen. That's directly on intent, Your Honor. That

1 he does not eat pharmaceutical grade pills. We have
2 pharmaceutical grade pills in this case. Intent is
3 the issue in this case. Ostrowski is not on point
4 because that's a possession case. King and Wilson are
5 on point here, Your Honor, and we ask you to allow in
6 with respect to the drugs that are on trial the
7 completed agreements.

8 THE COURT: Which would be in Nadeen, Tata and
9 Kiesha?

10 MR. PORTER: I believe that's a fair statement.
11 But the marijuana as well, the conversations about the
12 pine. We're down in the weeds, but the pine
13 conversation as well.

14 THE COURT: All right. This record is thorough.
15 Mr. Wellborn, I respectfully overrule your objection
16 on the 404 issue and allow those texts as it relates
17 to the marijuana. Nadeen -- that limited portion of
18 Nadeen. That limited portion of Kiesha. That limited
19 portion of Tata. I think I got them right. To come
20 in. All right. Under 404, I will allow that to
21 happen. Again, when you're trying things via a bench
22 trial, certainly I will give it the credibility I
23 believe it deserves. A lot of the arguments are on
24 the credibility, but I think under 404 they are
25 admissible. I'll look at them when I weigh all the

1 evidence. Okay. All right, what's next?

2 MR. WELLBORN: Your Honor, just so the record is
3 clear, do you find a logical connection between the
4 texts from those dates and what was found on April 17,
5 2017 at Amanda Lane?

6 THE COURT: Yes.

7 MR. WELLBORN: Okay.

8 THE COURT: As opposed to Ostrowski, which I think
9 is distinguishable.

10 MR. WELLBORN: Fair enough.

11 MR. PORTER: And Your Honor, I believe there's a
12 403 consideration as well.

13 THE COURT: Okay.

14 MR. WELLBORN: Well, the 403 would be whether or
15 not such relevance as these may have are outweighed by
16 the substantial prejudice. Obviously it's not
17 prejudice to a jury. I would argue it is prejudice
18 towards the record because the record if there's going
19 to be a conviction has to support that conviction.
20 And if these texts are going to be used in evidentiary
21 support of either a denial or directed verdict or
22 ultimately a conviction of my client, then the
23 question then becomes are these -- is the relevance of
24 these texts outweighed by the prejudice. I would
25 argue that the connection -- and I've already argued,

1 so I'm not going to argue it again -- the logical
2 connection and therefore relevance of these earlier
3 texts is minimal compared to the substantial prejudice
4 to my client in the record that might or might not
5 support a conviction.

6 THE COURT: Thank you sir.

7 That objection is overruled as well. I do find
8 the probative value exceeds the prejudicial effect and
9 I'll give it the weight and credibility I believe it
10 deserves.

11 All right. Call your next witness.

12 MR. PORTER: Thank you, Your Honor. At this point
13 we have a matter of housekeeping -- and defense can
14 correct me if I'm wrong, but I believe the defense is
15 willing to stipulate to the authenticity of the
16 reports that we've been discussing just now and we
17 will not need to call our cell phone expert. The
18 items that are contained in State's number 37.
19 Authenticity with respect to they are indeed on the
20 phone that is going to be entered into evidence as
21 States 38.

22 MR. WELLBORN: That is correct.

23 THE COURT: All right, so stipulated.

24 MR. PORTER: So Your Honor with that, we would ask
25 that State's 37 be admitted into evidence and for the

1 record to be clear, we did have Officer Brooks Felmet,
2 the person who ripped the phone who has been qualified
3 as a cell phone expert to authenticate the record, the
4 items, and for the purposes of the record what is in
5 evidence is State's 37; the filings are birthday party
6 item 23 images, living room item 12 images, photo item
7 four images, the chats that we discussed; report chat
8 166 Jeter. And I will speed this up. Nadeen, Kiesha,
9 Malikk, Tata, Nuk. Report images is not in evidence
10 and report user accounts will be.

11 Your Honor, that file is just a list of accounts
12 on the phone. It has Harold White's name. It
13 strictly goes to the possession of the phone. So
14 those items are now if the Court will allow it in
15 evidence.

16 THE COURT: That's State's 37?

17 MR. PORTER: Yes, sir.

18 THE COURT: Is that your understanding Mr.
19 Wellborn?

20 MR. WELLBORN: That is my understanding. Of
21 course I objection to the admissibility, but I don't
22 object to the authenticity.

23 THE COURT: All right. Thank you.

24 (WHEREUPON, State's Exhibit 37 was received in
25 evidence.)

1 MR. PORTER: And with that we will release Officer
2 Felmet.

3 THE COURT: The objection to the admissibility is
4 overruled. You are protected in the record, and he
5 does not need to be here to establish a foundation.

6 MR. PORTER: Thank you, Your Honor.

7 THE COURT: All right, what else?

8 MS. JOYNER: Your Honor, the next witness the
9 State intends to call is Officer Dalton Taylor from
10 Rock Hill. He is the officer who has Covid.

11 THE COURT: Is he on standby?

12 MS. JOYNER: He is on standby, however, on break
13 we discussed this matter with Mr. Wellborn. We have
14 what's been marked as State's Exhibit 36, and this is
15 a copy of Officer Taylor's in-car or body camera from
16 the date of the search where he assisted the Rock Hill
17 Police Department with the execution of that search
18 warrant. Mr. Wellborn has agreed that he will
19 stipulate the authenticity of that video and not
20 required the officer to appear to authenticate the
21 video and to allow us to offer it into evidence as
22 State's Exhibit Number 36. We are not offering it for
23 the purpose of the audio on the video, but for the
24 purpose of showing the execution of the search warrant
25 should the Court have any questions about it. So we

1 offer 36 in evidence.

2 THE COURT: So the State is not having to call
3 this witness?

4 MS. JOYNER: Yes.

5 THE COURT: Is that your understanding Mr.
6 Wellborn?

7 MR. WELLBORN: Yes.

8 THE COURT: The audio is not going to be played or
9 I'm just not going to listen to it, but I am going to
10 look at the video.

11 MS. JOYNER: Yes, sir.

12 THE CUORT: And it does come in subject to your
13 prior objections.

14 MR. WELLBORN: Yes, to my objection under the
15 Fourth Amendment issues as related to the search
16 warrant, that's correct.

17 THE COURT: You're protected in the record.

18 MR. WELLBORN: Thank you.

19 THE COURT: So stipulated and you can publish the
20 exhibit.

21 (WHEREUPON, State's Exhibit 36 was received in
22 evidence.)

23 MS. JOYNER: Well, Your Honor, if the Court does
24 not wish to see it at this time. It's a fairly long
25 video. We wanted it to be in for the record for you

1 to consider it.

2 THE COURT: That's fine. I can look at it later.

3 I mean, in all candor to the lawyers, we don't the
4 new state issued laptops I don't have the new one. My
5 law clerk has the newest one. We don't have DVD
6 players on them.

7 MS. JOYNE: We have a portable one.

8 THE COURT: I can have. Thank you. I will take
9 that and that means then you all have to come get it
10 back whenever I make a decision on this.

11 Which obviously means, Mr. Wellborn, I don't know
12 if you explained this to your client or not, this is a
13 lot to absorb and since I'm not a jury I want to
14 deliberate and it's going to take more than thirty
15 minutes to an hour to deliberate. Especially with
16 watching this video. That means I'm not determining
17 guilt or innocence, you know, just like that. When I
18 snap my fingers, not like a jury would do that. I am
19 going to take the matter under advisement.

20 MR. WELLBORN: Can I --

21 THE COURT: Yes.

22 (WHEREUPON, there was a discussion off the
23 record.)

24 THE COURT: All right.

25 MS. JOYNER: Our next witness is Officer Jason

1 Wells.

2 THE COURT: Live?

3 MS. JOYNER: Yes.

4 THE COURT: That's great.

5 JASON WELLS, called as a witness, having been duly
6 sworn by the clerk, was examined and testified as
7 follows:

8 DIRECT EXAMINATION

9 BY MS. JOYNER:

10 Q Please state your full name for the record?

11 A Jason Wells, W-e-l-l-s.

12 Q How are you employed?

13 A I am a special agent with the South Carolina Law
14 Enforcement division.

15 Q How long have you been with SLED?

16 A For approximately 17 years.

17 Q What is your current job title at SLED?

18 A I am the captain the narcotic's division.

19 Q And how long have you been with narcotic's division?

20 A Out of those 17 years -- let's see, 14. Fourteen of
21 them.

22 Q And do you have previously law enforcement experience
23 prior to SLED?

24 A I do, yes, ma'am. I began my career in 1999 with the
25 Columbus, Georgia Police Department and then with the Georgia

1 Bureau of Investigation and that was also in narcotics.

2 Q So directing your attention back to April 17th of 2017.

3 Were you working with SLED that day?

4 A Yes.

5 Q Were you involved in the execution of a search warrant
6 at [REDACTED] Amanda Lane?

7 A Yes, ma'am.

8 Q And was that within Rock Hill?

9 A Yes.

10 Q Within York County, South Carolina?

11 A Yes.

12 Q Okay. And please tell the judge briefly what your role
13 on the search warrant execution was?

14 A Yeah, I was asked to assist based on this being a
15 narcotics related search warrant and I was there to conduct the
16 physical search and collection of evidence.

17 Q Does SLED designate one particular person to be the
18 person who collects the evidence and maintains custody of it?

19 A That's generally how we do it.

20 Q Was that your role on April 17, 2017?

21 A Yes, ma'am.

22 Q As part of your search did you go into each and every
23 room of the house?

24 A Yes, ma'am, I believe I did. Yes, ma'am.

25 Q And just in general, what was the condition of the

1 home?

2 A It was a messy environment. There was clothes and
3 things strewed around. Yes, ma'am.

4 Q And was that true of every room in the house?

5 A Yes, ma'am, that I can remember. Yes.

6 Q Do you recall how many bedrooms there were?

7 A There were three upstairs and then if you call that --
8 I don't know if you would call it a bedroom downstairs. It was
9 kind of like a playroom. It did have a bathroom so maybe you
10 can classify that as a bedroom.

11 Q Okay. So the three bedrooms that were upstairs based
12 on the contents of those bedrooms did some appear specifically
13 to be children's rooms?

14 A Yes.

15 Q And what was the appearance of those children's rooms?

16 A They were messy as well.

17 Q Okay. And did you search each of those bedrooms?

18 A I did, yes.

19 Q As well as the downstairs, that area you talked about
20 that could be a bedroom but was more like a playroom?

21 A Yes, ma'am.

22 Q And when you're searching a house or any kind of
23 building with that type of clutter does that complicate the
24 search?

25 A It does. I mean it slows things down a little bit,

1 yes.

2 Q So going back to the search, do you recall the
3 different locations in the house where you recovered drugs or
4 what you believe to be drugs?

5 A Yes, ma'am.

6 Q And what were those locations?

7 A One of the primary locations was in the master bedroom,
8 the top drawer of a chest of drawers. There were various items
9 in there that we collected. There was a quantity of marijuana
10 in between the mattress and box springs in the master bedroom
11 and also a quantity of marijuana in that downstairs playroom
12 area.

13 Q Okay. The quantity of marijuana in the downstairs
14 playroom area would you consider that a large amount or small
15 amount?

16 A That was a smaller amount.

17 Q Okay. I am just going to show you what has already
18 been entered as a picture or State's Exhibit 6E. Do you
19 recognize that photograph?

20 A Yes, ma'am. This is from the downstairs room and this
21 is a table that has a white like a soft sided -- I think it's a
22 lunch box and I believe that is where the marijuana was.

23 Q And did you recover that marijuana?

24 A Yes, ma'am.

25 Q Now, the master bedroom you mentioned searching

1 underneath the mattress. Between the mattress and the box
2 spring. Could you tell the Court what you recovered, if
3 anything, from underneath that mattress?

4 A Okay. From underneath the mattress there was a
5 quantity of marijuana and there was a handgun there.

6 Q Do you remember how many handguns?

7 A I know in total we seized two handguns, yes, ma'am.

8 Q Would it refresh your recollection to see a photograph?

9 A Yes, it would.

10 Q I will show you what is been entered as 24A. Does that
11 refresh your recollection about how many handguns were
12 underneath the mattress?

13 A Yes.

14 Q And how many handguns were underneath the mattress?

15 A Two guns.

16 Q Do you recall if those guns were loaded?

17 A Yes. Yeah, according to my report I unloaded the
18 firearm while we were there.

19 Q Now, when you originally -- is this how it originally
20 appeared when you pulled up the mattress? I mean as far the
21 location of the orange bag?

22 A Yeah, they were right in between the mattress and box
23 springs, yes, ma'am.

24 Q And what was contents of this orange bag?

25 A Green leafy material. It was marijuana.

1 Q Okay. Did you remove it from the bag?

2 A Yes.

3 Q And did you ultimately recover that as well?

4 A Yes.

5 Q So going into the top drawer, do you recall seizing --
6 locating and seizing a pill bottle?

7 A Yes, ma'am.

8 Q Was that pill bottle with Harold White's name on it?

9 A Yes.

10 Q I am going to show you what has already been entered as
11 State's 29. Is that a picture of the pill bottle that you
12 seized?

13 A Yes, ma'am.

14 Q Okay. And in that picture there is some loose white
15 pills. Did you seize those as well?

16 A Yes.

17 Q Okay. I will show you what has been marked as State's
18 Exhibit 30. Do you see that plastic bag with the white pills?

19 A Yes, ma'am.

20 Q Did you seize that as well?

21 A Yes.

22 Q I am going to show you what has already been entered as
23 State's 26. What is that yellow object in the middle of that
24 drawer?

25 A That is a Weighmax brand digital scale.

1 Q Was that seized?

2 A Yes, ma'am.

3 Q Did you bring that to court today?

4 A I did.

5 Q And where is that located?

6 A On the bench back there.

7 Q Okay. Captain Well's I am going to show you what has
8 been marked as State's Exhibit 33. Is that the scale that you
9 recovered from this drawer as depicted?

10 A Yes, ma'am.

11 Q In this photograph States 26?

12 A Yes.

13 Q As narcotic officer what is potential significance of a
14 scale?

15 A Well, in many of the investigations I have worked on
16 people who distribute drugs and who traffic drugs they normally
17 have at least one digital scale if not multiple scales.

18 MS. JOYNER: We move this into evidence.

19 THE COURT: Any objection?

20 MR. WELLBORN: Other than the grounds previously
21 stated. Also -- I would also object the fact other
22 cases some times people have scales. In quote, many
23 of the cases that he has been involved does not
24 necessarily show that's what the scale is used for
25 this case.

1 MS. JOYNER: We would agree. We can ask the
2 question another way, Your Honor.

3 THE COURT: All right.

4 Q Are scales used some times to weigh drugs?

5 A Yes, ma'am.

6 Q Okay. Thank you.

7 THE COURT: Objection overruled.

8 (WHEREUPON, State's Exhibit 33 was received in
9 evidence.)

10 Q Now I'm going to show you photographs that have already
11 been entered; 25A and 25B. Do you recognize those photographs
12 or what's contained in those photographs?

13 A Yeah, this is a box that was on the floor in the master
14 bedroom and there a two amber colored pill bottles in here.

15 Q Had there been anything in those bottles would you have
16 collected those bottles and entered them into evidence?

17 A Yes, ma'am.

18 Q And if there's nothing in evidence from those bottles
19 so those bottle were empty?

20 A Yes, ma'am.

21 Q Now, in the master bedroom did you locate a quantity of
22 marijuana in the closet?

23 A Yes.

24 Q Okay. Do you recall where exactly that was located?

25 A I believe that was inside of an item of clothing.

1 Q Would it refresh your recollection to look at picture?

2 A Yes.

3 Q I am showing what has already been entered as 23C.

4 A Yeah, this was in a men's jacket that was hanging in
5 the closet.

6 Q Okay. And did you recover that as well?

7 A Yes, ma'am.

8 Q So as part of the search warrant, your recovery, were
9 the person solely responsible for taking these items into
10 custody and maintaining custody and control over them?

11 A Yes, ma'am.

12 Q And all of the -- let's start with the State's Number
13 2, that is marked for exhibit purposes as State's Number 2 can
14 you tell the Court whether you recognize State's Exhibit 2?

15 A I do.

16 Q And how are you able to recognize State's Exhibit 2?

17 A Well, it has my signature on the evidence tape from
18 where it was sealed. It has my initials on it and the date is
19 on there.

20 Q Okay, and what is State's Exhibit 2?

21 Q This is a box and this box is actually provided by our
22 lab.

23 Q Okay.

24 A Whenever I turned this in this is a box they provide
25 and they provide the evidence tape and we seal it up and I

1 initial and date it there. Yes, ma'am.

2 Q And what exactly did you place into this bag or this
3 box? Where is this from?

4 A That looks like what would have come between the
5 mattress and the box springs.

6 Q Is that baggy there the original bag that was in?

7 A Let me look at it. Yes, ma'am.

8 Q So from the time that this was located on Amanda Lane
9 until -- actually, where did you take this? After you seized
10 this, where did you take this item to?

11 A It goes into a lockbox in my vehicle and then to the
12 SLED Piedmont region where conducted our paperwork. I completed
13 it's out evidence sheets. We pre-log it and then I take it down
14 to the crime lab I believe it was two days later.

15 Q On April a 19th?

16 A Yes, ma'am.

17 Q Okay. And from the time that you took it into your
18 custody until the time that you dropped it in the evidence crime
19 lab was that in your continuous custody and control?

20 A Yes.

21 Q When it's in the lockbox in the car does anybody have
22 access to your lockbox?

23 A No, ma'am.

24 Q When it's at the Piedmont region office, where is it
25 located?

1 A Physically with me when I'm there.

2 Q Okay. And from the time you took it to the time you
3 dropped it you maintain continuous custody and control?

4 A Yes, ma'am.

5 MS. JOYNER: Your Honor, I would offer State's
6 Exhibit two in evidence.

7 THE COURT: Same objection?

8 MR. WELLBORN: Same objection, that's correct. To
9 be clear, related to the search warrant.

10 THE COURT: Objection overruled. Admitted into
11 evidence.

12 (WHEREUPON, State's Exhibit 2 was received in
13 evidence.)

14 Q The other items that you took into evidence on Amanda
15 Lane I want to go through those with you well, the other
16 evidence that you testified that you seized. When you seized
17 that, you how did you package it to maintain custody and control
18 until you dropped it at the SLED lab?

19 A We have a bag that is known as a SLED B.E.S.T. kit and
20 it has a unique identifying number on it and we seal it in that
21 and that's how we submit it to our crime lab.

22 Q I am going show you what has been marked as State's
23 Exhibit 1. Do you want to take a look at State's Exhibit 1. I
24 will pull out the B.E.S.T. -- is that the B.E.S.T. bag you were
25 referring to?

1 A Yes, ma'am.

2 Q And does that appear to be the B.E.S.T. bag that is
3 associated with the seizure of the rest of the evidence on
4 Amanda Lane on April 17th?

5 A Yes.

6 Q And how are you able to recognize that?

7 A From this it's the B.E.S.T. kit number here, B 275204
8 and it also has my name, signature and the date on it. This is
9 the date it was sealed.

10 Q 4/18 of 2017, and then you dropped it on 4/19 at SLED?

11 A Yes.

12 Q So from time that you seized it and bagged it and then
13 to the time you dropped it at SLED was it you continuous custody
14 and control?

15 A Yes.

16 Q Did it follow the same route as item number 2 going
17 into your lockbox in your car and then remaining with your
18 physical custody?

19 A Yes, ma'am.

20 Q Now, going through -- and just very briefly, was this
21 pill bottle taken from the top drawer in the master bedroom on
22 Amanda Lane?

23 A Yes.

24 Q And did that pill bottle when you located it contain a
25 grouping of several different pills?

1 A It did, yes.

2 Q And did you open that pill bottle or remove any of
3 those pills or as it appears in the photograph 32 that has
4 already been entered. Is that what was in the pill bottle when
5 you found it?

6 A I don't remember whether I opened it and counted them.
7 I don't remember.

8 Q Were these pills originally in that bottle?

9 A Yeah, they were in the bottle just like that.

10 Q At some point would you have removed them to count them

11 A Yeah, most likely I did that, yes.

12 Q Okay. So, now going to this bag that contains what
13 appears to be two different amounts of marijuana. Are these
14 items of marijuana one seized from the closet and one seized
15 from the game room?

16 A Can I look at them here.

17 Q Did you bag together the marijuana that you had seized
18 from --

19 A Yes.

20 Q Into this BEST evidence bag?

21 A Yes, ma'am.

22 Q And all the remaining items of this bag -- do you want
23 to take a look. Do you recall recovering that from the drawer?

24 A Yes.

25 Q And that would be what is marked as 1.6.1 for the

1 Court's information contained no controlled substance.

2 Did you also additionally collect suspected cocaine?

3 A Yes, ma'am.

4 Q And place that in the bag as well as an 88 pills, loose
5 white pills?

6 A Yes, ma'am.

7 Q Okay. Did you also place a pill bottle belonging to
8 Doug Smarr?

9 A Yes.

10 MS. JOYNER: We move State's 1 into evidence.

11 THE COURT: Same objection?

12 MR. WELLBORN: Yes, sir.

13 THE COURT: Noted for the record. Objection
14 overruled.

15 (WHEREUPON, State's Exhibit 1 was received in
16 evidence.)

17 Q Now ultimately did you receive on scene a phone from
18 part of the search warrant? Did you seize phones?

19 A Yes, ma'am.

20 Q I will show you what has been marked as State's 38. Do
21 you recognize that exhibit?

22 A Yes.

23 Q And how do you recognize this?

24 A This is a phone that was seized from Harold White's
25 person.

1 Q Okay. And were you the original person who seized it,
2 do you recall, or was it provided to you on scene?

3 A It was provided to me on scene right there.

4 Q By someone else?

5 A Yes.

6 Q Do you recall ultimately -- first of all, when you
7 first took this phone did you do anything to manipulate the
8 data? Did you look onto the phone, anything of that kind?

9 A No, ma'am.

10 Q And ultimately did you carry this phone back with you
11 to the Piedmont office as with State's 1 and State's 2?

12 A Yes.

13 Q Okay. And do you recall what you did with the phone?

14 A I ultimately got it back to -- I believe Melissa
15 Skipper so it could be downloaded.

16 Q Do you recall what day you brought it to Melissa
17 Wallace?

18 A I would have to see the chain of custody. I do not.

19 Q Would it refresh your recollection to see the receipt
20 of property?

21 A Yes, ma'am. (Handed) okay.

22 Q So once you received the phone and after you took it to
23 Piedmont Regional office what did you do with it? Or when did
24 you give it to Melissa Skipper Wallace?

25 A The next day on the 18th. All the phones.

1 Q Okay. And from time that you took it until the time
2 you gave it to Melissa Wallace was it in your continuous custody
3 and control?

4 A Yes, ma'am.

5 Q Now, in just going back real quickly, during your
6 search of the home -- the search of the bedroom, other than this
7 pill bottle that is contained in State's 1 with Harold White's
8 name, did you see any other pill bottles that belonged to Mr.
9 White that had a prescription for hydrocodone or Oxycodone?

10 A I don't remember any.

11 Q Would you have taken those into evidence if you had
12 located those?

13 A The reason I took this one here, I mean, it had a
14 number of different prescription pills in it. If it were a
15 prescription pill bottles that had pills in it that were
16 prescribed to him I may not have taken it.

17 Q Do you recall any -- was there any in the immediate
18 vicinity where you located all these pills in item one?

19 A No, ma'am.

20 MS. JOYNER: Your Honor, we offer States 38,
21 that's the phone into evidence.

22 THE COURT: Any objection?

23 MR. WELLBORN: Other than the previous objection
24 relating to the search warrant, no.

25 THE COURT: Thank you. Overruled admitted.

1 (WHEREUPON, State's Exhibit Number 38 was received
2 in evidence.)

3 MS. JOYNER: Your Honor, just as a housekeeping
4 matter, I want to make sure we entered two, one and
5 items 33 and items 38 through Mr. Wells.

6 THE REPORTER: In evidence.

7 THE COURT: She said yes.

8 MS. JOYNER: I believe that is correct. And Your
9 Honor, we previously did not enter these drug reports
10 because we had not yet entered the drugs so at this
11 this time we are going to go ahead and move 34 and 35
12 into evidence?

13 THE COURT: Same objection. Objection noted and
14 objection overruled. Admitted into evidence.

15 (WHEREUPON, State's Exhibits 34 and 35 were
16 admitted into evidence.)

17 MS. JOYNER: That's all the questions we have for
18 Captain Wells.

19 THE COURT: Mr. Wellborn.

20 MR. WELLBORN: Thank you.

21 CROSS EXAMINATION

22 BY MR. WELLBORN:

23 Q I will follow up with line of questioning about the
24 pill bottles. I believe you found one pill bottle that had Mr.
25 White's name on it, correct?

1 A Yes, sir.

2 Q And multiple pills in the pill bottle?

3 A That's correct.

4 Q Fair enough. Do you yourself ever take prescriptions
5 for anything? I am not going to ask what prescriptions you
6 take.

7 A I have, yes, sir.

8 Q And do you occasionally remove a pill from a pill
9 bottle?

10 A To take a pill out of it, yes.

11 Q Have you ever taken a pill out, left it on your night
12 stand to take later or take in the morning next to glass of
13 water or anything like that?

14 A I have done that, yes.

15 Q Okay. You have not?

16 A I have.

17 Q Okay. It's not a legal requirement that you keep your
18 prescription pills for which you are prescribed in a pill
19 bottle, is it? Let's try this another way.

20 If you get a prescription. Let's say hypothetically you get
21 a prescription for some antibiotic, right. There's no legal
22 requirement that you keep all your pills for which you are
23 prescribed in a pill bottle, is there?

24 A It's not. No, sir. I have seen people put them in the
25 little organizer.

1 Q Sure. Sure. And some people put multiple pills for
2 which they are prescribed in one container to take later,
3 correct?

4 A Not in a prescription pill bottle. I actually believe
5 that a crime to have multiple pills in a pill bottle.

6 Q Really?

7 A I do believe that.

8 Q Really. You believe that?

9 A Yes, sir.

10 Q But that wouldn't change the fact that if somebody had
11 a prescription for them they would be lawful to have the pills.
12 It just might be in your mind or belief unlawful for them to
13 have them in the same pill bottle, correct?

14 A Yes.

15 Q Where as if they were just in an organizer it would not
16 be un lawful?

17 A That's correct.

18 Q All right.

19 MR. WELLBORN: That's all the questions I have.

20 Thank you.

21 THE COURT: All right. Any redirect based upon
22 that.

23 MS. JOYNER: No, Your Honor.

24 THE COURT: Thank you, sir. You may step down.

25 MR. WELLBORN: Short break?

1 THE COURT: Sure.

2 (WHEREUPON, there was a brief recess.)

3 THE COURT: Are you ready madam solicitor?

4 MS. JOYNER: The State rests.

5 THE COURT: The State rests.

6 THE COURT: All right, Mr. Wellborn.

7 MR. WELLBORN: Thank you, Your Honor. At this
8 time I would request a directed verdict on the
9 indictment number 22-GS-46-00076 which is the
10 possession with intent to distribute Hydrocodone.
11 Citing the lack of evidence that my client possessed
12 with intent to distribute any Hydrocodone on April 17,
13 2017. I would also request a directed verdict on
14 indictment number 2018-GS-46-07327, which is the
15 possession with intent to distribute Oxycodone.
16 Again, citing lack of anything in the record that he
17 intended to distribute Oxycodone on April 17, 2017. I
18 would point out parenthetically with this indictment
19 covers the possibility of manufactured, distribution,
20 delivering, dispensing, purchasing, aiding, abetting
21 or a conspiracy. There's no evidence of any of those.
22 No evidence that my client manufactured anything,
23 distributed anything on April 17th, dispensed
24 anything, delivered, purchased on April 17th. He
25 didn't aid or abet anybody or conspire,

1 parenthetically. He is not even charge with a
2 conspiracy.

3 Then indictment number 2018-GS-46-03874 I am a not
4 seeking a directed verdict on that because in good
5 faith there is evidence in the record of possession of
6 cocaine. I would, however, seek a directed verdict on
7 indictment number 2018-GS-46-03876, for the possession
8 with intent to distribute marijuana because I believe
9 at this point the inference is in and of itself is
10 unconstitutional. There have been other cases that
11 have been decided in the past couple of years
12 regarding inferences. Inferences by their very nature
13 are burden shifting. That takes the burden away from
14 the State and places it on the defendant. And so I
15 would argue that as far as the date in question which
16 is April 17, 2017, there is no evidence beyond the
17 inference level that my client intended to distribute
18 the marijuana in question. And again, we would
19 preserve for the record the unconstitutional burden
20 shifting aspect on the inference level of the law.
21 And that would be it.

22 THE COURT: Okay. Thank you sir. Who is going to
23 respond on behalf the State?

24 MS. JOYNER: Your Honor, regarding possession with
25 intent to distribute marijuana we submit the directed

1 verdict viewing the evidence in the light most
2 favorable to the State we believe that we have met our
3 burden. We have a quantity of marijuana. The largest
4 quantity being 473 grams which is 16 times the
5 permissive inference level. I don't know the cases
6 that Mr. Wellborn is talking about. He did not cite
7 them. I don't know that the constitutionality, that
8 the directed verdict motion is the place for
9 unconstitutionality argument, but nonetheless, I think
10 our state recognizes the permissive inference and has
11 a consideration for the Court. We ask the Court to
12 deny the directed verdict. We also note that this
13 largest quantity of marijuana was found next to two
14 loaded guns and courts have routinely recognized the
15 connection between guns and drugs and that drugs are
16 -- that guns are tools of the drug trade. And so
17 regarding the possession with intent to distribute
18 Oxycodone and a possession with intent to distribute
19 Hydrocodone I think in this case we have clear
20 evidence of Mr. White's possession of those items.
21 They are found either in the cases of Oxycodone in a
22 pill bottle bearing his name in his bedroom in the top
23 drawer next to his passport. The Hydrocodone was
24 located in the same drawer, loose in that drawer, and
25 again, this is his bedroom. Further with intent to

1 distribute, Your Honor, I think intent is a question
2 for the fact finder. I think that there is evidence.
3 The Court has heard evidence regarding text messages.
4 We ask the Court to give that whatever weight that you
5 believe it should be given. In a directed verdict
6 motion it is in the light most favorable for the
7 State. So we would respectfully ask for the Court to
8 deny the motion for a directed verdict.

9 THE COURT: All right. Coming back to you Mr.
10 Wellborn, any further argument based upon the State's
11 reply.

12 MR. WELLBORN: Briefly. There is no evidence that
13 my client did not lawfully possess both the
14 Hydrocodone and the Oxycodone in question. The burden
15 is upon the State to prove that my client did not have
16 a prescription for either one of them. Had he had a
17 prescription for either one of those and chose to
18 periodically refill such a prescription and ultimately
19 accumulate the amount in question he would be in
20 lawful possession whether or not he had an intent to
21 distribute what he was in lawful possession of to
22 begin with is a separate issue. I would argue that
23 absent -- quite frankly absent anything, there is
24 nothing that shows on the date in question he intended
25 to distribute those items. Whether he was in lawful

1 possession or not.

2 I would point out that of course my client is not
3 charged with any gun offenses. The guns were
4 something that he and/or his spouse were in lawful
5 possession of. The mere fact that they have guns in
6 the household and those guns happen to be in proximity
7 to something he may have been in lawful possession of
8 does not indicate that he intended to distribute.
9 Quite frankly, I would be stunned if a significant
10 portion of the population of South Carolina does not
11 own or possess firearms or ammunition in their homes.
12 And quite frankly, it's quite possible that a
13 significant portion of people who are lawful gun
14 owners also happen to have prescriptions. It's also
15 quite possible that some of those people who are
16 lawful gun owners also happen to have marijuana in
17 their house. It doesn't tend to show that they are
18 drug dealers. The fact that drug dealers often have
19 guns, it's quite frankly the majority of the
20 population of our state and arguably our nation are
21 not drug dealers and significant portion of those are
22 lawful gun owners and one doesn't tend to prove or
23 disprove the other. So with that said, that would be
24 my only response to the argument by it State.

25 THE COURT: All right. Madam solicitor, he

1 brought up the issue of the State not proving beyond a
2 reasonable doubt that his client did not have a lawful
3 or valid prescription.

4 MS. JOYNER: Yes, sir. I am handing up State
5 versus Attardo, that's 263 S.C.546. That's 1975, South
6 Carolina Supreme Court opinion. It's an interesting
7 case. It's actually a marijuana case, but there is
8 dicta in this case. I think that it's relevant
9 directly on point to the argument that Mr. Wellborn
10 has made. Going to page three.

11 THE COURT: All right.

12 MS. JOYNER: There is discussion about -- beg the
13 Court's indulgence.

14 Page three of the second column. The last full
15 paragraph. The Court noted that on nine occasions the
16 trial judge made reference to the fact the State had
17 to prove the guilt of the accused and that such an
18 instruction was proper as to an affirmative defense.
19 It is also well established in case law when the State
20 has made a prima facie case under a statute and the
21 defendant claims to fall within an exception or
22 proviso in the statute the burden is on the defendant
23 to establish such a defense.

24 Under proper circumstances the statutory section
25 quoted above furnishes a classic example of when the

1 burden of proof would shift to the defendant. If the
2 defendant alleged he was legally entitled to the drugs
3 under a valid medical prescription he would have the
4 burden of proving the existence of the prescription.
5 And so that dicta because they are discussing
6 affirmative defenses and burden, but they are citing
7 or explaining as an example a statute that has pretty
8 much identical language as 44-53-370, as to controlled
9 substances and so we would argue that under Attardo we
10 made a showing that even possession of these drugs,
11 and I think for purposes of directed verdict applying
12 the dicta of Attardo to a directed verdict motion I
13 think the State has met its burden for purposes of
14 this motion.

15 I would also point out, Your Honor, as to
16 hydrocodone there is evidence that is in the record 25
17 A, B and C clearly show that right next to the dresser
18 in the bedroom where the 88 loose hydrocodone pills
19 are located there is a pill bottle that is empty
20 belonging to someone named Yvonne Davis for a
21 Hydrocodone prescription. So I think there is also
22 other indication that he is in possession of
23 hydrocodone pills for which he does not prescription.
24 But I would primarily as to the Oxycodone rely on
25 Attardo and also point out the circumstances of where

1 the pills were stored Your Honor.

2 THE COURT: Okay. Motion for the direct verdict
3 is respectfully denied.

4 MR. WELLBORN: Thank you, Your Honor.

5 THE COURT: Does the defense wish to put on a
6 case?

7 MR. WELLBORN: No, sir.

8 THE COURT: All right, the defense rests.

9 All right, let's hear --

10 MR. WELLBORN: You might wish to colloquy with my
11 client.

12 THE COURT: That's right. Thank you Mr. Wellborn.

13 MR. WELLBORN: Your welcome.

14 THE COURT: Sir, if you please stand for me.
15 Raise your right hand.

16 Do you swear or affirm the testimony you give
17 today is the truth, the whole truth and nothing but
18 the truth so help you God?

19 THE DEFENDANT: Yes.

20 THE COURT: Thank you sir. Be seated. Just talk
21 loud. I need to make sure that you understand that
22 we've reached a stage of the trial now where you get
23 to present your defense and in presenting your defense
24 I want to make sure you understand your Fifth
25 Amendment right to remain silent. The Fifth Amendment

1 under our constitution says that no person shall be
2 compelled in any criminal case to be a witness against
3 himself. That means nobody can make you testify if
4 you don't want to. Now you have the right to testify
5 if you want to and that's personal right that nobody
6 can take away from you, but nobody can make you
7 testify. Do you understand that?

8 THE DEFENDANT: Yes.

9 THE COURT: Have you been over this right with
10 your lawyer?

11 THE DEFENDANT: Yes.

12 THE COURT: Now, if you do decide to testify you
13 must understand your legal right not to have to
14 testify. In other words, you would be subject to the
15 same rules which have governed the other witnesses
16 which have testified in this case. That means you
17 could be cross examined on any relevant issue and
18 solicitor's office could try and make you look bad or
19 not credible. We don't have a jury here, but they can
20 try and do that in front of me. Okay. And try to
21 make you look not believable. They can also try to
22 impeach the credibility of your testimony by bringing
23 up any prior convictions you may have for crimes for
24 dishonesty or crimes of false statement or anything.

25 Is there any criminal record that the State would

1 seek to introduce if he were to testify?

2 MS. JOYNER: Yes, sir. He has a 2015 conviction
3 for possession with intent to distribute crack cocaine
4 first offense.

5 THE COURT: Subject to arguments on whether or not
6 that would come in, you know. You understand your
7 right to testify and I'm not saying right now that I
8 would let them bring that up. Of course this is
9 different and I just heard that. Okay. It's not like
10 a jury, where the jury potentially that wouldn't be
11 brought in front of a jury. So I would have to make
12 the decision as to whether or not the State could use
13 that evidence of a prior conviction to try and hurt
14 your testimony. Do you understand that?

15 THE DEFENDANT: Yes.

16 THE COURT: And I'm telling you right now I
17 probably wouldn't hold that against you. Okay. But
18 certainly it could. You may think it could impede
19 your credibility with me. Okay. Now, do you
20 understand your Fifth Amendment right to remain
21 silent?

22 THE DEFENDANT: I do.

23 THE COURT: Have you been over this with your
24 lawyer?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Do you wish to testify?

2 THE DEFENDANT: No.

3 THE COURT: Do you need any more time to talk
4 about this with Mr. Wellborn?

5 THE DEFENDANT: No, sir.

6 THE COURT: Thank you. Mr. Wellborn, do you agree
7 with your client's decision not to testify?

8 THE DEFENDANT: It's his decision and I do.

9 THE COURT: Thank you very much. All right and
10 the defense does not intend to put on any case?

11 MR. WELLBORN: No, sir.

12 THE COURT: The defense rests. All right. That
13 means he gets to argue last.

14 Madam solicitor.

15 MS. JOYNER: Thank you, Your Honor. We would
16 respectfully ask that you find the defendant guilty of
17 all charges. All of the drugs were recovered in the
18 defendant's home. All but a small quantity of them
19 were recovered in his bedroom. He clearly has
20 dominion and control over the premises, although that
21 alone is not sufficient for conviction. I would point
22 out to you the condition of the home. Not a well
23 organized home, described by all the officers and
24 whatever pictures are in evidence, as to be a very
25 messy and chaotic place. I point that out to the

1 Court because I think the placement of the items,
2 where these drugs were recovered in places that are
3 readily accessible picked apart from the chaos of this
4 home and placed somewhere where the defendant could
5 access them. I think it's relevant to his knowledge
6 of their presence and I think it's extremely relevant
7 to his ownership. It's his intent to exercise
8 dominion and control over these drugs.

9 The marijuana, Your Honor, there's three separate
10 quantities of marijuana located in the house. The
11 largest quantity is located under the the mattress.
12 It's 473 grams of marijuana. There is permissive
13 inference in the State of South Carolina. You're free
14 to accept it or reject it, but we would ask that you
15 accept that permissive inference. And we note that it
16 is 16 times the permissive inference level outlined in
17 the statute. You can see for yourself, that's State's
18 item two, is a large quantity of marijuana and it's
19 hidden under his mattress and box spring next to
20 loaded guns. The other marijuana, one small quantity
21 located in the closet of his master bedroom inside a
22 men's shirt or jacket. That picture is in evidence.
23 The other quantity located downstairs in a room. You
24 will see in those pictures that it appears to be a
25 room that is used because there are beer bottles and

1 liquor bottles. It's a room for entertainment. So we
2 would submit, Your Honor, clear evidence of his
3 ownership. We'd ask you to find him guilty of
4 possession with intent to distribute marijuana.

5 The second charge, possession of cocaine, again
6 going to the location where this cocaine, the
7 Oxycodone and Hydrocodone were found in his bedroom in
8 a drawer. There are pictures in evidence for the
9 Court. But significant this drawer contains a
10 passport, multiple financial transaction cards with
11 his name on it, a men's tie. It contains a bottle --
12 a medicine bottle. That is a prescription bottle. It
13 is part of State's Exhibit 1. It is Harold White's
14 prescription and that prescription indicates that it
15 was filled on April 7th of 2017 according to the
16 bottle. Just ten days before the execution of the
17 search warrant showing, Your Honor, that this is not a
18 drawer where things are just forgotten about and just
19 thrown and been sitting and perhaps he doesn't know
20 what's in there. This is a drawer that he uses and he
21 stores items deliberately and purposefully. This
22 cocaine you will see in the pictures is a small baggy
23 of cocaine and it is sitting right next to -- you will
24 see in States 30 -- and almost blends in to the
25 Oxycodone -- I'm sorry, the hydrocodone that's loose,

1 and that's that medicine bottle that is part of
2 State's Exhibit 1 that was filled ten days before the
3 execution of the search warrant. So that's the
4 cocaine and it's sitting right next to Harold White's
5 debit card or some type of credit card, and also you
6 see at the bottom of 30 -- you can see it a little
7 better in State's 28. It's sitting next to what's
8 probably a Sams club type card that shows Harold White
9 III and his photograph. This is his drawer and this
10 is his cocaine. And so we are respectfully ask the
11 Court to find him guilty of possession of cocaine.

12 Regarding Oxycodone, again the Oxycodone is
13 sitting inside this medicine bottle. Harold White's
14 name on it from April 7th of 2017. It is mixed in
15 with Ibuprofen, which there's a prescription. This is
16 a bottle of prescribed Ibuprofen and some additional
17 tablets that contain no controlled substance. I think
18 clearly that Oxycodone belonged to Harold White and
19 was recently placed there because that pill bottle
20 only existed presumably for two days.

21 Your Honor, regarding Hydrocodone, you've seen
22 pictures of Hydrocodone loose in the drawer. It's in
23 the same drawer. It's right next to this pill bottle.
24 It's in his bedroom. Again, going to items 25 A, B
25 and C, the Court will see that right in front of

1 there's testimony that this Luv's box is sitting on
2 the floor right in front of that chest of drawers
3 where the other drugs were found. In the close-up you
4 get to a bottle. It's in 25C, Yvonne Davis
5 Hydrocodone Acetaminophen and that's sitting in a box
6 of junk right in front of the dresser where the
7 Hydrocodone is located. It's strong evidence that he
8 does not have any kind of valid prescription for
9 Hydrocodone. I'll note for the record according to
10 the drug report there is 88 Hydrocodone. That's a lot
11 of Hydrocodone in one drawer. I think that although
12 there's no inference level on Hydrocodone I do think
13 the Court can consider the number of pills in its
14 consideration of whether there was intent to
15 distribute.

16 Going back to the intent to distribute, also, Your
17 Honor, just briefly regarding the phone. We have
18 entered into evidence the phone of the report subject
19 to Your Honor's ruling on those limited text messages.
20 The video that was entered of Dalton Taylor's body
21 camera, we have agreed the volume or the audio
22 wouldn't be played, but the visual would. And if the
23 Court is so inclined to watch that video, you will see
24 in the first couple of minutes the phone, that we have
25 entered into evidence as 38, being given from Harold

1 White to Dalton Taylor and then immediately handed to
2 the SLED agent establishing within that video the
3 receipt of that phone by law enforcement. I point to
4 the Court to the text that Your Honor has already
5 ruled admissible as further evidence of intent to
6 distribute regarding the marijuana and the pills.

7 Your Honor, that will be my closing statement.
8 Thank you.

9 THE COURT: Thank you madam solicitor. Mr.
10 Wellborn.

11 MR. WELLBORN: Thank you, Your Honor. A couple of
12 things that I would certainly concede from closing
13 argument. This was a messy place and there certainly
14 is evidence in the record by which Your Honor could as
15 the finder of fact find that my client knew or should
16 have known of the presence of certain items in the
17 house, E.g. the marijuana, cocaine, Hydrocodone, the
18 Oxycodone. However, exercising out the cocaine, the
19 gravamen of the offenses for which my client is on
20 trial is the Hydrocodone, Oxycodone and the marijuana
21 is that there was possession with intent to
22 distribute. Not simply possession. There's no
23 allegation whatsoever of distribution, manufacturing
24 aiding and abetting or anything else. Any of the
25 other things that are in the sort of shot gun phrasing

1 of the indictments. This trial is all about the
2 possession with intent to distribute. There is no
3 evidence in the record other than educated guess, a
4 strong hunch, a suspicion or a strong suspicion that
5 my client intended to distribute the Hydrocodone that
6 was found on April 17th. There is no evidence in the
7 record, again, other than the inference level
8 regarding marijuana. There is no evidence, again,
9 other than suspicion, may be a gut feeling, strong
10 suspicion, that my client intended to distribute the
11 Oxycodone.

12 I would point out that our courts, specifically,
13 State versus Hyder, H-y-d-e-r -- and I apologize. I
14 don't have the cite, but it's the only H-y-d-e-r in
15 the annals of South Carolina jurisprudence, has said
16 that suspicion, even strong suspicion is not enough.
17 And that goes to the directed verdict stage, but here
18 we are beyond the directed verdict stage. Nothing
19 else has been presented in evidentiary manner beyond
20 the directed verdict stage in the way of new evidence.
21 So what we are left with is it is suspicious. Maybe
22 even strongly suspicious, that my client had this much
23 Hydrocodone at the home. And suspicious, maybe even
24 strongly suspicious there was that much Oxycodone at
25 the home. But there's no evidence beyond that that he

1 intended to distribute that Hydrocodone or that
2 Oxycodone. And so for those reasons I would suggest
3 that it would be appropriate for a finding of not
4 guilty on those charges.

5 The marijuana charge we have the inference issue.
6 That's an issue of law whether or not the inference in
7 and of itself is enough because beyond that inference,
8 again, there is no evidence in the record that my
9 client intended to distribute the marijuana that was
10 found in his home on April 17th. As an officer of the
11 court, I can not make that same argument in relation
12 to the amount of cocaine that was found in the home.

13 THE COURT: Are there any lesser offenses for the
14 Court to consider?

15 MR. WELLBORN: Yes. Your Honor could find him
16 guilty of possession of more than an ounce of
17 marijuana.

18 THE COURT: All right.

19 MR. WELLBORN: Your Honor, could also if you make
20 a determination -- although there is no such evidence
21 in the record -- that he is guilty of unlawful
22 possession of prescription drugs for both the
23 Hydrocodone and the Oxycodone. But I would point out
24 again there is no such evidence in the record that he
25 did not have such prescription. And I'm certainly

1 aware of the authority from 1975, Justice Ness, in the
2 opinion that was cited, which is State versus Attardo,
3 I would mention just briefly in regards to that, that
4 number one, that case involved possession of more than
5 an ounce of marijuana with intent to distribute. That
6 did not involve any prescription drugs in that
7 particular opinion. They cited in dicta, the other
8 issues related to the requirement that something --
9 that the defendant show proof that they had a
10 prescription, and it is my opinion that law in fact or
11 that dicta would not be controlling and valid today
12 for that to be argued, especially again, in light of
13 the burden shifting aspects of it. We do have -- and
14 I'm certainly willing to spend some time talking about
15 it, but I don't think it's necessary. We have
16 addressed the burden shifting in cases involving
17 crimes of violence and possession of a firearm. We
18 can no longer interfere by use of a firearm that
19 someone intended to commit a murder or commit a
20 violent crime. That our Supreme Court has ruled on.
21 We have addressed inference and burden shifting in
22 other areas of the law. The court has yet to address
23 this issue in relation to drug cases, but that's
24 essentially what they are trying to argue and by
25 arguing that we have a burden to show that my client

1 had a prescription for these that is shifting the
2 burden which is just as unconstitutional in drug cases
3 that it would be in gun case or in another kind of
4 case.

5 So for those reasons I think Your Honor does have
6 the ability to find him guilty of a lesser offense of
7 possession of more than an ounce of marijuana. You do
8 have evidence in the record by which you could do
9 that. You do have evidence in the record by which you
10 could find him guilty of possession of -- unlawful
11 possession of prescription drugs if you choose to
12 accept the language of State versus Attardo from 1975
13 as controlling. You would certainly have evidence in
14 the record to do that. Those would allow the lesser
15 included offenses. As an officer of the Court you do
16 not have any lesser included options on possession of
17 cocaine and I would not argue such.

18 MR. WELLBORN: Thank you, Mr. Wellborn. Briefly
19 final argument.

20 MR. PORTER: Your Honor, I want to be clear, when
21 he's talking about unlawful possession of a
22 prescription drug is he talking about the offense
23 entitled forty or is he talking about possession of
24 hydrocodone, possession of Oxycodone because there is
25 a separate statute in title 40 where you possess

1 something that is only available to be prescribed and
2 I believe that is a two year misdemeanor. That is
3 uncharged and would not be lesser included and I don't
4 think the Court could find him guilty of that charge
5 since it's not in the statute. It would be completely
6 separate and uncharged and therefore the Court could
7 not.

8 THE COURT: I already looked it up. I just wanted
9 to hear you all say what you were going to say.

10 MR. PORTER: I just wanted to make sure he wasn't
11 talking about possession of Hydrocodone and possession
12 of Oxycodone which we do believe would be lesser
13 included in this case. But the title 44 offense would
14 the not.

15 THE COURT: Understood. So possession of is
16 Hydrocodone or possession of Oxycodone without the
17 intent to distribute, the State does believe is a
18 lesser offense.

19 MR. PORTER: Yes, sir, Your Honor. I believe that
20 would be a lesser offense based on facts in this case.

21 THE COURT: What's the statute on that?

22 MR. PORTER: 44-53-370 C and D.

23 THE COURT: 44-53-370.

24 MR. PORTER: C and D.

25 And then with respect to Attardo I believe the way

1 Attardo would work in the modern era would be that the
2 defense would have the burden to proffer the
3 prescription and the State would still retain the
4 burden of proof beyond a reasonable doubt. The
5 defense has failed to do that in this case. So we
6 believe that anything referencing a potential
7 prescription would have been in the defense's ability
8 to produce. At that point the State would have then
9 had a burden to disprove the existence of prescription
10 or its applicability to these things. So I think
11 Attardo is still good law. It's not burden statute,
12 but it is saying that the defense is in the best
13 position to be able to produce that evidence. It
14 should produce that evidence and then the State can
15 then still bear the burden of proof.

16 THE COURT: But it'S also dicta.

17 MR. PORTER: It is also dicta. That is correct.

18 THE COURT: All right. That concludes the trial
19 of this case. I want to thank the attorneys for a
20 very thorough presentation of the matters before the
21 court. Mr. White, let me speak to you. Let you know
22 what's going to happen. I am going to take all these
23 things under advisement. Okay. I'm going to take
24 like the paper evidence as well as some of the videos
25 and all that kind of stuff. My office isn't here.

1 I'm a visiting judge. Okay. I don't have a office
2 here in the courthouse so I will take it with me
3 because I am here holding court this week and I will
4 make a decision. I'm going to deliberate whatever my
5 verdict is in this case. I will look through all the
6 law again, look through all the facts as it has been
7 presented to me, consider the arguments of your very
8 able lawyer, Mr. Wellborn, as well as the State's
9 lawyers and when I have decided whatever my verdict is
10 going to be, guilty or not guilty, I will let the
11 lawyers know and we will schedule a special term of
12 court just for that. Okay. I will come back up here
13 from my office out of this Circuit and we will convene
14 court in one of these courtrooms here at the Moss
15 Justice Center where I will announce my verdict.
16 Depending on what my verdict is if I do find you
17 guilty on one or whatever I do we will deal with
18 sentencing at that time as well if that comes to play.
19 Okay. But at this point in time I just don't feel
20 comfortable making an off-the-cuff decision since I'm
21 not a jury. I have a lot of things to consider. So I
22 want you to know what is going to happen. I know you
23 want an answer sooner rather than later. You have been
24 waiting a long time. This is five years. I got you,
25 okay. I am going to do it as quickly as I can. I was

1 telling the lawyers during one of the breaks that I
2 may be up here next Thursday. I don't know yet.
3 Okay. Because I don't know if I will have a decision
4 yet. I don't want to rush my decision. I tell juries
5 when I try cases deliberation means deliberate.
6 Deliberately go through the evidence and I intend to
7 do that. Okay. So, when I have a decision I will let
8 the lawyers know and of course your lawyer will let
9 you know and then we will go from there. Good luck to
10 you sir. That concludes the trial of this case.

11 MS. JOYNER: Thank you very much.

12 THE COURT: Court is adjourned till tomorrow
13 morning I. Think we have probation violations.
14 That's it.

15 (END OF TRANSCRIPT)

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C E R T I F I C A T E

I, the undersigned Aileen Butler, Official Court Reporter for the 16TH 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 in the captioned case, in the Circuit Court for York County, South Carolina, on the 20th and 21st day of April, 2022.

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

August 2, 2022

Aileen Butler

STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE COURT OF GENERAL SESSIONS
CASE NO. 2018-GS-46-01848

STATE OF SOUTH CAROLINA,)
)
Plaintiff,)
)
-vs-)
)
HAROLD GENE WHITE, III,)
)
Defendant.)
_____)

TRANSCRIPT OF RECORD

April 28, 2022
York, South Carolina

B E F O R E:

Honorable Brian M. Gibbons, Judge.

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

Ms. Erin Joyner
Senior Solicitor
Mr. Daniel Porter
Assistant Solicitor
Attorneys for the State of South Carolina
York, South Carolina

Mr. Christopher Wellborn
Attorney at Law
Attorney for the Defendant
Rock Hill, South Carolina

Shannon E. McGilberry, CVR-M
Court Reporter

1 THE COURT: This is in the case of the *State of South*
2 *Carolina versus Harold Gene White, III*. The Court heard
3 this matter via bench trial last week. I've had an
4 opportunity to further review the evidence which was
5 submitted and considering that this was considered the
6 testimony which was offered and based upon further review
7 and deliberations, I find the defendant as follows as to
8 each indictment: all right. On indictment -- on the
9 indictment dealing with the possession with intent to
10 distribute marijuana, I find the defendant guilty.

11 On the indictment dealing with possession of cocaine, I
12 find the defendant guilty.

13 On the indictment dealing with possession with intent
14 to distribute oxycodone, I find the defendant guilty of the
15 lesser offense of possession.

16 On the indictment for possession with intent to
17 distribute hydrocodone, I find the defendant guilty of
18 possession with intent to distribute hydrocodone.

19 All right. That's the Court's verdict as to each one
20 of these indictments. I'm going to take a brief recess so
21 the parties can prepare for mitigation or offer any
22 arguments they wish to in regards to sentencing.

23 As well, Madam Solicitor, if you can hand me up the
24 sentencing sheets so we can proceed in the sentencing.
25 Okay. So I'll take a brief recess.

1 MS. JOYNER: Thank you, Your Honor.

2 (WHEREUPON, court was recessed at 10:09 A.M. and
3 reconvened at 10:14 A.M.)

4 THE COURT: All right. Let me hear from the State
5 first, Ms. Joyner. Yes, ma'am.

6 MS. JOYNER: Thank you, Your Honor. We did mark and
7 we'd ask to enter Court's Exhibit 4, which is --

8 THE COURT: All right. It's entered.

9 MS. JOYNER: Thank you, Your Honor. It's a certified
10 conviction for possession with intent to distribute crack
11 cocaine and that is from, I believe, 2015.

12 Your Honor, we're, of course, submitting that for the
13 Court's consideration as to sentencing, but also for
14 enhancement purposes for possession of cocaine, possession
15 of oxycodone and possession with intent to distribute
16 hydrocodone. That prior conviction would make those three
17 guilty verdicts today second offenses.

18 We would respectfully ask the Court to consider a ten-
19 year sentence in this case, making the PWID hydrocodone,
20 2022-GS-46-00076 the lead charge, with concurrent sentencing
21 on the remaining charges. We will tell the Court that a
22 2015 conviction for possession with intent to distribute is
23 the only prior record, but I did think there was some
24 information about that conviction which would be instructive
25 for the Court.

1 That conviction stems from an incident that occurred on
2 February 5th of 2015, when officers were conducting
3 surveillance in a area parking lot. They saw a car pull up
4 at the McDonald's and sit and wait. They saw another car
5 pull up. Ten minutes later they saw who would later be
6 found to be Harold White get out of his car, get into that
7 first car that had been waiting. As they approach
8 -- they go to approach, because they believe that what they
9 are seeing is a drug transaction and they see Harold White
10 get out of -- quickly get out of the car, get back into his
11 car and speed off and this is a failure to stop for a blue
12 light. The failure to stop was dismissed per his plea to
13 the possession with intent to distribute crack cocaine, but
14 he leads the police on a chase, at one point rolling down
15 the window, throwing out an object which the police were
16 later able to go back and locate. He ends up skidding off
17 the road, crashing into the woods and he actually,
18 ultimately, after he's placed under arrest, has to be taken
19 to PMC to treat his injuries. They were able to speak with
20 his front passenger who, essentially, corroborates that --
21 that Harold White did throw something out the window, that
22 he did indicate that he had to go take -- go somewhere
23 before taking this passenger home. They were able to look
24 at his phone in that case and see text messages which were
25 indicative of drug sales and he, as I said, did plead guilty

1 and he received probation on that case and that was -- he
2 pled guilty October of 2015, received probation and that's,
3 basically, a year and a half before the execution of the
4 search warrant in this case.

5 We have a situation where a person was drug muling in
6 2015, wrecked his car, had to be taken to the hospital and
7 that didn't deter him. He was placed on probation, did not
8 deter him and we have the situation where he is found in
9 possession of various drugs in his home next to loaded
10 weapons, in the case of the marijuana, in the home that he
11 shares with his children.

12 Regarding credit, Your Honor, credit for any time
13 served, Mr. White was arrested for these charges on March
14 6th of 2018. He posted bond the same day. Your Honor has
15 seen him coming in and out of a holding cell. That is due
16 to a bond revocation. His bond was revoked on these charges
17 on March 31st of 2021, following arrest for trafficking,
18 where a search warrant was executed at the same residence
19 and by trafficking, all the drugs were recovered. So by my
20 count, since the bond revocation, today's date, that is 393
21 days.

22 THE COURT: All right.

23 MS. JOYNER: That's the State's presentation.

24 THE COURT: Thank you, Madam Solicitor.

25 Mr. Wellborn.

1 MR. WELLBORN: Thank you and we would agree that 393
2 days is accurate as time already served and, of course,
3 should count to that time served.

4 Before you consider the 2015 for purposes of
5 sentencing, whether or not this is a second offense or not
6 would be an element that the State would have to prove at
7 trial. They've not -- they didn't introduce no evidence at
8 trial of my client's prior conviction for possession with
9 intent to distribute in 2015 or any conviction in 2015, for
10 that matter. You know, that didn't come up. We didn't have
11 to waive it, but it simply never came up. The record --

12 THE COURT: Well, it came up when I was talking to him
13 about if there were any crimes that he'd been convicted of
14 which the State would seek to cross-examine him on as to
15 credibility.

16 MR. WELLBORN: Yes, but they didn't prove it.

17 THE COURT: Well, I understand what you're saying.

18 MR. WELLBORN: They didn't introduce any evidence and
19 that's their burden and so, quite frankly, the Court is --
20 it would be improper for Your Honor to sentence since the
21 State did not prove that element. It would be improper for
22 you now to say, well, you know, after the fact I'm going to
23 take the State's, you know, recitation and this is what he
24 was convicted of. They had the option of proving that at
25 trial, which they did not do. So at this point, given the

1 authority of *Affronti versus United States*, given the other
2 authority of what the State is required in terms of elements
3 of an offense, if an offense is listed as a second offense,
4 you've got to prove the first offense. They didn't do that.
5 And, again, the record is devoid of any evidence to proof of
6 that prior conviction. Therefore, it would be improper as a
7 matter of law for you to sentence my client to a second
8 offense.

9 THE COURT: Okay; all right. Get past the legal
10 argument. Let's talk about mitigation.

11 MR. WELLBORN: Your Honor, my client has been in jail
12 for 293 days. He has -- quite frankly, he is somebody who,
13 despite his prior hiccups with the law as alluded to,
14 somebody other, as Ms. Joyner's says, other than that has no
15 record whatsoever. He did, in fact, have and attempted to
16 have a successful source of income, which was T-shirt
17 printing. There's evidence that I've received and that the
18 State's provided to me that at various points during the
19 search warrant being issued they found lots of T-shirts and
20 printing equipment for T-shirts, you know, and that's
21 basically it. My client has chosen not to speak to Your
22 Honor and -- because they're going to -- obviously there's
23 going to be further litigation involving this matter and
24 potentially this matter being re-litigated, so -- but that's
25 what we would present in mitigation.

1 THE COURT: All right. Thank you. And I'll be glad to
2 hear from anybody in -- yes, his family members or friends
3 are here. I'd be glad to hear from them if they would like
4 to address me. You could do so, just come up to the bar
5 right there so I can hear you and make sure my court
6 reporter can hear you. All right. Thank you, sir. Just
7 stand right there by your -- by Mr. White's lawyer.

8 What's your name, sir?

9 MR. DANTZLER: My name's Clifford Dantzler.

10 THE COURT: Yes, sir, Mr. Dantzler.

11 MR. DANTZLER: All right. I am the father-in-law of
12 Harold White. That's my daughter, his wife, Jalisa, and
13 that's Harold's parents there as well. I've known Harold
14 since he was a high school football star 2007, 2008 at South
15 Point High School. They had their first child right after
16 high school and I've been working with him and so forth,
17 counseling him. I just started ministry. I'm a pastor at
18 Upon this Rock 3 Cord Ministries, a new ministry right
19 across from Drums Tires on Main Street since September
20 2021, when I started it. Harold was instrumental in getting
21 the word out to the community and so forth. We got a big
22 old Thanksgiving giveaway. He helped all boy heal,
23 different ones come through. He has potential to be a
24 optimum person that change lives in young people. All that
25 he's been -- mistakes and choices he's made didn't -- he

1 took the counseling of me and his parents, his wife as well.
2 I do believe the whole purpose is to have someone change and
3 do better for the community. I believe he's learned his
4 lessons. He has three kids home, one, of course, is in
5 heaven, the twin, who Your Honor, was on my birthday, and
6 CHILD 2 is still here. CHILD 2 is going through a lot right
7 on behalf to the loss of his twin sister. There's one
8 person who keep control of CHILD 2, just say one word -- I
9 could look at him, that's his daddy. Since he been gone,
10 there's been some things going on with CHILD 2. We tried to
11 good location and counseling, so forth. Just this week
12 here, if y'all don't mind me saying, he's been sent to an
13 alternative school and only at five years old. I think it's
14 because of the turmoil that's going on with him right now.

15 I promise I will work with him, Harold, side by side in
16 ministry. I need him out there to help me -- help me with
17 these other people that just got killed yesterday. I
18 believe Harold can make a difference throughout this
19 community if he's given this chance, a second chance. I
20 know he made some bad choices, but we've all made some bad
21 choices and I just plead the mercy of the Court to have --
22 to have time served or whatever he may do to not leave that
23 way with his family.

24 They were just recently, about a year
25 ago before this all happened, they were the winners, Jalisa

1 and Harold White, of the executive (ph.) prize grant that
2 got -- they got 25,000, I can't remember what it was, to
3 further the business she done renovated by herself, couldn't
4 sleep. Harold was her main partner there. So she's trying
5 to stay afloat, keep her family afloat. We all do our part
6 wherever we can. I'm a educator, my wife's a educator,
7 don't have a whole of funding, but we're all in this
8 together. Harold has a way of doing -- he got the business
9 head, he would do definitely, so there's the fact on that.
10 He has so many ideas, he shared with me so much. He can be
11 a asset to the community if he just -- we work with him and
12 understand that he made the wrong decisions and if you'd
13 have mercy, I -- all I can do is ask for the mercy of the
14 Court.

15 THE COURT: Thank you, Sir.

16 MR. DANTZLER: Thank you, Your Honor.

17 THE COURT: I appreciate you. Anybody else like to
18 speak on Mr. White's behalf?

19 (No response)

20 THE COURT: Thank y'all for being here. Y'all -- I've
21 noticed that y'all have been here the entire -- y'all were
22 here all last week, all right, and I noticed that.

23 All right. Here's the thing on the legal issue, Mr.
24 Wellborn, for the purpose of the record, I'm not making any
25 finding on that. I mean, I never -- honestly, I didn't even

1 think about that until I reached my verdict, then I started
2 thinking about what my possible sentence would be. I mean,
3 PWID hydrocodone first offense carries up to fifteen. I
4 mean, so when you hear the sentence I'm handing down, you'll
5 understand. Of course, each one of the other drug offenses
6 I'm aware what they carry, but by no means was I going to
7 max them out or treat it like a second offense. So that
8 legal argument is preserved for further review based upon me
9 not making a finding on it, but I'm sentencing him based
10 upon what I found him guilty of, okay, which was what was
11 present to me.

12 All right. So here's the thing: on the PWID
13 marijuana, Mr. White, the Court sentences you to two years
14 in prison with credit for 393 days. That will be
15 concurrent. That's, essentially, a time-served sentence for
16 you, okay, on the marijuana.

17 On the cocaine charge, the sentence of the Court is
18 three years in prison, credit for previous time served, to
19 run concurrent.

20 On the indictment for possession of oxycodone, the
21 Court sentences you to two years in prison, with credit for
22 previous time served, concurrent, and on the operative
23 indictment for the sentencing in this case, which is
24 indictment 22-GS-46-76, having been found guilty of PWID
25 hydrocodone, the Court sentences you to seven years in

1 prison, to run concurrent with everything else, credit for
2 time served. Good luck to you, Mr. White.

3 All right. That concludes the trial in this case.
4 Anything else?

5 MR. PORTER: Your Honor, the second offense would be a
6 strike, so I -- the State would like to respond to Mr.
7 Wellborn's argument, because I don't think it's a fair
8 statement of the law.

9 The prior offense is not an element of the crime. If
10 you look at the drug statute, A is the penal- -- is the
11 elements of the crime, B is the sentencing matter. So it is
12 not an element that the State is required to prove. I've
13 been prosecuting drug cases for six years. This is the way
14 that we prove these things and just for enhancement purposes
15 in the future, we will need to know if the defendant was
16 convicted of a strike here today or if he was not. So---

17 THE COURT: Okay.

18 MR. PORTER: ---if he --

19 THE COURT: Well, like I said, I didn't -- I'm
20 sentencing him based upon what he was convicted of. Y'all's
21 argument is preserved in the record of this case for
22 whatever the Court of Appeals or the Supreme Court wants to
23 do. My sentencing was based upon not considering a first or
24 a second. I mean, even if I considered it a second, for
25 argument's sake, I wouldn't give him any more than what I

1 just did.

2 MR. PORTER: Absolutely.

3 THE COURT: I think that's plenty, considering the
4 facts and circumstances in this case and considering the
5 fact that he has over a year's worth of credit, you know,
6 and I took the gentleman's comments into consideration as
7 well. Okay. And I know the State was recommending me give
8 him ten and I came in well under that.

9 MS. JOYNER: Yes, sir; yes, sir. We just have some
10 other strikes --

11 THE COURT: You are protected.

12 MS. JOYNER: Thank you.

13 THE COURT: And Mr. Wellborn's position is protected as
14 well. Good luck to you, Mr. White. I wish you good luck as
15 well, sir.

16 MS. JOYNER: Thank you, Your Honor.

17 THE COURT: All right. That's the order of the Court.
18 This case is ended. Court's adjourned; sine die.

19 MS. JOYNER: Thank you, Your Honor.

20 MR. PORTER: Thank you, Your Honor.

21 (END OF REQUESTED TRANSCRIPT)

22

23

24

25

STATE OF SOUTH CAROLINA)
) C E R T I F I C A T E
COUNTY OF YORK)

I, the undersigned Shannon E. McGilberry, official Court Reporter for the Sixteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of the record of all proceedings had and evidence introduced in the hearing of the captioned case, relative to appeal, in the Court of General Sessions for York County, South Carolina, on the 28th day of April, 2022.

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

In witness whereof, I have hereunto subscribed my name,
this 15th day of November, 2022.

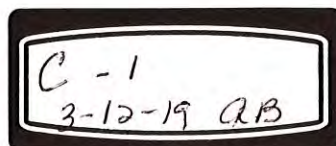
Shannon E. McGilberry, CVR-M

My Commission Expires:
April 26, 2027

STATE OF SOUTH CAROLINA

County of YORK

SEARCH WARRANT



Printed
4/17/17 8:26am

original
297

Date April 17, 2017
Officer Special Agent Trista Baird

STATE OF SOUTH CAROLINA
COUNTY OF YORK

}

AFFIDAVIT

Personally appeared before me, one Trista Baird who, being duly
(Name of Affiant)

sworn, says that there is probable cause to believe that certain property subject to seizure under provisions of Section 17-13-140 (Issuance, execution and return of search warrants for property connected with the commission of crime; inventory of property seized), 1976 Code of Laws of South Carolina, as amended, is located on the following premises in this County:

DESCRIPTION OF PROPERTY SOUGHT

Any and all evidence related to the death of **CHILD** (dob [REDACTED] 2016, dod 3/29/2017); to include Fentanyl (a DEA Schedule II synthetic morphine substitute anesthetic/analgesic), any substances suspected to be Fentanyl, and any paraphernalia or items associated with the use of Fentanyl; state issued identification card and/or driver's license of any and all individuals at the residence; any and all cellphones belonging to: Yolanda Harris Adams (dob [REDACTED]/1971), Darrell Rodney Ross (dob [REDACTED] 1951), Harold Gene White III (dob [REDACTED] 1990), Jasmine Latasha Rawlinson (dob [REDACTED] 1991), Julisa Gabrielle White (dob [REDACTED] 1990), Williette Woodard Beard (dob [REDACTED] 1953), and Amanda Jo Pettrey (dob [REDACTED] 1982)

DESCRIPTION OF PREMISES (PERSON, PLACE, OR THING)

TO BE SEARCHED

The property to be searched is a residence located at [REDACTED] Amanda Lane in the city limits of Rock Hill and in the county of York, South Carolina. The residence is located in the Taylor Oaks Subdivision and has light brown siding with dark green shutters and a dark green front door. To locate the residence, turn onto Ashridge Road from SC 901/Mt. Holly Road. Turn left onto Bloomsbury Drive and then turn left onto Amanda Lane. The residence will be on the left side of the road on Amanda Lane. The search is to include all rooms, attics, basements, locked or unlocked containers, outbuildings, storage sheds, tents, trash areas and trash containers, attached or unattached. Any vehicles located on the premises including trunks and closed or locked containers therein.

Printed
4/17/17 8:46am

REASON FOR AFFIANT'S BELIEF THAT THE
PROPERTY SOUGHT IS ON THE SUBJECT PREMISES

I, Special Agent Trista Baird, being duly sworn state the following:

Special Agent (S/A) Trista Baird is employed with the South Carolina Law Enforcement Division (SLED) and is assigned to the Special Victims Unit – Department of Child Fatalities. S/A Baird has worked in law enforcement since 2007. S/A Baird has been employed by SLED since May of 2013. Prior to working with SLED, S/A Baird was employed with the Rock Hill Police Department as a detective assigned to investigate child and vulnerable adult abuse.

On March 29, 2017, at approximately 5:56 pm, Piedmont Medical Center EMS and Rock Hill Police Department (RHPD) were dispatched to [REDACTED] Simpson Street in the city limits of Rock Hill, South Carolina, in reference to a 9-month-old female ([REDACTED] CHILD [REDACTED] dob [REDACTED] 2016; dod 3/29/2017) unconscious and not breathing. EMS arrived on scene and found Juliana White supine on the living room floor with a female performing chest compressions. She was unresponsive, not breathing, had no pulse, and had vomit coming from her mouth. She was transported to Piedmont Medical Center where she was pronounced deceased. York County Coroner's Office, RHPD, and SLED responded to the hospital.

According to [REDACTED] CHILD [REDACTED]'s father (Harold Gene White III), his mother (Yolanda Harris Adams) picked up his twins [REDACTED] CHILD [REDACTED] and [REDACTED] CHILD 2 [REDACTED] from his residence ([REDACTED] Amanda Lane, Rock Hill, South Carolina) at approximately 11:00 am or 12:00 pm on March 29, 2017. Adams took the twins to her residence at [REDACTED] Simpson Street. Later in the afternoon, he went to Adams' house and found [REDACTED] CHILD [REDACTED] asleep in Adams' bed. [REDACTED] CHILD 2 [REDACTED] was playing with Adam's friend (Williette Woodard Beard) in the living room. Adams was not home. He then left the residence.

According to Adams, her neighbor (Jasmine Latasha Rawlinson) picked the twins up from Harold White and brought them to her house around lunchtime. Adams fed the twins each a bottle with formula mixed with infant cereal. Then, the three of them lay down on her bed and went to sleep. Adams and [REDACTED] CHILD 2 [REDACTED] both woke up, got out of bed, and left [REDACTED] CHILD [REDACTED] sleeping in the bed. Adams got her children ready for their doctor's appointment and asked Amanda Jo Pettrey (who resides at her residence) and Beard to watch [REDACTED] CHILD [REDACTED] and [REDACTED] CHILD 2 [REDACTED] while she took her children to the doctor. When she home, Adams was told that [REDACTED] CHILD [REDACTED] was still asleep and went to check on her. She found her unresponsive and not breathing. Adams brought [REDACTED] CHILD [REDACTED] to Julisa White, who had arrived on scene at some point prior to Adams' arrival. Amanda Pettrey began CPR in the living room. Rawlinson, who was also on scene, called 911. Darrell Rodney Ross, who resides at the residence, was asleep in one of the bedrooms for most of the day.

An autopsy was completed on March 30, 2017. The toxicology report from NMS Labs revealed that [REDACTED] CHILD [REDACTED] had 17 ng/mL of Fentanyl and 5.2 ng/mL of Norfentanyl in her blood at the time of her death.

It is the belief of this affiant that information gained from this search is necessary to assist investigators in determining the cause and manner of death of [REDACTED] CHILD [REDACTED] the individuals who were present at the time and leading up to her death, and the timeline of events surrounding her death.

Sworn to and Subscribed before me

This 17 day of April, 2017



(Signature of Judge)

(L.S.)



(Affiant's Signature)

Affiant's Agency South Carolina Law Enforcement Division

Affiant's Agency Address PO Box 21398 Columbia SC 29221

Affiant's Agency Phone # (803) 896-7078

Printed
4/17/17 8:26am

STATE OF SOUTH CAROLINA
COUNTY OF YORK

}

Search Warrant

Form approved by
S.C. Attorney General
Section 17-13-160
March 15, 1978

TO ANY BONDED LAW ENFORCEMENT OFFICER OF THIS STATE OR COUNTY OR OF A MUNICIPALITY OF
YORK COUNTY

It appearing from the attached affidavit that there are reasonable grounds to believe that certain property subject to seizure under provisions of Section 17-13-140 (Issuance, execution and return of search warrants for property connected with the commission of crime; inventory of property seized), 1976 Code of Laws of South Carolina, as amended, is located on the following premises:

DESCRIPTION OF PREMISES (PERSON, PLACE, OR THING)
TO BE SEARCHED

The property to be searched is a residence located at [REDACTED] Amanda Lane in the city limits of Rock Hill and in the county of York, South Carolina. The residence is located in the Taylor Oaks Subdivision and has light brown siding with dark green shutters and a dark green front door. To locate the residence, turn onto Ashridge Road from SC 901/Mt. Holly Road. Turn left onto Bloomsbury Drive and then turn left onto Amanda Lane. The residence will be on the left side of the road on Amanda Lane. The search is to include all rooms, attics, basements, locked or unlocked containers, outbuildings, storage sheds, tents, trash areas and trash containers, attached or unattached. Any vehicles located on the premises including trunks and closed or locked containers therein.

DESCRIPTION OF PROPERTY

Any and all evidence related to the death of [REDACTED] CHILD (dob [REDACTED] 2016, dod 3/29/2017): to include Fentanyl (a DEA Schedule II synthetic morphine substitute anesthetic/analgesic), any substances suspected to be Fentanyl, and any paraphernalia or items associated with the use of Fentanyl; state issued identification card and/or driver's license of any and all individuals at the residence; any and all cellphones belonging to: Yolanda Harris Adams (dob [REDACTED] 1971), Darrell Rodney Ross (dob [REDACTED] 1951), Harold Gene White III (dob [REDACTED] 1990), Jasmine Latasha Rawlinson (dob [REDACTED] 1991), Julisa Gabrielle White (dob [REDACTED] 1990), Williette Woodard Beard (dob [REDACTED] 1953), and Amanda Jo Pettrey (dob [REDACTED] 1982)

This Search Warrant shall not be valid for more than ten days from the date of issuance. A written inventory of all property seized pursuant to this Search Warrant shall be made to The Honorable Stephanie A. Wood

(Name of Judge)

Within ten days from the date of this warrant, such inventory to be signed by the officer executing this warrant, and a copy of such inventory shall be furnished to the person whose premises are searched if demand for such copy is made.

A copy of this Search Warrant shall be delivered to the person in charge of the premises searched at the time of such search if practicable, and if not, to such person as soon thereafter as is practicable; in the event the identity of the person in charge is not known or if such person cannot be found after reasonable diligence in attempting to locate the person, a copy shall be attached to a prominent place on such premises.

York County, S.C.
(City or Town)

April 17, 2017
(Date)

[Signature] (L.S.)
(Signature of Judge)

Printed 4/17/17 8:46am

Page 2 - Return

4/17/17

M. Skipper Wallace /
Jason Wells

- Ten tan round pills scored TL177 in a pill bottle labeled
- Douglas Smarr
- Pill bottle labeled Harold White containing 3 different kinds of pills: 37 white oblong pills scored IBU800, 4 dark gray capsules, 15 white round pills scored A04
- Fifty loose white oblong pills scored IBU800
- Two peach colored round pills scored mylan A3
- Small brown envelope with wax sleeve containing white powder
- One hand-tied plastic bag containing white powder
- 88 loose white oblong pills scored Watson 3203
- One peach colored iPhone Model A1778 - Julisa White
- One white LG phone - Harold White
- One 9mm magazine w/ ammo from glove box - Green Ford Expedition SC 734 [REDACTED], VIN: 1FMRU1760XL [REDACTED]

04-17-17



M. Skipper Wallace

Affiant - Officer Executing Warrant.

Return

I received the attached Search Warrant dated April 17, 2017, and have executed it as follows:
(date on the search warrant)

On April 17, 2017 at 11 o'clock A M, I searched _____
(Date) (Time) (A/P) (name of person described in warrant)

and/or [REDACTED] Amanda Lane Rock Hill SC
(the premises described in warrant)

I left a copy of the warrant with Yolanda Harris Adams Julisa White
(name of person in charge of premises or the location of prominent place of premises searched)

together with a receipt for the items seized.

The following is an inventory of property taken pursuant to the search warrant:

Two (2) phones from box in master bedroom
 Two (2) phones from backpack on kitchen table
 One bag suspected marijuana from black and white bag in basement
 One bag suspected marijuana from jacket pocket - master closet
 One bag suspected marijuana under mattress - master bedroom
 One yellow scale - master bedroom drawer
 Two (2) phones - purple backpack - garage
 One HTC phone - garage desk
 One Asus phone - floor - master bedroom outside bathroom door
 Taurus Millennium G2 PT111, 9mm S/N TJU17079 w/ magazine i ammo
 Hi Point 9mm (9 S/N P 1472277 w/ magazine i ammo
 Savage .22/.410 long gun in soft case; no observed S/N (2nd page attached)
 This inventory was made in the presence of S/A Jason Wells
 AND S/A M. Skipper Wallace

I swear this inventory is a true and detailed account of all property taken by me on the warrant.

SWORN to before me this 17th
 day of April, 2017
[Signature] (L.S.)
(Signature of Judge)

[Signature]
(Signature of Officer Executing Search Warrant)

5542

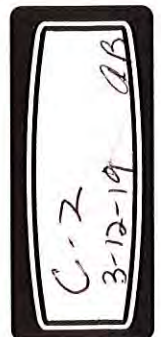
STATE OF SOUTH CAROLINA

County of YORK

SEARCH WARRANT

Date April 25, 2017

Officer Special Agent Trista Baird



STATE OF SOUTH CAROLINA
COUNTY OF YORK

} AFFIDAVIT

Personally appeared before me, one Trisha Baird who, being duly
(Name of Affiant)

sworn, says that there is probable cause to believe that certain property subject to seizure under provisions of Section 17-13-140 (Issuance, execution and return of search warrants for property connected with the commission of crime; inventory of property seized), 1976 Code of Laws of South Carolina, as amended, is located on the following premises in this County:

DESCRIPTION OF PROPERTY SOUGHT

Any and all data, to include but not limited to records, images, call logs, phone numbers, text messages, videos, voice messages, internet history, GPS location information, wireless networks, passwords, user accounts, and emails. All information pertaining to the investigation regarding the death of **CHILD**

DESCRIPTION OF PREMISES (PERSON, PLACE, OR THING)
TO BE SEARCHED

1. iPhone, gold, Model A1778, IMEI 353806081462833, passcode 000000
2. LG LS 676, white, S/N 611CYDG0565866
3. LG VM701, black, S/N 109KPKN0108709
4. iPhone, white, Model A1533 IMEI 013971006205295
5. iPhone, black, Model A1533, IMEI 013853005080905
6. iPhone, white, Model A1387, S/N C39GMJTVDTD0
7. HTC Model 0PCV100, white in pink and black case, S/N FA51VSR22711
8. Asus, black and white, Model Z00D, S/N F8AZCY00D969
9. Huwaei, black, Model U8665; S/N L6X7NB9352724237
10. Samsung, burgundy, SGH-6174 IMEI 357246011884788

STATE OF SOUTH CAROLINA
COUNTY OF YORK



Search Warrant

Form approved by
S.C. Attorney General
Section 17-13-160
March 15, 1978

TO ANY BONDED LAW ENFORCEMENT OFFICER OF THIS STATE OR COUNTY OR OF A MUNICIPALITY OF
YORK COUNTY

It appearing from the attached affidavit that there are reasonable grounds to believe that certain property subject to seizure under provisions of Section 17-13-140 (Issuance, execution and return of search warrants for property connected with the commission of crime; inventory of property seized), 1976 Code of Laws of South Carolina, as amended, is located on the following premises:

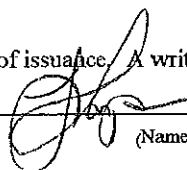
DESCRIPTION OF PREMISES (PERSON, PLACE, OR THING)
TO BE SEARCHED

1. iPhone, gold, Model A1778, IMEI 353806081462833, passcode 000000
2. LG LS 676, white, S/N 611CYDG0565866
3. LG VM701, black, S/N 109KPKN0108709
4. iPhone, white, Model A1533 IMEI 013971006205295
5. iPhone, black, Model A1533, IMEI 013853005080905
6. iPhone, white, Model A1387, S/N C39GMJTVDTDO
7. HTC Model OPCV100, white in pink and black case, S/N FA51VSR22711
8. Asus, black and white, Model Z00D, S/N F8AZCY00D969
9. Huwaei, black, Model U8665; S/N L6X7NB9352724237
10. Samsung, burgundy, SGH-6174 IMEI 357246011884788

DESCRIPTION OF PROPERTY

Any and all data, to include but not limited to records, images, call logs, phone numbers, text messages, videos, voice messages, internet history, GPS location information, wireless networks, passwords, user accounts, and emails. All information pertaining to the investigation regarding the death of **CHILD**

This Search Warrant shall not be valid for more than ten days from the date of issuance. A written inventory of all property seized pursuant to this Search Warrant shall be made to The Honorable _____

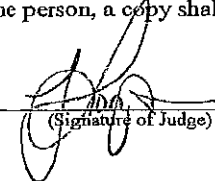

(Name of Judge)

Within ten days from the date of this warrant, such inventory to be signed by the officer executing this warrant, and a copy of such inventory shall be furnished to the person whose premises are searched if demand for such copy is made.

A copy of this Search Warrant shall be delivered to the person in charge of the premises searched at the time of such search if practicable, and if not, to such person as soon thereafter as is practicable; in the event the identity of the person in charge is not known or if such person cannot be found after reasonable diligence in attempting to locate the person, a copy shall be attached to a prominent place on such premises.

Rock Hill, S.C.
(City or Town)

4/25, 20 17
(Date)


(Signature of Judge) (L.S.)

REASON FOR AFFIANT'S BELIEF THAT THE
PROPERTY SOUGHT IS ON THE SUBJECT PREMISES

I, Special Agent Trista Baird, being duly sworn state the following:

Special Agent (S/A) Trista Baird is employed with the South Carolina Law Enforcement Division (SLED) and is assigned to the Special Victims Unit – Department of Child Fatalities. S/A Baird has worked in law enforcement since 2007. S/A Baird has been employed by SLED since May of 2013. Prior to working with SLED, S/A Baird was employed with the Rock Hill Police Department as a detective assigned to investigate child and vulnerable adult abuse.

On March 29, 2017, at approximately 5:56 pm, Piedmont Medical Center EMS and Rock Hill Police Department (RHPD) were dispatched to [REDACTED] Simpson Street in the city limits of Rock Hill, South Carolina, in reference to a 9-month-old female (CHILD [REDACTED] dob [REDACTED]/2016; dod 3/29/2017) unconscious and not breathing. EMS arrived on scene and found CHILD [REDACTED] supine on the living room floor with a female performing chest compressions. She was unresponsive, not breathing, had no pulse, and had vomit coming from her mouth. She was transported to Piedmont Medical Center where she was pronounced deceased. York County Coroner's Office, RHPD, and SLED responded to the hospital.

According to CHILD [REDACTED]'s father (Harold Gene White III), his mother (Yolanda Harris Adams) picked up his twins (CHILD [REDACTED] and CHILD 2 [REDACTED]) from his residence [REDACTED] Amanda Lane, Rock Hill, South Carolina) at approximately 11:00 am or 12:00 pm on March 29, 2017. Adams took the twins to her residence at [REDACTED] Simpson Street. Later in the afternoon, he went to Adams' house and found CHILD [REDACTED] asleep in Adams' bed. CHILD 2 [REDACTED] was playing with Adam's friend (Williette Woodard Beard) in the living room. Adams was not home. He then left the residence.

According to Adams, her neighbor (Jasmine Latasha Rawlinson) picked the twins up from Harold White and brought them to her house around lunchtime. Adams fed the twins each a bottle with formula mixed with infant cereal. Then, the three of them lay down on her bed and went to sleep. Adams and CHILD 2 both woke up, got out of bed, and left CHILD [REDACTED] sleeping in the bed. Adams got her children ready for their doctor's appointment and asked Amanda Jo Pettrey (who resides at her residence) and Beard to watch CHILD [REDACTED] and CHILD 2 [REDACTED] while she took her children to the doctor. When she home, Adams was told that CHILD [REDACTED] was still asleep and went to check on her. She found her unresponsive and not breathing. Adams brought CHILD [REDACTED] to Julisa White, who had arrived on scene at some point prior to Adams' arrival. Amanda Pettrey began CPR in the living room. Rawlinson, who was also on scene, called 911. Darrell Rodney Ross, who resides at the residence, was asleep in one of the bedrooms for most of the day.

An autopsy was completed on March 30, 2017. The toxicology report from NMS Labs revealed that CHILD [REDACTED] had 17 ng/mL of Fentanyl and 5.2 ng/mL of Norfentanyl in her blood at the time of her death.

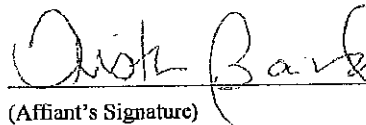
These cellphones were obtained from a search warrant that was executed on April 18, 2017 at [REDACTED] Amanda Lane Rock Hill, South Carolina. Extractions of these cellphones are needed at this time. It is the belief of this affiant that information gained from this search is necessary to assist investigators in determining the cause and manner of death of CHILD [REDACTED] the individuals who were present at the time and leading up to her death, and the timeline of events surrounding her death.

Sworn to and Subscribed before me

This 25 day of April, 2017

(Signature of Judge)

(L.S.)


(Affiant's Signature)

Affiant's Agency South Carolina Law Enforcement Division

Affiant's Agency Address PO Box 21398 Columbia SC 29221

Affiant's Agency Phone # (803) 896-7078

Return

I received the attached Search Warrant dated April 25, 2017, and have executed it as follows:
(date on the search warrant)

On April 25, 2017 at 5 o'clock P M, I searched _____
(Date) (Time) (A/P) (name of person described in warrant)

and/or cellphones listed (#1-10) in Warrant
(the premises described in warrant)

I left a copy of the warrant with Det. Brooks Felmet
(name of person in charge of premises or the location of prominent place of premises searched)

together with a receipt for the items seized.

The following is an inventory of property taken pursuant to the search warrant:

Extractions from cellphones: 1, 2, 7, 8

Unable to get extractions from cellphones:
3, 4, 5, 6, 9, 10

This inventory was made in the presence of Det Brooks Felmet
 AND S/A Trista Baird

I swear this inventory is a true and detailed account of all property taken by me on the warrant.

SWORN to before me this 2
 day of June, 2017
 _____ (L.S.)
 (Signature of Judge)

Trista Baird
 (Signature of Officer Executing Search Warrant)

1 STATE OF SOUTH CAROLINA

2 -----x

3 STATE,

4 Plaintiff,

5 Case No.

6 -against-

2018-GS-46-07326

7 HAROLD WHITE,

8 Defendant.

9 -----x

10 March 12-13, 2019

11 York, S.C.

12

13 B E F O R E:

14 HONORABLE WILLIAM MCKINNON

15

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

17 ERIN JOYNER,

18 Attorney for the State

19

20 CHRISTOPHER WELLBORN,

21 Attorney for the Defendant

22

23

24 Aileen Butler

25 Official Court Reporter

E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>EVD.</u>
Court's 1	Document		30
Court's 2	Warrant		67
Plf's 7	Photograph		110
Plf's 8	Diagram		110
Plf's 9	Diagram		
Plf's 10	Photographs		

	<u>I N D E X</u>			
	<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u> <u>RECROSS</u>
1	Trista Baird			
2	Ms. Joyner	24		39
3	Mr. Wellborn		33	
4	Charity Chappellear			
5	Ms. Joyner	102		
6	Melissa Wallace			
7	Ms. Joyner	107		
8	Mr. Wellborn		127	
9	Willy Wylie			
10	Ms. Joyner	132		149
11	Mr. Wellborn		145	
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1 MS. JOYNER: The State is calling the case of
2 State of South Carolina versus Harold White. They are
3 Indictments 2018-GS-46-07326, trafficking hydrocodone,
4 2018-GS-46-07327, possession with intent to distribute
5 oxycodone, 2018-GS-46-03874, possession of cocaine,
6 and 2018-GS-46-03876, possession with intent to
7 distribute marijuana.

8 THE COURT: Miss Joyner, would you say that one
9 more time. I was setting up my laptop.

10 MS. JOYNER: Yes, Your Honor.

11 The first is trafficking hydrocodone.
12 2018-GS-46-7426.

13 THE COURT: Okay.

14 MS. JOYNER: Possession with in intent to
15 distribute oxycodone which was the Indictment ending
16 7327, possession of cocaine, Indictment ending in
17 3874, and possession with intent to distribute
18 marijuana, 3876.

19 THE COURT: Thank you, ma'am.

20 MS. JOYNER: Your Honor, the possession with
21 intent to distribute oxycodone and trafficking
22 hydrocodone are direct indictments. We provided a
23 copIES to Mr. Wellborn. I think he indicated he will
24 not require a formal arraignment.

25 THE COURT: Is that correct, Mr. Wellborn?

1 MR. WELLBORN: We have notice of those
2 Indictments.

3 We are not requiring a formal arraignment.

4 THE COURT: Thank you, sir.

5 MS. JOYNER: Your Honor, Mr. Wellborn indicated
6 yesterday that he wished to have a bench trial in this
7 case.

8 THE COURT: Okay.

9 MS. JOYNER: The State does not wish to contest a
10 bench trial. We agree to waive the State's right for
11 a jury trial in this case.

12 THE COURT: Okay.

13 MS. JOYNER: And Your Honor, I prepared a jury
14 list -- or a witness list in anticipation of a jury
15 trial which would list out all the names that we
16 expect to arise in this case. Not everybody
17 necessarily to be an active witness. So -- but for
18 the Court's information on the witnesses we expect to
19 call or may be needed, we also -- so this is the names
20 you may expect to hear and the second list is the
21 redaction of people that we don't think we'll actually
22 be calling in reference to this case or anticipate
23 calling.

24 THE COURT: Whenever you all are ready.

25 MS. JOYNER: Your Honor, I know that Mr. Wellborn

1 has indicated that he has some pretrial. The State
2 likewise has some pretrial.

3 THE COURT: Okay.

4 MS. JOYNER: I don't know how the Court would wish
5 to proceed. Mr. Wellborn did subpoena Judge Wood who
6 was the issuing Magistrate on the search warrant of
7 the residence. I don't know if we wants to take up
8 that issue first.

9 THE COURT: Why don't we do that first. Is Judge
10 Woods here?

11 MR. WELLBORN: She is. But to be fair to the
12 Court it would make sense to handle the first very
13 quick motion before Judge Wood search warrant motion
14 because one really kind of falls as a result of the
15 other.

16 THE COURT: Okay. What's the first motion?

17 MR. WELLBORN: The first motion is a motion for a
18 bill of particulars in this matter and that was filed
19 last week. The purpose of the motion for the bill of
20 particulars is somewhat simple in that my client was
21 charged and surrendered himself on a warrant as of the
22 sixth of March of last year. And among those warrants
23 they all alleged offenses. That the offenses that are
24 are on trial occurred at a specific location on on a
25 specific day. Specifically, April 17, 2017, at 1635

1 Amanda Lane. My client was given those warrants. He
2 was therefore put on notice that that was the charge
3 against him which he would have to defend himself.
4 The direct indictments in this case which were issued
5 by the Grand Jury as of October 11th of 2018, so, more
6 than a year later, said that my client committed these
7 offenses on or about April 17th in York County.

8 Now, the problem with that is that in speaking
9 with solicitor and maybe we can clear this up very
10 quickly today -- that the solicitor has indicated that
11 she feels that there are acts for which my client
12 could be found guilty of these offenses that occurred
13 at potentially other locations and other times other
14 than those alleged in the warrants, which are April
15 17, 2016, [REDACTED] Amanda Lane. So there's a difference
16 obviously between evidence that may come in such as
17 404(b) evidence, right, evidence of a subsequent act
18 or other act, that is -- makes it likely or more
19 likely or less likely that the act on trial occurred.
20 But what we're talking about is what is on trial.
21 What you as the finder of fact will have to find that
22 shows that my client is guilty of the discrete
23 offenses for which he is on trial. We don't know what
24 those act or acts are because the solicitor has
25 indicated there maybe other acts that she feels

1 constitute the offenses for which my client is on
2 trial. We haven't been given notice of what those
3 acts are.

4 Now, why is that important? Well, it's important
5 for multiple reasons. Number one, the due process
6 clause of the Fifth Amendment of the United States and
7 the due process clause of Article I, Section Three of
8 the South Carolina Constitution demand it.

9 Number two, my client has a Sixth Amendment right,
10 both to compulsory process and the right to present a
11 defense under the Sixth Amendment of the United States
12 Constitution and Washington versus Texas and United
13 States versus Nixon and United States versus Burr,
14 B-u-r-r. Also, under the South Carolina Constitution
15 and South Carolina Common Law, stating State versus
16 James Lemarcus Page. The cite for State versus James
17 Lemarcus Page which quotes Washington versus Texas is
18 750 S.E. 2d 623, the South Carolina Court of appeals
19 case from 2013.

20 THE COURT: What do these cases say Mr. Wellborn?

21 MR. WELLBORN: Basically they're saying somebody
22 has a right to present a defense.

23 THE COURT: Okay, I agree with you.

24 MR. WELLBORN: Okay. But the problem is we can't
25 present a defense if we don't know what we are

1 defending and we also have a right of course to
2 confrontation under the Sixth Amendment of the United
3 States Constitution and under Article 1, Section 14 of
4 the South Carolina Constitution. We can't know what
5 we're going to confront and prepare a defense to
6 confront that if we don't know what the acts are that
7 they are going to try. So they have to give us
8 notice.

9 Furthermore, the South Carolina Constitution is
10 very clear.

11 THE COURT: Mr. Wellborn, are you alleging the
12 Direct Indictments don't give you sufficient notice of
13 what the acts are?

14 MR. WELLBORN: They give me notice of -- what the
15 Indictment in trafficking hydrocodone gives me notice
16 --

17 THE COURT: Do we have copies of the Indictments?

18 MR. WELLBORN: I do and I will be glad to hand up
19 a copy.

20 THE COURT: Hold on to the original. Mr. Wellborn
21 do you have copies.

22 MR. WELLBORN: Would you like to see my copies of
23 the Indictments?

24 THE COURT: Do you have a copy for me, additional
25 copy.

1 I think the clerk is going to make copies for me.

2 MR. WELLBORN: Okay.

3 THE COURT: Okay. I am looking at them now, Mr.
4 Wellborn. Tell me what are you concerned about.

5 MR. WELLBORN: Okay. Well, I am concerned about
6 the fact that the Indictments do not -- they allege
7 all kind of possibilities for what might constitute
8 the offense. Now, that's not uncommon in a
9 trafficking case.

10 THE COURT: That is what the statute says.

11 MR. WELLBORN: Yes, it does. But the statute
12 doesn't say that any old thing applies. The
13 Indictment is a notice document and the notice has to
14 be giving my client fair notice of what he is
15 defending himself for.

16 Now, obviously we've been given notice that he is
17 defending himself potentially for selling,
18 manufacturing, bringing in to the state, assisting
19 others in doing all this, on or about April 17th.

20 THE COURT: Right.

21 MR. WELLBORN: But what it doesn't give him notice
22 of are where these locations are. Anywhere in York
23 County on or about April 17th doesn't give him proper
24 notice. Especially since by way of --

25 THE COURT: Do you have case law saying they have

1 to identify the location that it occurred at in the
2 Indictment?

3 MR. WELLBORN: What I have, Your Honor, is the
4 South Carolina Constitution which says that he has to
5 be given proper notice and let me read the provision
6 to you. This is Article 1, Section 14, of the South
7 Carolina Constitution.

8 "Any person charged with an offense shall enjoy
9 the right to a speedy and public trial, be fully
10 informed of the nature and cause of the accusation."
11 What we had up to the point of the direct indictment
12 was we had absolute. We had a date. We had a
13 location. We had what he was accused of. We knew
14 what we were defending. Up until last week I was
15 assuming that we were defending act or acts that
16 occurred at [REDACTED] Amanda Lane, on April 17, 2017. I
17 assumed that the solicitor would attempt to introduce
18 404(b) evidence that was -- made it more likely that
19 those acts occurred under some theory of either common
20 scheme or plan, or motive or identity. Whatever it
21 might be under a Lyle exception to the general rule of
22 preclusion. But I did not expect that there would be
23 other acts that the solicitor would say, oh, at some
24 other location at some other time he also committed
25 the acts alleged in the indictment. That's what I'm

1 troubled about.

2 Now, if the solicitor says what she really intends
3 to do is simply introduce 404(b) evidence and we're
4 only trying the acts that allegedly occurred, those
5 are the acts you have to make a finding of guilt or
6 innocence, of those acts that occurred at [REDACTED] Amanda
7 Lane on April 17, 2017, then I have no argument.

8 THE COURT: Mr. Wellborn, let me stop you there.
9 It may help me if one of you want to give me kind of
10 brief summary of what happened in this case. I know
11 nothing.

12 MR. WELLBORN: Sure. I will glad to since it's my
13 motion.

14 On April 17, 2017, a search warrant was served on
15 my client's home at [REDACTED] Amanda Lane. As a result of
16 that search warrant the drugs that are the subject of
17 this particular trial were found in my client's
18 residence.

19 THE COURT: What was found Mr. Wellborn?

20 MR. WELLBORN: Well, there was cocaine found,
21 there was oxycodone found. There was hydrocodone.
22 There was marijuana.

23 THE COURT: Okay.

24 MR. WELLBORN: All of which is the subject of this
25 trial.

1 THE COURT: Okay.

2 MR. WELLBORN: So all the drugs that are the
3 subject of this particular trial are before this Court
4 as a result of this search warrant. There were no
5 drugs that were found or will be placed into evidence
6 in terms of tangible evidence that were found at any
7 other location at any other time in York County or
8 anywhere else. So, given that and given the warrants
9 it's not hard to believe that we would expect we be
10 trying a case that again other than 404(b) issues
11 would be about the events and the items found at [REDACTED]
12 Amanda Lane on April 17, 2017 and not trying acts that
13 occurred at some other location, some other time.
14 Again, it may be a complete nullity if the solicitor
15 says I'm only going to introduce acts from other
16 events for purposes of 404(b), but that has not yet
17 been represented to me.

18 I actually did make the inquiry whether she
19 intended on trying acts that occurred at other
20 locations and simply introducing Lyle evidence or
21 whether she just intended on introducing Lyle
22 evidence.

23 THE COURT: Let me hear from Miss Joyner.

24 MS. JOYNER: Your Honor, just to supplement the
25 facts that have already been presented, and I think

1 the motion does correctly stated that the defendant
2 was arrested on March 6th of 2018 and was indicted in
3 October of 2018.

4 So, as an initial matter, we do have an issue with
5 the motion that Mr. Wellborn has presented to the
6 Court because we don't believe that it is a proper
7 motion under state law. And I am handing up a case to
8 the Court.

9 THE COURT: Well, I'm not familiar with the motion
10 for a Bill of Particulars. I have Westlaw on my
11 computer here so I am looking up.

12 MS. JOYNER: That was State versus Wells, 162 S.C.
13 509 (1931) and we've highlighted the appropriate
14 section. It says, "The third contention of the
15 appellant is that, on the second indictment, the Court
16 should have granted this motion" --

17 THE COURT: I see it. You have highlighted in
18 yellow.

19 MS. JOYNER: -- "requiring the State to furnish a
20 bill of particulars." We know of no provision in our
21 law requiring the presentation or delivery of a bill
22 of particulars. It seems to be the practice in some
23 jurisdictions, but it is not known in ours.
24 Generally, the same result may be accomplished,
25 however, by a motion to quash the indictment because

1 it does not furnish a defendant with the necessary and
2 proper information for him to meet the charges
3 preferred against him.

4 So I did key cite State versus Wells. I didn't
5 find any more recent cases that talk about the bill of
6 particulars except for two out of state cases. So I
7 don't think that the motion as captioned and presented
8 to the Court is a proper motion for the Court's
9 consideration. That's the first part of the State's
10 argument.

11 Secondly, factually, Your Honor, Mr. Wellborn
12 communicated with me last Tuesday. He sent me an
13 e-mail somewhere shortly after nine, asking if we
14 could speak and I replied that I had to go to prelims.
15 Could he e-mail me. I'm not the sure if he had gotten
16 that email. In the meantime he called my paralegal to
17 see if he could speak with me and I asked her to let
18 him know if he hadn't seen my e-mail that I was going
19 to prelims and that if he really needs to talk to me
20 he can stop by prelims. So we had a very brief
21 conversation last Tuesday and I already -- we already
22 communicated that the State did intend to introduce
23 evidence that his client is a drug dealer. But I
24 think that -- I don't think it's proper for Mr.
25 Wellborn -- it would be proper for him to object to

1 admissibility of certain evidence but I don't think
2 that I'm required in advance of the trial to lay out
3 my case or to try to quantify it as to under what
4 legal theory it will come in and I was reluctant to do
5 that with him. And -- but, in candor to the Court, he
6 did indicate he was going to file a motion for a bill
7 of particulars, but there was some kind of breakdown
8 and I didn't actually get a copy until it came to the
9 clerk so it perhaps may have got lost somewhere in my
10 office but I got this yesterday. Again, personally I
11 didn't have a chance to look at it.

12 I don't think, for example, the State versus
13 Lemarcus Page answers the question. That was my case,
14 my trial case, and I don't have any similar issue that
15 circled around that case.

16 The State's position is that we are going to
17 present evidence regarding prior drug dealing and we
18 have a witness in the holding cell who will talk about
19 prior drug transactions regarding roxy. That goes as
20 to the oxycodone. We have the processing of the
21 defendant's phone which talks about roxies -- well,
22 talks about what we believe are oxycodone and refers
23 to them as blues, roxies. We also have mention of
24 pain pills. We have mention of what we believe is
25 hydrocodone in the form of references to something

1 called a seven five. It could be hydrocodone or it
2 could be oxycodone, but we believe that we could have
3 some testimony come before the Court in the form of
4 Eddie Black who is an investigator with the Department
5 of Health who is also has a doctor in Pharmacy and
6 investigated prescription pill fraud regarding what
7 some of these terms mean.

8 So there's a lot on the phone. I would say
9 different dates, but the earliest we would be looking
10 at would be January of 2017, leading up to the search
11 warrant that was served on April 17th of 2017.

12 THE COURT: Okay.

13 MS. JOYNER: So that's what we intend to introduce
14 at this stage, however that is captioned or understood
15 by the defense, but that's our intention.

16 THE COURT: Thank you, Miss Joyner.

17 MR. WELLBORN: Briefly in response.

18 I would point out two things. Number one, a bill
19 of particulars is a vehicle that is very commonly
20 filed and very commonly argued, very commonly heard in
21 Federal Court.

22 THE COURT: Well, I understand Mr. Wellborn, but
23 this case Miss Joyner passed me up seems to say there
24 is no such provision in South Carolina.

25 MR. WELLBORN: And that's true and that was the

1 state of the law in 1931.

2 THE COURT: And today.

3 MR. WELLBORN: Well, I mean, I think it's open. I
4 think whether we term it a motion for bill of
5 particulars or motion for specificity or a motion to
6 quash, the basis of it remains the same. I would also
7 point out that Miss Joyner in response has said that
8 she intends on introducing evidence. That's a
9 separate issue then what acts my clients is on trial
10 for. I'm simply asking that it be pinned down before
11 we begin the defense of what acts my client is on
12 trial for in terms of, are we defending a trafficking
13 that occurred in January? Are we defending a
14 trafficking that occurred in April whereby evidence
15 that supports that April allegation will come in from
16 a January act?

17 THE COURT: Mr. Wellborn, I'm looking at all four
18 indictments. They seem to be standard indictments.
19 They identify the date, the alleged conduct on or
20 about and they give you the statute that your client
21 is alleged to have violated. Is that not sufficient?

22 MR. WELLBORN: No, and I will tell you why.
23 Because at some point in this trial you will have to
24 make a determination as a matter of law whether or not
25 the State has sustained enough in this matter whether

1 a directed verdict should be granted. The directed
2 verdict has to be, have they proven that the acts
3 alleged have occurred. Not have they shown me enough
4 to make something that is a prior act that is evidence
5 is admissible or not. They are two different issues
6 and that's where you have to make that decision, is my
7 client for instance in a --

8 THE COURT: I understand the distinction.

9 MR. WELLBORN: Right. Right. It's a very huge
10 distinction between somebody in a Lyle situation
11 whether they stole a gun to rob a bank and that is
12 admissible as part of a common scheme or plan but they
13 are not on trial for stealing the gun.

14 THE COURT: I understand.

15 MR. WELLBORN: And if the Court believes that they
16 stole the gun but didn't rob the bank they don't get
17 convicted of robbing the bank. That's basically where
18 we are.

19 THE COURT: But the date is on or about April
20 17th. Why is that not enough?

21 MR. WELLBORN: If the solicitor says that she
22 agrees that we're trying -- that's what on trial is
23 what occurred on April 17th at [REDACTED] Amanda Lane and
24 she just intends on introducing other acts, fine. We
25 can have that argument. But my client -- we all need

1 some clarity as well as a review in Court of what we
2 are actually trying in terms of the acts alleged, not
3 the evidence.

4 THE COURT: What you want is a ruling if testimony
5 comes in that a month prior to this your client sold
6 drugs to someone I'm not going to convict him of
7 possession for that based on that testimony.

8 MR. WELLBORN: That's correct.

9 THE COURT: Miss Joyner.

10 MS. JOYNER: Your Honor, I think primarily, when
11 we're -- taking out Mr. William Wylie's testimony who
12 is the individual who is going to testify regarding
13 some prior drug transactions, specifically the
14 oxycodone as he had purchased via a third party from
15 the defendant. Regarding the trafficking in oxycodone
16 the evidence of the prior dealings we would be relying
17 on the telephones and so I think that on or about --
18 on April 17th of 2017, 88 hydrocodone pills were found
19 in Mr. White's home. The weight of those pills create
20 the trafficking charge.

21 The -- by statute we're required to prove that he
22 was -- the knowing element of the statute that he knew
23 that -- that he was knowingly doing one of the
24 criminal acts and that he knew that he had illicit or
25 illegal drugs.

1 We also have -- we also have -- so you could
2 constructively possess, you can actually possess, you
3 can deliver, or you can attempt to deliver. So
4 there's all different kinds of ways that he could be
5 guilty of trafficking as to the hydrocodone. So I
6 think the text messages that we have go back to
7 showing all the different ways that the Court can find
8 that he was trafficking the hydrocodone that he had in
9 his possession.

10 It's sort of a res gestae of that possession on
11 April 17th of 2017. So are we asking for the Court to
12 say, oh, here's text message that he is going to sell
13 hydrocodone but include that in the weight. No. But
14 we're talking about the 88 pills that he had in his
15 home. We're talking about what the text messages are
16 going to show, his dominion and control. They are
17 going to show his intention, which it can be simple as
18 actual constructive possession. They also show that
19 he had these with the intention of delivering which
20 also is provided for in the hydrocodone statute. And
21 they show the knowing, the knowing element that we are
22 required to prove.

23 THE COURT: I think what Mr. Wellborn is trying to
24 get at, is he wants to preclude an argument that,
25 well, even if you know, for example -- and I'm not

1 suggesting I will rule that way, but if I find that 88
2 pills that you just talked about he is not guilty on
3 those but, well, the text messages shows he was guilty
4 of possession on a different date. I think that's
5 your argument.

6 MR. WELLBORN: That is my argument, Your Honor.

7 MS. JOYNER: Yes, we are not trying to ask you to
8 add the weight of those pills. We're simply talking
9 about the res gestae, the center of the nucleus being
10 the 88 pills he's in possession.

11 THE COURT: The four indictments are all referring
12 to the drugs that were found with the search warrant
13 at his house on April 17th?

14 MS. JOYNER: Correct.

15 THE COURT: Okay, and you are going to want to
16 bring in other evidence to show that he met the
17 element of the statute but it's still the quantity of
18 the drugs found on April 17th?

19 MS. JOYNER: That's correct. That's correct, Your
20 Honor.

21 THE COURT: Mr. Wellborn, is that satisfactory?

22 MR. WELLBORN: That is. That is the substance of
23 the motion.

24 THE COURT: Let's move on.

25 MR. WELLBORN: Thank you, Your Honor. May I

1 approach?

2 THE COURT: Absolutely. I would like to get Judge
3 Woods out of here as quickly as possible.

4 MR. WELLBORN: This is the next motion. (Handed.)
5 And those are cases I will be referring to.

6 THE COURT: All right. Quite a stack.

7 MR. WELLBORN: The next motion I have is to
8 suppress any and all evidence that the State seized or
9 found as a result of the search warrant served at 635
10 Amanda Lane on April 17, 2017, as violative of my
11 client's rights under the Forth Amendment of the
12 United States Constitution and the provisions of the
13 South Carolina Constitution arguing that under South
14 Carolina Constitution we have even more enhanced
15 rights because we have a specific constitutional right
16 to privacy that does not exist within the federal
17 constitution, albeit it does exist in common law.
18 Obviously the onus would be on the State, but it's our
19 position that the search warrant itself was invalid
20 because it did not give --

21 THE COURT: Do you have a copy of the warrant?

22 MR. WELLBORN: So, I guess the State would have to
23 put up argument because they are required to prove it.

24 MS. JOYNER: Could I ask Your Honor, Mr. Wellborn
25 stated the argument again about what's wrong with the

1 warrant. I think that under -- I will be happy to put
2 up witnesses, but I think under State versus Patton
3 there has got to be more than just a generalized
4 complaint.

5 THE COURT: It would certainly help the Court if
6 you could tell me what --

7 MR. WELLBORN: Absolutely. The search warrant
8 lacks probable cause.

9 MS. JOYNER: Your Honor, we've marked this as
10 Court's Exhibit One. We are prepared to present the
11 evidence of Special Agent Baird at this time.

12 THE COURT: Yes.

13 TRISTA BAIRD, called as a witness, having been
14 duly sworn by The Clerk, was examined and testified
15 as follows:

16 DIRECT EXAMINATION

17 BY MS. JOYNER:

18 Q Can you please states your full name for the Court.

19 A Trista Baird.

20 Q How are you employed?

21 A I work for the State Law Enforcement Division.

22 Q In what capacity?

23 A I'm special agent in the Special Victims Unit
24 Department of Child Fatalities.

25 Q All right. How long have you been with SLED?

1 A Since May of 2013.

2 Q And that entire time have you been with child
3 fatalities?

4 A I have.

5 Q Prior to that did you have any other law enforcement
6 experience?

7 A I did. I worked for Rock Hill Police Department.

8 Q How long did you work for Rock Hill Police Department?

9 A As a police officer from 2007 to 2013.

10 Q In what capacity?

11 A I began on patrol. I also worked for the street crimes
12 unit, worked for professional standards and also for the
13 detective division.

14 Q What did you do with the detective division?

15 A Investigated child and vulnerable adult abuse.

16 Q So, going back to April 17th of 2017, were you employed
17 with the South Carolina Law Enforcement Division?

18 A I was.

19 Q And at that time were you working on an investigation
20 into the death of a nine-month old child, [REDACTED] CHILD [REDACTED] ?

21 A I was.

22 Q Had this occurred at [REDACTED] Simpson Street?

23 A That's right.

24 Q I am going to show you what has been marked as Court's
25 Exhibit One. Do you recognize -- take a look at it and tell

1 the Court if you recognize that document?

2 A I do.

3 Q Okay. And what do you recognize that document as?

4 A It's the search warrant for [REDACTED] Amanda Lane.

5 Q And were you the affiant on that search warrant?

6 A I was.

7 Q Who was the Magistrate or Municipal Judge that signed
8 that search warrant?

9 A Judge Wood.

10 Q And is she a Magistrate in Rock Hill?

11 A She is.

12 Q For York County South Carolina?

13 A That's right.

14 Q And is the address of [REDACTED] Amanda Lane within York
15 County, within Rock Hill?

16 A It is.

17 Q Okay. Do you recall -- did you met with her on April
18 17th of 2017?

19 A I did.

20 Q And do you recall what time you met with her, morning
21 or afternoon?

22 A That morning.

23 Q And where did you met with Judge Wood?

24 A At her office on Cherry Road.

25 Q So when you met with Judge Wood. Had Judge Wood been

1 involved in this case or investigation of this case?

2 A No.

3 Q And when you arrived to met with her, did she place you
4 under oath?

5 A She did.

6 Q Okay. And did you provide her the sworn affidavit that
7 is pages two and three?

8 A I did.

9 Q Okay. And if you could please read for the Court going
10 to your reasons for affiant's belief that property sought is on
11 the subject premises.

12 THE COURT: Do you have a copy by any chance?

13 That would help me.

14 MR. WELLBORN: Your Honor, I have an extra copy if
15 you like to make a copy of that.

16 MS. JOYNER: I got one, Your Honor.

17 THE COURT: Okay. Thank you ma'am. (Handed up to
18 the Court)

19 Q Going to page three, can you please read the narrative
20 that you presented to Judge Wood.

21 A "I, Special Agent, Trista Baird, being duly sworn state
22 the following:

23 Special Agent, Trista Baird is employed with the South
24 Carolina Law Enforcement Division and is assigned to the Special
25 Victims Unit Department of Child Fatalities. S/A Baird has

1 worked in law enforcement since 2007. S/A Baird has been
2 employed by SLED since May of 2013. Prior to working with SLED,
3 S/A Baird was employed with the Rock Hill Police Department. As
4 a detective assigned to investigate child and vulnerable adult
5 abuse.

6 On March 29, 2017, at approximately 5:56 p.m. Piedmont
7 Medical Center EMS and Rock Hill Police Department were
8 dispatched to [REDACTED] Simpson Street in the city limits of Rock
9 Hill, South Carolina in reference to a nine-month-old female,
10 [REDACTED] CHILD, date of birth [REDACTED]/2006. Date of death, 3/29,
11 2007.

12 Q Is that '17?

13 A '17. I'm sorry. "3/29/2017. Unconscious and not
14 breathing. EMS arrived on scene and found [REDACTED] CHILD supine
15 on the living room floor with a female performing chest
16 compressions. She was unresponsive, not breathing, had no
17 pulse, and had vomit coming from her mouth. She was transported
18 to Piedmont Medical Center where she was pronounced deceased.
19 York County Coroner's Office, Rock Hill Police Department and
20 SLED responded to the hospital.

21 According to [REDACTED] CHILD's father, Harold Gene White III,
22 his mother, Yolanda Harris Adams, picked up his twins, [REDACTED] CHILD
23 [REDACTED] and [REDACTED] CHILD2 from his residence at [REDACTED] Amanda Lane,
24 Rock Hill, South Carolina, at approximately 11 o'clock a.m. or
25 12 o'clock p.m. on March 29, 2017. Adams took the twins to her

1 residence at [REDACTED] Simpson Street. Later in the afternoon, he
2 went to Adam's house and found on [REDACTED] CHILD asleep in Adams'
3 bed. [REDACTED] CHILD2 was playing with Adams' friend, Williette
4 Woodard Beard in the living room. Adams was not home. He then
5 left the residence.

6 According to Adams, her neighbor, Jasmine Latasha Rawlinson,
7 picked up the twins from Harold White and brought them to her
8 house around lunchtime. Adams fed the twins each a bottle with
9 formula mixed with infant cereal. Then, the three of them lay
10 down on her bed and went to sleep. Adams and [REDACTED] CHILD2 both woke
11 up, got out of bed, and left [REDACTED] CHILD sleeping in the bed.
12 Adams got her children ready for their doctor's appointment and
13 asked Amanda Joe Pettrey who resides at her residence and Beard
14 to watch [REDACTED] CHILD and [REDACTED] CHILD2 while she took her
15 children to the doctor. When she was home Adams was told.

16 Q Did you insert a word there?

17 A I meant when she got home. When she got home Adams was
18 told that [REDACTED] CHILD was still asleep and went to check on
19 her. She found her unresponsive and not breathing. Adams
20 brought [REDACTED] CHILD to Julisa White who had arrived on scene
21 at some point prior to Adams arrival. Amanda Pettrey began CPR
22 in the living room. Rawlinson, who was also on scene called
23 911. Darrell Rodney Ross, who resides at the residence, was
24 asleep in one of the bedrooms for most of the day.

25 An autopsy was completed on March 30, 2017. The toxicology

1 report from NMS labs revealed that [CHILD] had 17
2 nanograms over milliliters of of Fentanyl and 5.2 nanograms over
3 milliliters of Norfentanyl in her blood at the time of her
4 death.

5 It is the belief of this affiant that information gained
6 from this search is necessary to assist investigators in
7 determining the cause and manner of death of [CHILD], the
8 individuals who were present at the time and leading up to her
9 death, and the timeline of events surrounding her death."

10 MS. JOYNER: Your Honor, I'm sorry, I may have
11 neglected to enter this as a Court exhibit. I ask
12 that it be entered now.

13 MR. WELLBORN: Without objection.

14 THE COURT: It is entered into evidence.

15 (WHEREUPON, Court's Exhibit One, received in
16 evidence as of this date.)

17 Q Now, Detective Baird, let's go step-by-step through the
18 affidavit that you presented. Is all the information that is
19 contained in affidavit correct?

20 A It is.

21 Q Correct as to what you knew from your investigation at
22 that point?

23 A Right.

24 Q Had you been assigned to the case on March 29th at the
25 time of 2017 when [CHILD] passed?

1 A I was.

2 Q Now, going to the description of properties sought. Go
3 over to the second page. Can you please read that description
4 to the Court?

5 A "Any and all evidence related to the death of child [REDACTED]
6 [REDACTED] date of birth [REDACTED]/2006, date of -- I'm sorry, 2016. Date
7 of death 3/29/2017, to include Fentanyl, DEA scheduled II
8 synthetic morphine substitute anesthetic/analgesic, any
9 substances suspected to be Fentanyl, any and all paraphernalia
10 or items associated with the use of Fentanyl; state issued
11 identification card and/or driver's license of any and all
12 individuals at the residence; any and all cellphones belonging
13 to: Yolanda Harris Adams, date of birth [REDACTED]/1971; Darrell
14 Rodney Ross, date of birth [REDACTED]/1951; Harold Gene White III,
15 date of birth [REDACTED] 1990; Jasmine Latasha Rawlinson, date of
16 birth [REDACTED]/1991; Julisa Gabrielle White, date of birth
17 4/4/1990; Williette Woodard Beard, date of birth [REDACTED]/1953, and
18 Amanda Jo Pettrey date of birth [REDACTED]/1982.

19 Q Are the names of those last cellphones belonging to are
20 those the names of all the individuals that are listed were
21 contained in your narrative?

22 A Right, they are.

23 Q Okay. And the property to be searched is listed as [REDACTED]
24 Amanda Lane, within the limits of Rock Hill, County of York.

25 A That's correct.

1 Q And have you reviewed the address or the description of
2 how to get to the residence and is that all correct?

3 A It is.

4 Q And again going back to the [REDACTED] Amanda Lane am I
5 correct it the residence that is referenced as belonging to the
6 defendant, Harold Gene White III?

7 A That's right.

8 Q And [REDACTED] child -- according -- going back to the
9 affidavit had been at that residence up until lunchtime?

10 A That's right.

11 Q And then had gone to her grandmother's house at [REDACTED]
12 Simpson Street where she passed?

13 A That's right.

14 Q So going back to this reason for affiant's belief that
15 the property sought, that narrative, was any other information
16 provided to Judge Wood in support of probable cause in this
17 case?

18 A No.

19 Q Okay. And were you sworn at the time this affidavit
20 was presented to the judge?

21 A I was.

22 MS. JOYNER: I don't have any other questions at
23 this time. I may have some additional questions
24 depending on Mr. Wellborn questions.

25 THE COURT: Mr. Wellborn.

1 MR. WELLBORN: Thank you.

2 CROSS EXAMINATION

3 BY MR. WELLBORN:

4 Q Would you like some water?

5 A I am good.

6 MR. WELLBORN: Your Honor, is it all right if I
7 stand here.

8 THE COURT: That will be fine.

9 MR. WELLBORN: Thank you.

10 Q So, I would like to go through with you your warrants.
11 There are actually three warrants issued in this case, correct?

12 A Actually more. But for the homes and the phones.

13 Q Well, let me maybe help you out with some specificity.
14 I don't want you guessing.

15 The warrants that was served at [REDACTED] Amanda Lane, that
16 warrant was sought on the morning of April 17, 2017, correct?

17 A Correct.

18 Q At the same time or shortly thereafter within minutes
19 you also sought a warrant for [REDACTED] Simpson Street, correct?

20 A Correct.

21 Q And I have that copy of that warrant with me but
22 perhaps you may remember, the language in that warrant was
23 identical with the exception of [REDACTED] Simpson Street to the
24 warrants for Amanda Lane, correct?

25 A Correct.

1 Q And in fact specifically that warrant alleged the same
2 exact facts verbatim. Basically you used the same language kind
3 of carbon copied it, right?

4 A That's right.

5 Q Okay. And again, the warrant for 644 Simpson Street
6 just like the warrant for Amanda Lane said, quote, it is the
7 belief of the affiant, that is you, right?

8 A That's right.

9 Q That information gained from this search is necessary,
10 right?

11 A Right.

12 Q To assist investigators in determining the cause and
13 manner of death of child [REDACTED], right?

14 A Yes, sir.

15 Q The individuals who are present, right?

16 A Right.

17 Q At the time, I presume at the time of death, right?

18 A Time of death.

19 Q And leading up to her death and the timeline of events
20 surrounding her death?

21 A That's right.

22 Q Okay. All right. You also sought a warrant which was
23 issued on the 19th of April, so two days later, for Williette
24 Beard, correct?

25 A I am not sure when it was. Is this for a phone or for

1 her hair.

2 Q I am going to show you this. This is dated April 19th,
3 and it is for cellphones belonging to Williette Beard. Does
4 that ring a bell?

5 A That's right.

6 Q Okay. And the language in the affidavit supporting
7 supporting that warrant was the same identical language that had
8 been used for the warrant for [REDACTED] Simpson Street and [REDACTED] Amanda
9 Lane. Correct?

10 A If I can read it. Probably, but --

11 Q Well, I don't want to -- let's go through that. Take a
12 moment if you don't mind. And if you can look at the affidavit
13 and tell me if there is a single word that is different from the
14 affidavits that were issued two days before the other two
15 locations?

16 A Right. It appears that it is the same.

17 Q Would you agree that it is in fact identical? And you
18 typed it up, right?

19 A I did.

20 Q Okay.

21 A Yes, it is the same.

22 Q All right. It is identical. Okay. So you didn't
23 actually individual type up each one of these warrants? You
24 basically just did it in triplicate, xeroxed them, spit it out
25 on the computer?

1 A No, I typed each one separately because the property
2 and the place to be searched are all different.

3 Q But the affidavit is identical word for word, right?
4 So is that spit out in triplicate or just copied?

5 A No, I probably copied it. It's all the same purpose.

6 Q All right. So three different locations, two separate
7 days, same exact affidavit, the same need for the same stuff,
8 right.

9 A For Williette it was just her phone.

10 Q Understood. But the affidavit was identical?

11 A Right.

12 Q All right. Let's go through the timeline if you don't
13 mind leading up to this. As of March 29th is when [REDACTED] child
14 was taken to Piedmont Medical Center, correct?

15 A Correct.

16 Q And she was taken from [REDACTED] Simpson Street?

17 A That's right.

18 Q Not [REDACTED] Amanda Lane?

19 A No, from Piedmont she came from Simpson Street.

20 Q Correct. And she arrived at Piedmont and on the same
21 day, on the 29th of March she died, correct?

22 A Correct.

23 Q And she died at Piedmont Medical Center?

24 A Right.

25 Q And she presumably died in the presence of various

1 doctors and nurses, correct?

2 A That's right.

3 Q All right. So it wouldn't have been necessary as
4 indicated in the affidavit to determine who was present when she
5 died because you knew she died in Piedmont in the presence of
6 doctors and nurse, correct?

7 A At the time at Simpson Street.

8 Q Well, I am reading from your affidavit and it says
9 because this is what you told the judge and you did tell the
10 judge this under oath, right?

11 A Right.

12 Q Okay. That it was necessary to assist investigators in
13 determining the cause and manner of death and the individuals
14 who were present at the time.

15 At time of death it would have been doctors and nurses,
16 right?

17 A She was unconscious and not breathing. I'm not sure.
18 I would have to look at the report but I don't think she came
19 back from the hospital.

20 Q Sorry, I didn't mean to cut you off. I apologize for
21 that. You wouldn't have found any -- realistically, any doctors
22 or nurses that assisted [REDACTED] child [REDACTED] at either [REDACTED] Simpson
23 Street or [REDACTED] Amanda Lane by way of a search warrant, would
24 you?

25 A No. My intent was that at the present, at the time she

1 was unconscious, not breathing.

2 Q Okay. Fair enough. But the irony is in the affidavit
3 you already indicated who was present leading up to her death.
4 That was the basis of your affidavit?

5 A That's what we were told.

6 Q Okay. And by searching someone's home you were going
7 to be able to say oh, I can search the home and know they were
8 present before this child died?

9 A Well, we were requesting cellphones in all of these.
10 Right, by cellphones, yes, that would have helped us with that.

11 Q Okay. Fair enough.

12 A Or could have help us with that.

13 Q Cause and manner of death. Now, the arrant was sought
14 on April 17th, correct?

15 A Yes, sir.

16 Q All right. As of March 30th there was an autopsy at
17 Piedmont Medical Center, correct?

18 A Correct.

19 Q And so then as of April 15th two days prior to the
20 warrant being sought you already knew the cause of death. It
21 was from Fentanyl or Norfentanyl because you had the report from
22 NMS labs, right?

23 A The cause of death was not told. We just had the
24 toxicology report.

25 Q Okay. All right. Well, and so -- fair enough. So

1 then you get the search warrant and it is executed on the 17th,
2 buy two days later you still feel you need to find out why this
3 child died and who she was present -- who was present when she
4 died which is why you're seeking Willette Beard's cellphone?

5 A Right. Her phone was one of the only ones that we
6 couldn't get on the original search warrant.

7 Q Okay. All right. And as you said you presented no --
8 there was no oral supplementation? You're familiar with that
9 means, oral supplementation?

10 A Yes, sir, and no, there wasn't.

11 Q You just presented the warrants and they were signed
12 and then you did your searches?

13 A That's right.

14 MR. WELLBORN: That's all the questions.

15 THE COURT: Any redirect Miss Joyner?

16 MS. JOYNER: Yes, sir.

17 REDIRECT EXAMINATION

18 BY MS. JOYNER:

19 Q So going back, I just want to go back and direct your
20 attention to the reason for affiant's belief that property
21 sought is on the subject premises. Going to the second
22 paragraph beginning on March 29, 2017. Please begin reading
23 just again for EMS arrived on scene.

24 A "EMS arrived on scene and found child supine on
25 the living room floor with a female performing chest

1 compressions. She was unresponsive, not breathing, had no
2 pulse, and had vomit coming from her mouth. She was transported
3 to Piedmont Medical Center where she was pronounced deceased.
4 York County --

5 Q That's fine. You can stop now. So when you indicated
6 that she was not breathing and had no pulse and was unresponsive
7 on scene. Did that -- did you have understanding that she had
8 passed at that point?

9 A That's right.

10 Q Okay. Are EMS workers allowed to pronounce a person
11 dead without taking them to the hospital?

12 A They usually don't.

13 Q They usually don't. With fatalities it's not their
14 practice.

15 A Right, it's not their practice.

16 Q But you went to the hospital, as the next line says,
17 York County Coroner's Office, Rock Hill PD and SLED responded to
18 hospital?

19 A That's right.

20 Q And at that point she was pronounced dead?

21 A That's right.

22 Q But you're not indicating that she wasn't dead before
23 she got there. You're just simply indicating that's where the
24 official pronouncement was made?

25 A Right. In my experience they often die at the home but

1 are transported and a time of death is given at the hospital but
2 they are never resuscitated after leaving the home.

3 Q So, Mr. Wellborn asked you about the autopsy and
4 toxicology, at the day that you sought this warrant, the search
5 warrant, had the autopsy report been issued?

6 A No.

7 Q According to what you knew through your investigation
8 was it clear when exactly **child** had died?

9 A On the 29th.

10 Q But when on the 29th?

11 A Right before 911.

12 Q Okay.

13 A That's when we knew she was unconscious and not
14 breathing.

15 Q That is when she was found unresponsive?

16 A Right.

17 Q Okay. Did you know at that point how she had obtained
18 Fentanyl? How she had come to be positive with Fentanyl?

19 A No.

20 Q Nothing in your investigation -- there's nothing -- no
21 information left out in this affidavit that you knew how she had
22 come into contact with Fentanyl?

23 A Right. We did not know.

24 Q Did you know that Fentanyl was a dangerous drug?

25 A At the time of the warrant, yes.

1 Q Mr. Wellborn ask you about the similar, identical
2 language of [REDACTED] Simpson Street. Was that language identical
3 because you were investing and looking for evidence in both
4 locations where the child had been just prior to her death?

5 A That's right, I was.

6 Q Did you also use similar language for your probable
7 cause as to the extraction search warrants for the cellphones?

8 A I did.

9 Q You testified you did not have oral testimony, am I
10 correct, you did not offer anything outside of this affidavit in
11 support of the probable cause?

12 A No, just the warrants.

13 Q Did you talk to Judge Wood? Do you talk to Judge Wood
14 when you go in to see her about search warrants?

15 A Yes.

16 Q Have a conversation with her?

17 A I do, yes.

18 Q But you did not offer anything outside of what is
19 contained in the four corners in support of the search warrants,
20 is that correct?

21 A No, I didn't.

22 MS. JOYNER: I don't have any other questions.

23 THE COURT: Any recross?

24 MR. WELLBORN: No, sir.

25 THE COURT: Okay. Thank you. You may step down.

1 MR. WELLBORN: Your Honor, given the fact that the
2 officer testimony that there was no oral
3 supplementation I don't have any reason to call Judge
4 Wood.

5 THE COURT: Okay. Any objection to releasing
6 Judge Wood.

7 MS. JOYNER: Not from the State.

8 MR. WELLBORN: Thank you.

9 THE COURT: Thank you, Judge Wood.

10 MR. WELLBORN: I'm prepared to argue on the issue
11 of the search warrants.

12 THE COURT: All right.

13 MR. WELLBORN: So, Your Honor, of course the issue
14 is not what the officer knew or the officer believed.
15 The issue is what the magistrate was presented with,
16 and the law is clear that given the fact that there
17 was no oral supplementation that you, as reviewing
18 Court, are limited to the four squares or four corners
19 of the search warrant and that's State versus Kinloch.

20 MS. JOYNER: Was that in the packet? I apologize.

21 MR. WELLBORN: It is not. It's not in the packet
22 but I think we all kind of know that's the law. I'm
23 certainly happy to provide the case to Miss Joyner if
24 she needs to review it.

25 The applicant of course, or the application for

1 search warrant has to have probable cause to show that
2 there is a legitimate object of a search and that it's
3 going to be located in a particular place and that's
4 Steagald versus United States which is in the packet,
5 that's United States Supreme Court 451, 204. Steagald
6 is S-t-e-a-g-a-l-d versus United States, 1981 case.
7 All of this of course flows from the seminal case of
8 Illinois versus Gates, 462 U.S. 213, where the United
9 States Supreme Court said sufficient information must
10 be presented to a magistrate to allow -- to determine
11 probable cause can't be a mere ratification of the
12 bear conclusions of others. Mere affirmance of belief
13 or suspicion is not enough.

14 That is also -- that's Nathanson versus United
15 States which is in the packet. That goes back to
16 1933, 290 United States Supreme Court, 41. That's
17 found on page 47 of that opinion.

18 Fortunately we have a lot of guidance in South
19 Carolina on this issue and there are several cases.
20 First of all we have a statute which is 1713 one forty
21 in South Carolina Code.

22 THE COURT: Is that in your packet?

23 MR. WELLBORN: I'm sorry.

24 THE COURT: Is that in your packet?

25 MR. WELLBORN: It should be.

1 THE COURT: The reason I ask, for whatever reason
2 the internet is going extremely slow this morning.

3 MR. WELLBORN: What I'll do if Your Honor likes I
4 am pretty sure it is in the package, but if not I will
5 hand --

6 THE COURT: If I need to see it I'll ask, but go
7 ahead.

8 MR. WELLBORN: So, it says that magistrate or
9 recorder or city judge having the powers may issue a
10 search warrant, for and seize (1) stolen or embezzled
11 property; (2) property, the possession of which
12 unlawful. Property which is being used or has been
13 used in the commission of a criminal offense, or is
14 possessed with the intent to be used in committing a
15 criminal offense, or concealed to prevent a criminal
16 defense from being discovered, or property
17 constituting evidence of a crime or tending to show
18 that a particular person committed a criminal offense.

19 Now, that's what our law allows somebody to be
20 searched for and seized. Further, under the statute
21 it says a warrant issued hereunder shall be issued
22 only upon an affidavit sworn before a magistrate or
23 court of record establishing the grounds for the
24 warrant. So we do have a statute. Now again that's
25 rather vague, but the case law is much more specific.

1 Within the packet, both Your Honor and the State
2 should have State versus Smith, from 1990. And what
3 we're talking about here is a warrant that is in this
4 case I would argue is conclusory and that is what is
5 not allowed in South Carolina. State versus Smith
6 from 1990, on the second page of the opinion it talks
7 about a robbery and the warrant there said, quote,
8 that on May 12th approximately 11:45, Reginald Jerome
9 Smith went to the Master Inn in Savannah. He robbed a
10 manager. He's been staying at the Host of America,
11 room 216 since January first. There is every reason
12 to believe the weapon used in the robbery would be
13 located in the room. That's a much more -- has more
14 of a nexus and much less conclusory than this warrant.
15 This warrant that we are dealing with in this case
16 does not say that they expect to find Fentanyl in my
17 client's house, that they expect to find any
18 Norfentanyl in my client's house. That there's any
19 reason to believe that anything located at 1635 Amanda
20 Lane are items that would be related to this case. It
21 simply says that we think it is necessary to assist
22 investigators --

23 THE COURT: But Mr. Wellborn, I just read this
24 case very briefly. The issue seems that it isn't
25 talking about the evidence in the Smith case. It's

1 saying that the search warrant doesn't explain why
2 they believe this particular individual committed the
3 robbery.

4 MR. WELLBORN: That's correct.

5 THE COURT: Isn't that totally different issue
6 than what we have here?

7 MR. WELLBORN: But it still has the same result
8 which is that the warrant should not have been issued.

9 THE COURT: But the conclusory statement at issue
10 is -- let's see.

11 MR. WELLBORN: We have two conclusory statements.
12 We have one in State versus Smith and the one here.

13 THE COURT: Right. The one in Smith goes into
14 some detail of why they expect to find evidence of the
15 crime at this location, but the Court in Smith said
16 that's not enough.

17 THE COURT: But what the Court said it was not
18 enough in Smith was the identification of this person
19 as the robber.

20 MR. WELLBORN: Yes.

21 THE COURT: Which is not --

22 MR. WELLBORN: But it goes on. It says mere
23 conclusory statements which gives the Magistrate no
24 basis to make a judgement to find probable cause are
25 are insufficient. This action can not be a mere

1 ratification of the bear conclusions of others. The
2 last paragraph or the second to last here the
3 affidavit says forth no facts as to why, police
4 believed submit did anything. This warrants in our
5 case gives nothing to the Magistrate as to why they
6 believe Harold White committed a crime or why Harold
7 White would have any potential Fentanyl or Norfentanyl
8 or why Harold White -- for that matter this warrant
9 doesn't even alleged that a crime occurred. It says a
10 child died and the child had Fentanyl in her system.
11 But it does not alleged that anybody has committed a
12 crime, let alone that Harold White has committed a
13 crime. Let alone the evidence of this alleged crime.

14 THE COURT: Mr. Wellborn, it's not an arrest
15 warrant. It's a search warrant looking for evidence
16 for the death of a nine month old child.

17 MR. WELLBORN: I understand, but the search
18 warrant still has to have something that tells the
19 Magistrate as to why evidence that is of a criminal --
20 that something has happened that's either currently a
21 crime or is likely to be found at [REDACTED] Amanda Lane.

22 THE COURT: I'm really -- the way I read the
23 affidavit what we have is, we have a toxicology report
24 saying there's Norfentanyl and Fentanyl in the baby's
25 system, a nine-month old infant.

1 MR. WELLBORN: Correct.

2 THE COURT: And they were two locations that the
3 infant was previously were the Amanda Lane address and
4 what is is the other one -- and the Simpson Street
5 address.

6 MR. WELLBORN: That is correct.

7 THE COURT: Isn't that enough to get a search
8 warrant?

9 MR. WELLBORN: No, it is not.

10 THE COURT: Tell me why.

11 MR. WELLBORN: Because there has to be a nexus.
12 There has to be some explanation as to why you expect
13 these drugs to be found. I would also like to cite
14 the next case from South Carolina.

15 THE COURT: Okay.

16 MR. WELLORN: Which is State versus Backus, 2008.
17 In Backus -- and this is page five of eight of the
18 opinion -- the Court said the affidavit fails to set
19 forth any facts as to why police believed appellant
20 committed the crime. The affidavit lacks specificity
21 and contains conclusory statement. And again, that
22 affidavit had more in it in terms of a nexus than this
23 one. This affidavit we are dealing with in our case
24 is simply says, that my client is the child's father.
25 That his mother, the grandmother of the child, my

1 client's mother picked up his twins from his residence
2 been 11 or 12 p.m. on March the 29th, 2017.
3 Approximately a month before.

4 So, you got potentially staleness issue on top of
5 everything else. And that the grandmother, my
6 client's mother took the twins to [REDACTED] Simpson Street.
7 Later in the afternoon he went by the house and he
8 found this child, [REDACTED] child [REDACTED] asleep in the bed and then
9 he left, [REDACTED] Simpson Street. At this point it doesn't
10 mention anything about Fentanyl, Norfentanyl, and
11 evidence of a crime, any drugs, or anything else.
12 Then the warrant says that Jasmine Rowlinson picks up
13 the twins from Harold White or according to Adams, the
14 mother, she thought Jasmine Rawlinson picked up the
15 twins from Harold White and brought her to her house
16 around lunchtime. She feed the twins a bottle and
17 infant cereal and laid them all down to bed and go to
18 sleep. Again, no evidence of any drugs, no evidence
19 of any crime.

20 Adams and [REDACTED] child 2 [REDACTED] both woke up. Got out of bed.
21 Left [REDACTED] child [REDACTED] sleeping in the bed. Again, no evidence
22 of any drugs. No evidence of any crime. Let's see.
23 Let's see -- got her children ready for the doctor's
24 appointment and asked a Amanda Jo Pettrey, who was at
25 her residence, and Beard, Williette Beard, to watch

1 child and child 2 while she took her
2 children to the doctor. When she went home -- so
3 sometime later, the grandmother, my client's mother,
4 comes back to the residence at Simpson Street and
5 is told that child was still asleep. She goes
6 to check on her. She found her unresponsive and not
7 breathing. At that point still no evidence of any
8 crime. No evidence of any drugs. No evidence of any
9 Fentanyl.

10 Adams brought child to Julisa White, who
11 arrived at the scene at some point prior to Adams
12 arrival rifle. Pettrey began CPR in the living room.
13 Rowlinson was also on the scene called 911. Darrell
14 Ross, who resides at the residence, was asleep in one
15 bedrooms for most of the day.

16 So as of the date this child died there was no
17 evidence of any crime. No evidence of any drugs. An
18 autopsy is completed on March 30th. Then we get this
19 NMS toxicology lab report that says she had Fentanyl,
20 Norfentanyl in her blood at the time of death. But
21 there is no evidence as to where that Fentanyl would
22 have come from.

23 THE COURT: That's what the police are looking.

24 MR. WELLBORN: That's what they are looking but
25 you can't just look for stuff because you want to look

1 for it. You have to have a nexus.

2 THE COURT: Mr. Wellborn, let me ask you this.
3 You're a detective. You need to get a search warrant.
4 You want to know where the baby got the Fentanyl.

5 MR. WELLBORN: Correct.

6 THE COURT: What do you think should have been in
7 the affidavit?

8 MR. WELLBORN: There should have been some
9 specificity as why they expect that they are going to
10 find evidence of Fentanyl or Norfentanyl at [REDACTED]
11 Amanda Lane.

12 THE COURT: And you don't think the fact that that
13 was where the baby was staying immediately prior to
14 the overdose that's not enough?

15 MR. WELLBORN: That isn't where the baby was
16 staying immediately prior to the overdose.

17 THE COURT: Within a few hours.

18 MR. WELLBORN: It's still not enough.

19 THE COURT: Tell me what you think would be
20 enough.

21 MR. WELLBORN: Perhaps something suggesting that
22 there was evidence to believe that they would find
23 drugs at that residence. That Harold White had been
24 involved in Fentanyl or Norfentanyl. Not just we
25 think --

1 THE COURT: It doesn't have to be your client.
2 It's just the location, right?

3 MR. WELLBORN: Well, it's my clients and the
4 location are both listed on the search warrant. But
5 there's nothing in this warrant that says or states or
6 alleges that you're going to find anything related to
7 Fentanyl or Norfentanyl at my client's address other
8 than the fact that's where the the child lived.

9 THE COURT: And the child overdosed on those
10 drugs.

11 MR. WELLBORN: Well, it doesn't say that because
12 again, we don't know that the child overdosed on drugs
13 until we get the autopsy report after the search
14 warrant.

15 THE COURT: There are two extremely strong
16 narcotics, anesthetic/analgesic in a nine month old.

17 MR. WELLBORN: I agree. But let's look at this
18 hypothetically. Hypothetically if this was an armed
19 robbery case and there was armed robbery that occurred
20 at [REDACTED] Simpson Street and one of the victims of the
21 armed robbery was [REDACTED] child [REDACTED], but [REDACTED] child [REDACTED]
22 happened to just be there visiting. But she lived at
23 [REDACTED] Amanda Lane. You wouldn't issue a search warrant
24 for Amanda Lane to determine whether or not there was
25 anything related to the armed robbery. You have to

1 have some nexus to it. Some reason that is stated to
2 the Magistrate to believe that there is going to be
3 evidence of that armed robbery at that address. There
4 is nothing in here that suggests their would be
5 evidence of Fentanyl or Norfentanyl that they are
6 looking for or suggesting anything relating to her
7 death because they know where she went down. They
8 know where she was unresponsive. They know where she
9 stopped breathing.

10 THE COURT: Are you making a time argument?
11 Basically too much time has elapsed from when she was
12 at the Amanda Lane address and therefore the warrant
13 is not value.

14 MR. WELLBORN: Well, there are two arguments.
15 Number one, I think the warrant is defective on its
16 face. Number two, I think it is stale because it was
17 sought a month later.

18 THE COURT: No, I mean, are you arguing it is
19 defective because the elapsed time from when the baby
20 left Amanda Lane to when she was discovered overdosed?
21 Is that your argument, too much time has passed?

22 MR. WELLBORN: No, I am arguing they don't even
23 allege that there is a reason they are going to find
24 anything at Amanda Lane that relates to the death.

25 THE COURT: And you think they need something more

1 than a nine-month old infant had two different
2 narcotics in her system and was unconscious and
3 unresponsive.

4 MR. WELLBORN: They need something more than it's
5 the belief of the affiant that the search is
6 necessary. They need something in there that says
7 they have reason to believe they are going to find
8 something at Amanda Lane that will assist them in this
9 investigation. They need something to suggest that
10 they are going to find something that suggests that a
11 crime occurred. And by the way, they don't even
12 allege that a crime occurred.

13 THE COURT: They don't have to allege a crime
14 occurred.

15 MR. WELLBORN: Well, they have to allege -- they
16 have to be searching by law for evidence of a crime or
17 concealment of a crime. That's required.

18 THE COURT: They can conclude that a crime didn't
19 occur after the warrant. They are investing. They
20 are investing a suspicious death. Isn't that not
21 enough?

22 MR. WELLBORN: No, its not because a suspicious
23 death can be anything. That can be somebody dies in a
24 hospital of medical malpractice.

25 There has to be by our statute an under the

1 constitution of law a search warrants can only be
2 issued if there is probable cause to believe that a
3 crime has occurred and that evidence of this crime is
4 going to be found at this particular location. That
5 is not in the warrant. Simply not.

6 THE COURT: I'll hear from Miss Joyner.

7 MR. WELLBORN: And I would ask, Your Honor,
8 also --

9 THE COURT: Mr. Wellborn, I will come back to you.

10 MR. WELLBORN: Thank you. There are two cases
11 from 2018 that I think are are instructive as well.

12 MS. JOYNER: Your Honor, the State submits the
13 affidavit, support of the search warrant, is supported
14 by probable cause. I'm handing up to the Court, State
15 versus Fletcher. It is a Court of Appeals decision
16 and it does have a red flag so it was overruled on a
17 different ground but the search warrant discussion I
18 think is as close to being on point as can be. It's
19 it looks long with a number of case notes. So getting
20 to the discussion about the search warrant is on page
21 18 of the Westlaw number and on 19 going into probable
22 cause. But the underlying facts were that there was a
23 deceased child, also nine months old. The deceased
24 child was brought to a hospital and at about 1:15
25 p.m., and the child was in full cardio pulmonary

1 arrest. Medical personnel ventilated, the medicated,
2 they tried to resuscitate. They ultimately had to
3 pronounce this child dead about three hours later. CT
4 scan and x-rays showed that this child had suffered
5 injuries to the abdomen, internal bleeding, bruising
6 to the liver, bowels, pancreas low blood flow to the
7 kidney, spleen and liver. So police began investing.
8 They interviewed the hospital staff regarding the
9 injury. They interviewed the child's mother who
10 provided the statement that the child had fallen off
11 of the bed earlier. That she had picked the child up.
12 Comforted the child and thought everything was fine.
13 Went about her day and did not realize anything was
14 wrong until the dentist office that they were leaving
15 -- I think it was while they were leaving she noticed
16 something wasn't right. They road to the hospital
17 while the defendant, who was her boyfriend, was
18 performing CPR. The boyfriend gave two statements.
19 Neither a full confession. The first sort of
20 mirroring the mother's. I performed CPR. The child
21 didn't look right after the dentist. And I think he
22 mentioned that he does play with the kid or wrestle.
23 And in a second statement did admit to hitting the
24 child twice, but it's not clear from the case or from
25 my reading of the case when exactly he said that

1 happened. Also asked whether he could put some
2 pressure inadvertently on the child while wrestling.
3 So, he challenged the search warrant affidavit. That
4 argument, Fletcher, this is beginning on page 19 of
5 the Westlaw cite or Westlaw page numbers; "Fletcher
6 asserts the search warrant affidavit did not contain
7 sufficient facts to constitute probable cause to
8 believe evidence of a crime would be found at the
9 residence. We disagree.'

10 They go on to say that based upon the totality of
11 the circumstance the affidavit provided the Magistrate
12 with a substantial basis for finding probable cause to
13 search the home of the mother and boyfriend. The
14 mother and the defendant.

15 The affidavit edifies that the mother claims the
16 child had fallen out of the bed. Was brought to the
17 hospital because he stopped breathing. That there
18 were bruises on the child. They go on to say,
19 suspicion of child abuse is not only implicit but
20 verifiable, and thus the suspicion supports the
21 Magistrate's finding of probable cause thus a warrant
22 is valid. Because the investigator searched the
23 warrant pursuant to valid warrant the trial Court
24 properly refuses to suppress the evidence including
25 hand cuffs and photographs found in the residence.

1 Then they go on to the scope of the search warrant and
2 he further claimed that he did not describe with
3 sufficient particularity the property to be seized and
4 the Court refused upset the trial Court had erred in
5 not suppressing evidence on that grounds. They then
6 disagree. They go on to say that the warrant in this
7 case, the property to be searched was perfectly
8 appropriate. And the language of the search warrant
9 very much mirrored the language of our search warrant
10 in this case. They say, then they go on -- they go on
11 to say on page 21 of the Westlaw page, "The warrant in
12 the instant case was limited to evidence of abusive
13 behavior to the children. The exact characteristics
14 of the evidence was unknown to investigators.
15 However, requiring a more detailed description would
16 unreasonably thwart an investigation. And so in this
17 particular case, the warrant alleged very similar to
18 the language in our warrant. And I think that what we
19 have from our warrant, Your Honor, is information
20 presented to the Magistrate that showed the child was
21 at two different addresses within six or seven hours
22 of being unresponsive, being found unresponsive, CPR
23 attempted at the residence. That she was nine months
24 old. We know that she is positive for Fentanyl and
25 Norfentanyl and we know from the affidavit that this

1 is a schedule two synthetic morphine substitute. And
2 there is simply no way for a nine-month old to have
3 voluntarily ingested this. I think there is more than
4 probable cause for police to search this residence and
5 the other residence, the last two places the children
6 -- the child was known to be. And I think the
7 Fletcher case supports that finding and I am just
8 looking in Fletcher to the language of the search
9 warrant.

10 THE COURT: They said it was implicit, right?

11 MS. JOYNER: Implicit, yes, sir. So we submit
12 that Flethcerm as again, overturned on a different
13 ground. We believe that this answers any issue
14 regarding probable cause to the affidavit.

15 THE COURT: Mr. Wellborn, is your argument that
16 they don't specifically allege what crime they think
17 may have been committed, is that the complaint?

18 MR. WELLBORN: They don't even allege a crime.
19 They don't even allege a crime. In Fletcher the
20 warrant, the Court said quote, "The warrant in the
21 instant case was limited to evidence of abusive
22 behavior towards children." That's what the Court
23 decided in Fletcher. That's on page 21. This warrant
24 does not allege anything that constitutes child
25 neglect or drugs. It does not allege any crime

1 whatsoever.

2 THE COURT: Mr. Wellborn, unless it is injected
3 under a doctor's orders there is no way that a baby
4 could obtain Fentanyl and it not be a crime, is there?

5 MR. WELLBORN: No, I agree with you but here's the
6 problem, judge. You still have the issue. You got to
7 show two things. Number one, that we are looking for
8 evidence of a crime. The other thing is that there is
9 some reason other than, you know, there's some reason
10 you are going to find this evidence of the crime or we
11 expect to find this evidence of the crime at the
12 location a month later.

13 THE COURT: But the temporal proximity from the
14 overdose and the time the baby was at Amanda Lane
15 location you don't think that is enough?

16 MR. WELLBORN: A month later?

17 THE COURT: No, no. The few hours from when the
18 time the baby overdose from when the baby was at the
19 location.

20 MR. WELLBORN: If they had sought a warrant on
21 March 29th or March 30th.

22 THE COURT: So now it's staleness argument?

23 MR. WELLBORN: There is a staleness aspect to
24 this, but here's one thing. It is is very interesting
25 because even in Fletcher the Court says, quote, "A

1 probable cause determination requires the Magistrate
2 to analyze the totality of the circumstances before
3 him and set forth in the affidavit before him there is
4 fair probability that contraband or evidence of a
5 crime will be found at a particular place.

6 Our warrant is devoid of anything to suggest that
7 there is going to be Fentanyl or anything else found
8 on Amanda Lane.

9 THE COURT: Except that the baby was there a few
10 hours there it died of an overdose.

11 MR. WELLBORN: Right. But it doesn't even say
12 that they think that there is going to be that they
13 think Fentanyl came from Amanda Lane.

14 THE COURT: Isn't that obvious?

15 MR. WELLBORN: No, it's not obvious, Judge, and I
16 will tell you why. The baby was picked up by people
17 and transported in a car. The warrant does not seek a
18 search of any of those cars. The baby was at various
19 points with various folks throughout the house at 644
20 Simpson Street.

21 Now there is a warrant for [REDACTED] Simpson Street, but
22 the warrant does not search every place this baby
23 could have been. Furthermore, we don't know how long
24 that Fentanyl had been in the system. That Fentanyl
25 could have arguably been in the system days, hours.

1 We don't know. Where was the baby the day before?
2 Where was the baby earlier?

3 THE COURT: Can't the police do a search in
4 stages? It seems to be your arguing that unless the
5 police simultaneously obtain search warrants for every
6 possible location for the baby, no warrant is valid.

7 MR. WELLBORN: I'm not arguing that. What I'm
8 arguing is they reached a conclusion and their
9 conclusion was because this baby is the child of
10 Harold White who lives at [REDACTED] Amanda Lane and that's
11 where the baby was picked up that morning that
12 therefore there is probable cause to believe we are
13 going to find evidence of Fentanyl or Norfentanyl at
14 [REDACTED] Amanda Lane. And the cases that Your Honor has
15 before you -- and at this point I would like to draw
16 the Court's attention to State versus Dill which was
17 decided last June by Justice James.

18 THE COURT: I read that.

19 MR. WELLBORN: The affidavit --

20 THE COURT: That deals with the reliability of
21 what was told to the Magistrate, right?

22 MR. WELLBORN: Which is what we are dealing with,
23 the reliability. It says quote, "The affidavit as
24 written supplies no information supporting the initial
25 mere conclusory assertion that there was an active

1 methamphetamine lab. Now that case the Magistrate was
2 provided a statement saying there was a
3 methamphetamine lab at this address we want to search.
4 This is nothing in this warrant saying Magistrate, we
5 believe we're going to find Fentanyl or Norfentanyl or
6 evidence of at [REDACTED] Amanda Lane.

7 THE COURT: I think I've heard enough. Mr.
8 Wellborn, I disagree with you. I may be wrong but I
9 think the search warrant is sufficient.

10 MR. WELLBORN: All right. Thank you, Your Honor.

11 THE COURT: What they have is, they have a baby, a
12 nine-month old that can't voluntarily ingest Fentanyl.
13 Who was exposed to Fentanyl and Norfentanyl and a
14 matter of a few hours at two different -- at least
15 they know of two different locations. I think that is
16 enough.

17 MR. WELLBORN: And Your Honor, I would argue --
18 ask for a ruling on the staleness issue since the
19 search warrant was issued a month later.

20 THE COURT: I'm going to overrule that objection
21 as well. They've got to wait for the toxicology
22 report.

23 MR. WELLBORN: I understand they have to wait for
24 a toxicology report. But why do they think a month
25 later this evidence is still going to be there if it's

1 there at all.

2 THE COURT: They have to try.

3 MR. WELLBORN: Okay. I mean if the position of
4 the Court is they have to try and that's good enough
5 then I understand that's the Court's ruling.

6 THE COURT: I assume they did it as quickly as
7 they could.

8 MR. WELLBORN: And again, I respectfully take
9 exception to that, they have to try or they did it as
10 and quickly as they could is grounds for probable
11 cause but I understand that is the Court's ruling.

12 THE COURT: Thank you. Anything else counsel?

13 MS. JOYNER: Your Honor, we also have search
14 warrant for the extraction of the phone. We would
15 inquire whether there is objection to that.

16 MR. WELLBORN: Well, Your Honor, I believe that
17 the phones were taken into law enforcement custody as
18 a result of the search that was issued on April 17,
19 2017. If the solicitor indicates that is the case I
20 think we preserved our objections to the search
21 warrant.

22 THE COURT: That would be the same basis.

23 MS. JOYNER: We have a separate search warrant
24 for the extraction.

25 MR. WELLBORN: I understand. Just so we are

1 clear, those phones were seized as a result of a
2 search warrant on April 17th. If that is the State's
3 position and then later a search warrant was issued
4 for extraction based on the same identical language
5 then, yes, sir we would take exception to that coming
6 into evidence.

7 MS. JOYNER: We should offer evidence on this as
8 well.

9 THE COURT: I think what Mr. Wellborn is saying he
10 is making an objection on the same basis and he thinks
11 he has sufficiently objected.

12 MR. WELLBORN: And if the State can perhaps
13 clarify were the phones that Miss Joyner is talking
14 about and the search warrant related to extraction of
15 those phones if those phones were taken into the
16 State's -- if they were seized by the State as a
17 result of a search warrant issued on April 17, 2017,
18 then I would object to those. I don't need to object
19 to the separate search warrant.

20 MS. JOYNER: Okay. Your Honor, just for the
21 record, so we have several search warrants that were
22 taken in and we are going to be offering or presenting
23 hopefully as evidence items from the phone taken from
24 Mr. White's person during execution of the search
25 warrant at [REDACTED] Amanda Lane. And so it is almost

1 identical language up until the cell phones were
2 obtained. So we will make this a Court's Exhibit Two
3 for the record.

4 (Court's Exhibit Two, warrant, received in
5 evidence as of this date.)

6 THE COURT: I think what Mr. Wellborn said was he
7 is not objecting to the warrant issued for the
8 contents of phone.

9 MS. JOYNER: Yes, sir.

10 THE COURT: Maintaining the same objection to the
11 issue of the original warrant. Is that correct Mr.
12 Wellborn?

13 MR. WELLBORN: Yes, that's correct. The warrant
14 issue and the contents of the phone is something that
15 flows from the seizure and therefore it fruit of
16 poison in the tree.

17 Now, just to protect the record I guess what I
18 need to do is just go ahead and raise an objection to
19 those search warrants as well. And Your Honor of
20 course can make your ruling on that.

21 THE COURT: Well, your now objecting to the second
22 warrant for the contents?

23 MR. WELLBORN: Yes, sir.

24 THE COURT: Miss Joyner, you need to put evidence
25 on that.

1 MS. JOYNER: Okay.

2 MR. WELLBORN: And Your Honor, if the evidence is
3 going to be the identical language in the search
4 warrant and I think we probably already heard the
5 predicate for it so you may not need to hear evidence,
6 but that's up to Your Honor.

7 THE COURT: I think Ms. Joyner said there was some
8 additional language in the warrant.

9 MS. JOYNER: Yes. We will ask Special Agent Baird
10 to retake the stand.

11 DIRECT EXAMINATION

12 CONT'D BY MS. JOYNER:

13 Q Detective Baird, you are still under oath. I am going
14 to show you briefly what has been marked as Court's Exhibit Two.
15 Is this a copy of the warrant, search warrant you obtained for
16 extraction of the phones that were seized from [REDACTED] Amanda Lane?

17 A It is.

18 Q And could you tell the Court what date you sought that
19 warrant?

20 A On April 25, 2017.

21 Q Okay. And when you presented that affidavit to the
22 Magistrate were you under oath?

23 A I was.

24 Q Okay. And was the information that you provided to the
25 Magistrate contained in the four corners of that affidavit?

1 A Yes.

2 Q Okay. So you offered no sworn testimony in addition to
3 oral testimony in addition to what is contained in here?

4 A No.

5 Q And going to the affidavit section, coming up to just
6 the section regarding the autopsy. Is that language all
7 identical to the language that you previously submitted in your
8 affidavit for the search of [REDACTED] Amanda Lane?

9 A It is.

10 Q Okay. The final section of the last paragraph of the
11 affidavit, if you could please read that to the Court?

12 A The cell phones were obtained from a search warrant
13 that was executed on April 18, 2017 at [REDACTED] Amanda Lane, Rock
14 Hill, South Carolina. Extractions of these cell phones are
15 needed at this time. It is the belief of this affiant that
16 information gained from the search is necessary to assist
17 investigators in determining the cause and manner of death of
18 [REDACTED] child [REDACTED], the individuals who are were present at the time
19 and leading up to her death and the timeline of events
20 surrounding her death.

21 Q Okay. And the phones that are referenced in this
22 Court's Exhibits Two are they the same phones that are listed in
23 the return of Court's Exhibit One?

24 A They are.

25 Q Okay. And there is a mention of the phones being

1 obtained during a search warrant on April 18th. Is that the
2 correct date?

3 A No, it was the 17th.

4 Q Is that a typographical error on your part?

5 A It was.

6 Q So all other the information contained in affidavit
7 truthful and accurate?

8 A It is.

9 MS. JOYNER: Those are the State's questions.

10 MR. WELLBORN: I have no questions.

11 THE COURT: Okay. Thank you, ma'am. You may step
12 down.

13 Mr. Wellborn, I understand your motion is for the
14 same reasons as your previous motion, lack of probable
15 cause in the initial search warrant and this is fruit
16 of the poisonous tree.

17 MR. WELLBORN: That is correct.

18 THE COURT: I will deny your motion for the
19 record.

20 MS. JOYNER: Thank you, Your Honor.

21 MR. WELLBORN: Your Honor, one more motion related
22 to the search.

23 THE COURT: We have been going for quite a while
24 now. Let's take a 15 minute break and we will come
25 back.

1 MS. JOYNER: Thank you, Your Honor

2 (WHEREUPON, court was in recess.)

3 THE COURT: Counsel, there is something I should
4 have put on the record in the beginning just to make
5 sure my brother had no involvement with this case. I
6 know obviously, Mr. Wellborn, you are private counsel.
7 Did your client consult with my brother at all before
8 you were retained.

9 MR. WELLBORN: Not to my knowledge.

10 THE COURT: Miss Joyner, do you have any knowledge
11 of my brother being involved in this case?

12 MS. JOYNER: No, Your Honor. Miss Adams is
13 represented Jeff Zuschke but I have no belief that
14 your brother is at all involved.

15 THE COURT: Thank you, very much. I appreciate
16 that counsel.

17 All right. Any other pretrial motions?

18 MR. WELLBORN: Yes, Your Honor.

19 THE COURT: Okay.

20 MR. WELLBORN: The next motion I have would be to
21 the State to establish what other acts they intend on
22 introducing against my client and to what extent they
23 meet the 404(b) Lyle exceptions. Because of course as
24 we all know, 404(b) and Lyle creates a rule of
25 exclusion that can only be surmounted if certain

1 standards are met.

2 THE COURT: Mr. Wellborn, let me stop you. I
3 think since this is a bench trial, I think the better
4 tactic here rather than doing a long motion in Limine
5 hearing let's just as the evidence comes in you can
6 make your objection to it and we will rule on it as it
7 comes in if that's okay.

8 MR. WELLBORN: That's fine. And of course as a
9 courtesy to Your Honor each objection will be in
10 multiple parts because of the whole matrix that one
11 has to go through in terms of necessity, clear and
12 convincing, and then what particular exception it
13 meets and whether in fact meets that exception.

14 THE COURT: I'd prefer, rather than trying to
15 guess what Ms. Joyner is going to try to introduce,
16 let's just proceed and since there is no jury you can
17 make the objections as it comes up.

18 MR. WELLBORN: That's fine.

19 MS. JOYNER: Your Honor, I do want to inquire
20 before we begin the bench trial and jeopardy attaches
21 whether Mr. Wellborn has any motion as regards to the
22 appropriateness of tracking hydrocodone Indictment.

23 MR. WELLBORN: There was a direct Indictment. I'm
24 not sure that there is anything beyond that. The
25 Indictment has been directly indicted.

1 As an officer the Court is the State aware of any
2 impropriety relating to the Indictment?

3 MS. JOYNER: No, I'm not. I just wanted to make
4 sure you didn't have any objection to or intend to
5 raise after jeopardy had attached any issues that he
6 felt legal arguments regarding trafficking hydrocodone
7 outside of a directed verdict motion based upon the
8 evidence.

9 MR. WELLBORN: Well again, I'm not aware of any
10 irregularity with the Indictment but I would ask as an
11 officer of the Court if the solicitor is aware of such
12 irregularity that she mention that which I believe she
13 would be required to do.

14 MS. JOYNER: As an officer of the Court I'm not
15 aware of any irregularity with the Indictment. I just
16 wanted to be clear.

17 THE COURT: Mr. Wellborn, obviously you will make
18 a directed verdict motion as some point as to the
19 sufficiency of the evidence. Other than that, do you
20 have any objection to trafficking hydrocodone
21 Indictment?

22 MR. WELLBORN: I -- well, I do not. No. Bare
23 with me one second just to make sure.

24 MS. JOYNER: And to be clear, the State's
25 question is whether he intends to argue at any point

1 after jeopardy is attached that hydrocodone is not
2 appropriate subject matter of the trafficking charge
3 under 44-53-370(e)(3).

4 THE COURT: Okay. Mr. Wellborn.

5 MR. WELLBORN: Well, there's that, but there is
6 another issue too. And that is that the Indictment of
7 possession of -- well, I apologize. It's not
8 trafficking in oxycodone. To be clear the Indictment
9 I have is possession with intent to distribute
10 oxycodone.

11 MS. JOYNER: I may have misspoke. Trafficking
12 hydrocodone.

13 My question is if intends to raise a legal
14 argument that hydrocodone does not fall within that
15 statute and if he does I would like to handle that
16 before double jeopardy.

17 THE COURT: Okay.

18 MR. WELLBORN: Your Honor, I am a not aware of an
19 argument there but perhaps just because I'm not aware
20 of and maybe we don't want this revisited later, it
21 might be a good to have a Court finding related to
22 that. So, yes, I will go ahead on behalf of my client
23 I will raise that issue just to be...

24 THE COURT: We will have argument on it then.

25 MS. JOYNER: And Your Honor, the State fully

1 believes that we are appropriate to make this charge.
2 We did -- we do understand that there are are
3 different feelings about this issue and so wanted to
4 go ahead and address it before beginning of the trial
5 so that if so so both sides have fair opportunity to
6 argue this point.

7 THE COURT: All right.

8 MS. JOYNER: I have prepared a brief, not nothing
9 whether it was going to be raised. (Handed up to the
10 Court.) And I do have the supporting cases that
11 somehow become separated from...

12 THE COURT: Okay. Ms. Joyner, the Alabama case, I
13 read the quote. It says this Court has previously
14 recognized that opiates are included within the
15 prohibition of 13(a)-12-231-3, isn't that the issue we
16 are talking about here?

17 MS. JOYNER: Yes, but I think when you look at the
18 reasoning in the Alabama case they are explaining back
19 to the statutory construction. Basically the
20 identical statute that we have.

21 THE COURT: Okay. But I mean they're saying that
22 the prosecution didn't present scientific evidence
23 that it was an opiate, but let's go back to our
24 statute. That to me is a difference.

25 Our statute doesn't say opiate it says opium or

1 morphine.

2 MS. JOYNER: Our statute -- this Alabama statute,
3 you go to the trafficking provision itself, it says --
4 it has identical language as ours. So by Westlaw
5 number is page two, their trafficking statute is
6 section 13(a)-12-231 subsection 3, "any person who
7 knowingly sells or manufactures, delivers or brings
8 into the State, or who is knowingly in actual or
9 constructive possession of, four grams of morphine,
10 opium, or any salt, isomer, or salt of an isomer
11 thereof, including heroin as described, in Section
12 20-2-23(20) or 20-2-25. It says (a)(a). That's a
13 typo. It actually one (a) you'll see later. Or four
14 grams or more of any mixture containing any such
15 substance, is guilty of a felony which shall be known
16 as trafficking in illegal drugs. And then they have
17 it looks like they have similar tiered system based on
18 weights as we do.

19 They then go on to explain that -- they go into an
20 analysis about the board of health is the one that is
21 classified as a schedule drug which is similar to our
22 DHEC. And they may have listed in this case it was
23 oxycodone as -- it's listed as scheduled two as
24 promulgated by their public health department.

25 Then going forward, page three by Lexus or Westlaw

1 numbers, the paragraph that begins, opiate is a drug
2 containing or derived from opium. They say
3 specifically -- the next line is, that the trafficking
4 statute specifically provides and they go on and quote
5 it, they italicized as described in these sections.
6 Then they go on from there to say, that there law --
7 they have list of schedules as adopted by the
8 legislature, of schedule two drugs. They go to the
9 definition specifically cited to, or the statute
10 specifically cited to the trafficking statute which
11 20-2-25-1(a) list, opium or opiate or any salt
12 compound, derivative, preparation opium or opiate.

13 Then they say although the trafficking statute
14 does not specifically list opiates, it does
15 specifically include opiates by reference to 20-2-25
16 one (a). So, this, is our argument. That as
17 described in 44-53-210 incorporates those scheduled
18 drugs into the statute. And the definition -- or the
19 subsection they list in their discussion from 20-2-25
20 (1)(a), is identical to what is listed 44-53-210(b)(1)

21 THE COURT: Okay. I'm not a chemist, but the
22 dispute as I understand it is in our statute, as
23 described in section 43-53-190 or 44-53-210, does that
24 further describe the lists already given or does that
25 add additional drugs to the list? Is that the

1 argument?

2 MS. JOYNER: I think it incorporates, yes. It
3 Incorporates. It sort of in a way defines that
4 provision, any morphine, opium, salt isomer, including
5 heroin as described. An incorporation and I guess in
6 a sense a definition to. And I think that's how
7 Alabama Court goes because they say it's incorporated
8 by reference. But then they go on to say that the
9 oxycodone -- they don't have to actually prove it's an
10 opium to prove the case because it's listed as a
11 schedule two drug its designated by the opium or
12 opiate, and the trafficking statute incorporates that
13 statute, then it's okay to traffic oxycodone.

14 THE COURT: I'm not a chemist. I'm assuming from
15 this argument that the State is not going to be able
16 to offer evidence that hydrocodone is morphine, opium,
17 a salt, or a salt of an isomer, of those drugs; is
18 that correct?

19 MS. JOYNER: Correct. We're going to offer
20 testimony that hydrocodone is a schedule II narcotic.
21 Hydrocodone meets the definition of opiate which is
22 contained in 110-31. An opiate is -- we have almost
23 identical -- very, very similar definition of opiate
24 as Alabama Court does as well.

25 HE COURT: My struggle with the Alabama decision,

1 isn't a pretty standard rule of interpretation in
2 criminal cases criminal statutes are strictly
3 construed against the State?

4 MS. JOYNER: They are, but I think if you go to
5 State versus Miles, which is the South Carolina case.
6 I think when you read those two together I think that
7 --

8 THE COURT: Do you have a copy of Miles? I have
9 it. All right.

10 MS. JOYNER: So State versus Miles is an appeal
11 from a trafficking in illegal drugs, same subsection
12 that we are under. In this case it was trafficking,
13 again oxycodone. And oxycodone and hydrocodone
14 they're on the same footing because they are both
15 opiates, and under South Carolina law they're both
16 Scheduled II narcotics. So what would apply to
17 oxycodone would apply to hydrocodone.

18 In Miles, his actual challenge was, he was upset
19 that he felt that the term knowing in the trafficking
20 statute, in subsection (e)(3) should apply to every
21 element of trafficking offense, including the specific
22 type of drug listed. That he had to know that he was
23 trafficking oxycodone, not just know that was
24 trafficking in illegal drugs. The Court of Appeals
25 went into a lengthy interpretation of this.

1 THE COURT: I read the quotes if your memo.

2 MS. JOYNER: I'm sorry.

3 THE COURT: I read the section. I read your whole
4 memo.

5 MS. JOYNER: And so I think that what Miles is
6 saying by implication, is that they -- first of all I
7 think the Miles court spent a lot of time interpreting
8 the statute. But the Miles court, or the Supreme
9 Court that denied Cert, at any point said, wait a
10 minute, this doesn't even apply. Why are we here on
11 an oxycodone when this doesn't -- this isn't actually
12 a crime. I think they could have raised it sui sponte
13 and they didn't. I am not relying on that but just
14 sort of as an aside I think they could. But there
15 discussion is they are looking at the caption of the
16 offense. They consider that. They talk about how
17 long the drug code is and you got to look at it from a
18 big picture standpoint. And they then go on to say --
19 again, on a separate issue, but I think very
20 informative, the quote that's included on page two of
21 the brief. This dissent is unescapable when we
22 consider (e)(3) reference to 190 and 210, which sets
23 forth Schedule I and II governing classification of a
24 controlled substances. While we can interpret
25 statutes by bringing in rules of grammar logic, and

1 other tools, we must be careful not to construe common
2 sense out.

3 So, they felt like in the massive structure of the
4 the drug law, that their interpretation of the statute
5 they had to look at all these different things and
6 they specifically said trafficking in illegal drugs,
7 clearly the legislature didn't intend to require us to
8 prove the specific drug otherwise why call it
9 trafficking in illegal drugs. Why include by
10 reference these other code sections which bring in
11 Schedule I and Schedule II. So --

12 THE COURT: I don't want to interrupt you. Go
13 ahead.

14 MS. JOYNER: And I also think they go into -- I
15 think I am done with that argument. I apologize.

16 THE COURT: That's okay. I understand that case is
17 involving the level of knowledge required of the
18 defendant. But this is more kind of a fundamental and
19 critical issue. The legislature has to say what drugs
20 are illegal drugs. And you're asking me to -- I think
21 what you're saying I should read the quote as
22 described in section 44-53-190 (sic) or 44-53-210. I
23 should read that as in addition to the drugs listed in
24 those statutes.

25 I think that's a stretch given I have to strictly

1 construe criminal statutes against the state.

2 MS. JOYNER: I think you have to look at all the
3 words of the statute and assume that they all do have
4 a purpose. So, kind of starting at the beginning of
5 my argument. I think on the caption -- and I know the
6 captioning alone is not the magic bullet, but the
7 Miles' Court did talk about reading the caption as a
8 significant factor. And when you look at this drug
9 code we know that we have trafficking statute that was
10 created within 370 and 375 and they are captioned
11 very, very specifically to the drugs that the
12 legislature intends to criminalize as far as
13 trafficking goes. They'll all criminalized in other
14 ways. So tracking marijuana, a Schedule I drug is
15 pulled in specifically detailed. We have trafficking
16 in methaqualone, very specifically a Scheduled -- I
17 think it's a Schedule III. I could be wrong.

18 THE COURT: Quaaludes. I think they are a
19 Schedule I.

20 MS. JOYNER: Schedule I, I apologize. Trafficking
21 cocaine. We have the trafficking of flunitrazepam,
22 which is scheduled four. All of those -- all the
23 trafficking statutes are very specific to the
24 particular class of drug, a particular drug that they
25 reference. Even when you go to 375(E)(1), trafficking

1 in ephedrine, pseudoephedrine, phenylpropanolamine,
2 their salts, isomers, or salts of isomers, or
3 combination of any of these substances. And I think
4 that final caption is very significant because had the
5 legislature wanted that (E)(3) to just apply to -- to
6 just apply to morphine, opium, salt, isomer or salt of
7 isomer thereof, they could have captioned it as such
8 and they didn't. They called it trafficking in
9 illegal drugs.

10 I think that is one window into their retention
11 when they created the statute. So now, we look at --
12 moving away from the caption we look at the rest of
13 the wording; morphine, isomer, salt, or salt of isomer
14 thereof as described in 190 or 210. So, why if they
15 only wanted to apply to morphine, they only wanted it
16 to apply to opium or salt or isomer thereof, why do
17 you reference these statutes as all.

18 The other subsections of the trafficking -- I
19 think there is ten trafficking offenses created within
20 370 and 375 -- only three of them are going to cite to
21 a definition or site to a schedule. So, those -- and
22 I know I included it in the brief -- but -- so you
23 have the trafficking in illegal drugs, which cites the
24 190 and 210. You have trafficking in the
25 methamphetamine and cocaine base from 375 and

1 trafficking in cocaine. So, we know the legislature
2 doesn't just include the schedule in all of the
3 trafficking.

4 THE COURT: I'm listening.

5 MS. JOYNER: I know.

6 THE COURT: I am looking at the statute while we
7 are talking.

8 MS. JOYNER: And so we have to assume there is
9 some importance or significance attached to that
10 language that we should try and understand. So when
11 you go to the trafficking in cocaine. Trafficking in
12 cocaine is (E)(2) under 370. They cite -- it contains
13 the following language. I apologize the statute is so
14 big. Ten grams or more of cocaine or any mixture
15 containing cocaine as provided in 44-53-210(B)(4) is
16 guilty of a felony known as trafficking in cocaine.

17 So, the 210 is the same statute that is described
18 and incorporated in the (E)(3), but in contrast to
19 (E)(3) that broadly includes all of 210, cocaine
20 trafficking cites specifically to the definition that
21 that the legislature -- or the language of the
22 legislature feels is necessary for an understanding of
23 that particular trafficking in cocaine statute.

24 So in that language is -- so you go to (A) the
25 controlled substance listed in this section, schedule

1 II, and then (B); any of the following substances
2 accept those narcotic drugs listed in other schedules
3 whether produced directly or indirectly by extraction
4 from substances of vegetable origin, or independently
5 by means of chemical synthesis, or by a combination of
6 extraction and chemical synthesis.

7 To subsection (4): Coca leaves and any salt,
8 compound, derivative, or preparation of coca leaves,
9 and any salt, compound, derivative, or preparation
10 thereof which is chemically equivalent or identical
11 with any of these substances, but not including -- and
12 it goes on.

13 So instead of for the legislature, instead of
14 cocaine just broadly citing the 210 and leaving us to
15 figure out what that means, or to look through the
16 whole statute, they go specifically to this provision
17 as far as coca leaves salt and compound.

18 Then you look at trafficking in methamphetamine
19 and cocaine base out of 375, they cite to the
20 definition section, they say as defined and otherwise
21 limited in 110, 210(D)(1) and (D)(2). So the 110 is
22 going to go into the definitions of cocaine base and
23 methamphetamine. But then you get the references to
24 (D)(1) and (D)(2) under 210. So again, the reference
25 by the legislature in that this trafficking statute is

1 specifically to two very small subsections of the
2 statute, and those are ones that reference salt,
3 isomer and salt compound, etc. So, again the
4 legislature is citing very specific provision.

5 So now we get over to our statute of (E)(3) and it
6 cites broadly to 190, which is a Schedule I and
7 broadly to 210 which is the Schedule II, which is
8 where hydrocodone lives. So, there has to be a reason
9 that it's cited to and it says as described by. As
10 described by is going to take us straight to, and of
11 the following under subsection (B)(1), any of the
12 following substances accept those narcotic drugs
13 listed in other schedules, whether produced directly
14 or indirectly by extraction from substances, a
15 vegetable or generated independently by means of
16 chemical synthesis or by combination of extraction and
17 chemical synthesis. One; opium and opiate and any
18 salt compound derivative or preparation of opium or
19 opiate, excluding certain drugs that are not at issue
20 here.

21 So, we know 210 lumps together the opium and the
22 opiate from the very beginning. And I think that when
23 the legislature cites back to this broad statute they
24 know this definition is in there and they know these
25 two are lumped together.

1 THE COURT: Your not arguing that everything
2 listed in that statute applies. You only want the
3 opiate definition?

4 MS. JOYNER: Yes.

5 THE COURT: Your argument is not, like for
6 example, the bottom of that statute, phenylacetone,
7 phenyl-2-propanone, and all those. You're not saying
8 those apply. What you want is the definition of
9 opiate instead of opium?

10 MS. JOYNER: Yes, that they mean to kind of
11 conflate those two things by reference and opiate fall
12 under and that's what Alabama does. And I think Miles
13 --I think Miles is a signal that if the issue were
14 confronted by the Appellant Courts they would do the
15 same. Because Miles' language is -- Miles -- the
16 whole opinion of Miles they presume that oxycodone
17 fits within the statute.

18 THE COURT: But it wasn't raised.

19 MS. JOYNER: It wasn't raised. That's true.

20 THE COURT: Miss Joyner, you have argued this
21 really well and I understand your argument. Let me
22 give Mr. Wellborn a try and then I more than likely
23 what I'm going to do, we'll break for lunch.

24 My struggle -- I understand what you are saying
25 and I understand the legislature, that may have been

1 their intent. But my struggle is, opiate and opium
2 are two different words. The word opiate doesn't
3 appear in the statute the Indictment alleges he
4 violated and given the criminal statutes has to be
5 construed strictly against the State I'm concerned.
6 But let me hear what Mr. Wellborn has to say.

7 MR. WELLBORN: Yes, Your Honor, briefly.

8 I think that the statement by Miss Joyner that
9 this should be quote conflated by reference sums up
10 the State's position. But conflating by reference
11 runs heads long into as Your Honor has already
12 identified, not only the words of statutory
13 interpretation which are quoted and cited on page five
14 of the Miles' opinion, but also the rules of Lenity
15 and the rule of Lenity goes even further and say if
16 there is any ambiguity it cuts in favor of the
17 defendant.

18 I would also mention that the statute in Miles
19 specifically says opium. It does not say opiate.
20 Furthermore, the Indictment, which is the notice
21 document in this case, specifically says opium not
22 opiate.

23 THE COURT: That's a whole different issue. I
24 didn't even think about. The Indictment alleges he
25 possessed opium or a salt or isomer. Even if the

1 statute permits it, is that Indictment sufficient?

2 MS. JOYNER: My Indictment does say hydrocodone,
3 Your Honor.

4 THE COURT: Oh, it does. I'm sorry.

5 MS. JOYNER: I'm looking at the statute, it does
6 say hydrocodone.

7 MR. WELLBORN: But to be clear, what the
8 Indictment says, is 28 grams or more of any morphine,
9 opium, salt, isomer or salt of an isomer thereof,
10 namely hydrocodone. So arguably, if we were to
11 conflate that --

12 THE COURT: Okay. To me the Indictment is okay.
13 I understand, if the statute permits it that
14 Indictment language is enough.

15 MR. WELLBORN: If the statute permits it.

16 But the statute is clear that we're talking about
17 opium, not opiate.

18 THE COURT: Okay, Mr. Wellborn, the point that
19 goes Miss Joyner's way is, the two statutes they
20 reference, 190 has a list of opium, isomers and salts.
21 So I'm comfortable. I can see saying, the reason the
22 legislature included 190 was to give a list of salts
23 and isomers and opium. But 210 doesn't. 210 doesn't
24 define or explain any of the terms in 375(E)(3) so why
25 is it there?

1 MR. WELLBORN: Well, that's an interesting
2 question. Why is it there? Why is it there does not
3 help us. That gives us ambiguity and ambiguity per
4 the rules of Lenity cuts in favor of the defendant. I
5 mean, the argument, that gee, we can all sort of
6 postulate as to why would they he have done X,Y or Z
7 when they drafted it is interesting. But if we're
8 left with, we don't know why they did it and this is
9 why I think they did it or they could have done it for
10 this reason, or they might not have done it for that
11 reason. That is not enough to pass the rule of Lenity
12 test, especially since my client is to be put on trial
13 for something that gives him specific notice under a
14 specific statute and the language of this specific
15 statute does not include opiates. It include
16 specifically opium.

17 THE COURT: All right. Miss Joyner, any response?

18 MS. JOYNER: There is a section of the rule, one
19 being in Miles and I know the Court has probably
20 scanned through it. It does not intent to create
21 ambiguity where there is none. And while, you know, I
22 would just say -- point out to the Court regarding the
23 schedule drugs, as well Your Honor, that sort of what
24 is a Schedule I or Schedule II, is a polluted concept,
25 so I think that another reason to broadly include as

1 described in 210 is to encompass the idea that those
2 schedules they can change according to DHEC action,
3 and hydrocodone was at one point was not a schedule
4 two and now it is. So I think it is a practical way
5 for legislature to build in that part of the drugs
6 and how it works.

7 THE COURT: Okay. Well counsel, I think
8 understand the arguments. I don't have the answer,
9 but I understand the arguments. Like I said, let's
10 take a lunch break. I am going to send this e-mail
11 out to the judges and see if my colleagues can give me
12 some advice. But I will say as it is right, the
13 statutory construction rules make me think I have to
14 rule against the State on this.

15 I don't think the language is clear. It says when
16 it is prohibited four or more grams of morphine,
17 opium, or a salt isomer, or a salt of an isomer,
18 including heroin, as described in two other statutes.
19 And I have a tough time saying that clearly adds on
20 additional substances. Maybe I'm wrong. Let me talk
21 to my colleagues, talk to law clerk and think about
22 this. I'll consider it at lunch. Let's go to two
23 o'clock.

24 MR. WELLBORN: Before you break, I would ask that
25 my client be allowed to remain out on bond. He has

1 made every court appearance. He has been facing this
2 thing for over a year. He was here yesterday. There
3 is no evidence that he is a risk of flight. He turned
4 himself in when he found out about the warrant at the
5 Rock Hill Police Department and surrendered himself.
6 Has not violated bond in any way whatsoever, so I
7 would ask that he be allowed to remain out on bond for
8 the course of trial.

9 All his family, all his contacts, his entire life
10 has been spent in the city of Rock Hill.

11 THE COURT: Mr. Joyner, what's the State's
12 position.

13 MS. JOYNER: I don't think jeopardy has attached
14 at this point, Your Honor. We're still in the
15 pretrial phase. I would be more concerned if the
16 Court comes back, rules that we can go forward on the
17 hydrocodone and that he would be facing 25 to 40. At
18 that point I think that is a different scenario.
19 Also, I point out with the oxycodone as charged it is
20 no less than ten, but jeopardy has not attached at
21 this point.

22 THE COURT: Okay. Well, I appreciate that
23 clarification, Miss Joyner. We'll kick the can down
24 the road. I will delay that decision until I have to
25 make it. For right now jeopardy is not attached so he

1 MS. JOYNER: Just going back to Miles and it is
2 not raised in Miles, but kind of the question is,
3 would this be a subject matter jurisdiction issue if
4 the statute does not cover the offense? Would that
5 become a subject matter jurisdiction issue? I think
6 that we just put forth to the Court if the Court would
7 construe it as such, I think under Miles it could have
8 been raised sui sponte. I know the limitations of
9 that argument, but I did want to put forward that to
10 the Court.

11 THE COURT: I would not think it's a subject
12 matter of jurisdiction.

13 MS. JOYNER: Okay. That's all I have to include.

14 THE COURT: Mr. Wellborn.

15 MR. WELLBORN: Quite honestly, it could have been
16 raised sui sponte and not on it's relevance, since it
17 has been raised and is before the Court.

18 THE COURT: We never really talked about the exact
19 motion that was before the Court. Is it a motion to
20 quash the Indictment?

21 MR. WELLBORN: That seems to be the most
22 appropriate is the way would I look at it.

23 THE COURT: Miss Joyner?

24 MS. JOYNER: Your Honor, we would -- certain
25 limitation of the motion to quash is that we would

1 will be able to go to lunch.

2 MR. WELLBORN: Thank you.

3 (WHEREUPON, the court was in recess for lunch.

4 COURT:

5 THE COURT: Counsel, any further argument on the
6 issue of trafficking oxycodone?

7 MS. JOYNER: Your Honor, just -- and we know this
8 is not in any way binding to the Court, but we did
9 want the Court to the know that we have prosecuted a
10 jury trial on two other cases under the statute.
11 Those were both oxycodone -- trafficking in oxycodone
12 for the purposes of the State's argument.

13 THE COURT: Was it raised at those trials?

14 MS. JOYNER: The one, Acasio, the State versus
15 Bernardo Veno Acasio (phonetics). Miss Jennifer
16 Colton in our office, her recollection is that the
17 defense counsel did raise that argument at trial, but
18 it did not go up on appeal. So it was not raised on
19 the appeal. It was affirmed on an unpublished opinion
20 on a Batson argument that was raised on appeal.

21 THE COURT: Okay.

22 MS. JOYNER: The other case was Denaldi Keith
23 (phonetics) and it was not raised at trial or raised
24 on appeal, but we did want to include that.

25 THE COURT: I appreciate that.

1 like to appeal the issue. For clarity's sake, if the
2 Court rules against us, and I don't know if it's
3 procedurally proper for me to appeal for a motion to
4 quash. I think a motion to quash allows me to go back
5 to the Grand Jury which would sort of put us into a
6 cycle.

7 I would request if the Court is going to quash the
8 motion that there be some accompanying order from
9 which we could ask the Attorney General's Office
10 whether it would be appropriate to appeal.

11 THE COURT: I am more than happy to give you
12 something to appeal. It would be great if we had
13 clarity on this issue. I will be happy to do a
14 written Order. What is the vehicle to do that?

15 MR. WELLBORN: Well, just procedurally, Your
16 Honor, an appeal can not be taken from anything that
17 does not foreclose the case from the State from
18 prosecuting.

19 On a motion to quash the State, as Miss Joyner has
20 pointed out, it's simply a matter of redrafting the
21 indictment in a way that is compliant with the
22 existing law and that would clear the problem and
23 therefore they're not precluded from later prosecuting
24 if that's what they choose to do.

25 THE COURT: My ruling would say -- if I ruled this

1 way which to be honest, I am probably going to do --
2 is that the oxycodone doesn't fall under that statute.
3 So there's way for re-indictment other than to
4 re-indict not for trafficking.

5 MR. WELLBORN: Well, correct. I mean, the point
6 is they can still prosecute. They can't prosecute it
7 as trafficking. Whether or not that implicates State
8 versus Regina McKnight and the other cases that talk
9 about the State being enable to prosecute because of
10 pretrial ruling is debatable. But certainly, I guess
11 the request from the State is please give us
12 clarification of your ruling in case we want to appeal
13 it?

14 Obviously, I have no standing to argue for or
15 against such clarification.

16 THE COURT: I think it's a fair request from the
17 State. There's no appellant -- there's no guidance at
18 all from our appellant courts.

19 MR. WELLBORN: Right. And again, I don't take
20 any position on that because it's improper for me to
21 take a position on whether or not you should give a
22 ruling that is clear or not. Generally I prefer clear
23 rulings.

24 THE COURT: Miss Joyner, what would you like me to
25 do?

1 MS. JOYNER: I'm assuming from all of this, that
2 you are going to dismiss the case -- that particular
3 case. I believe an Order -- maybe if we could just
4 draft an Order of dismissal with the ruling of the
5 Court that the statute does not apply. I think that
6 should be sufficient to allow for the State to appeal
7 on that particular Indictment.

8 THE COURT: Rather than quashing the indictment I
9 would dismiss the charge?

10 MS. JOYNER: I would think so. I think that is
11 the best route, Your Honor.

12 THE COURT: And do you mind me putting in the
13 Order that it is couched as an order of dismissal
14 rather than an Order quashing the indictment an Order
15 for allow for appeal.

16 MS. JOYNER: I have no issue with that language
17 being included at all, Your Honor.

18 THE COURT: Right. Given that then I will grant
19 the motion to dismiss and I am going to dismiss the
20 Indictment for trafficking oxycodone on the basis that
21 the statute 44-53-370(E) does not include oxycodone.
22 I will explain my ruling for the record but I will
23 also do a written Order.

24 The statute says, four grams or more of any
25 morphine, opium, salt, isomer, or salt of an isomer

1 thereof, including heroin. It's not heroin, it's not
2 morphine, it's not opium, it's not a salt or an
3 isomer, or morphine or heroin. And so the State is
4 asking me to it says as described in 44-53-190 or 210
5 which are the Schedule I and Schedule II drug lists.
6 And I don't think I can import. I mean, those statutes
7 have a provision for opium and its derivative and a
8 separate provision for opiates. And then they have a
9 list of bunch of other drugs that are neither opium
10 nor opiates. I don't think I can selectively add
11 opiates into 370 when the phrasing is as described.
12 Which again, implies to me it's describing what has
13 already been listed in the statute.

14 And then finally, given that I struggled with
15 making all this out I think the rule of Lenity
16 requires me. I can't figure out what the legislature
17 intended. I am required to rule for the defense.
18 That's the bottom line. Okay.

19 All right. Now, I will do a written Order on
20 that.

21 MS. JOYNER: Beg the Court's indulgence.

22 THE COURT: Certainly.

23 MS. JOYNER: Your Honor, with that ruling I would
24 still like to proceed on the remainder of the charges.

25 THE COURT: Okay.

1 MS. JOYNER: I did he refrain from numbering
2 anything but we do have a lot of exhibits and I wanted
3 to make sure that the Court would not have an issue
4 with us proceeding forward before I wasted the court
5 reporter's stickers. So if I could have about five or
6 ten minutes to mark these exhibits.

7 THE COURT: No problem at all.

8 MS. JOYNER: Thank you, Your Honor.

9 THE COURT: I'm working on the Order whenever you
10 are all ready.

11 MS. JOYNER: Almost done.

12 THE COURT: No worries.

13 MS. JOYNER: The State is ready.

14 THE COURT: All right. Mr. Wellborn.

15 MR. WELLBORN: The defense is ready. Thank you.

16 THE COURT: Counsel, I have a policy of opening
17 and closing in bench trials. I would prefer a little
18 bit from each party just to help me summarize how you
19 see the issues. If you can just kind of give me a
20 basic summary of how you view the case that would be
21 helpful.

22 MS. JOYNER: Thank you, Your Honor. May it please
23 the Court.

24 The defendant stands for trial today for
25 possession with intent to distribute marijuana,

1 possession of cocaine and possession with intent to
2 distribute oxycodone.

3 The State expects that the evidence will show
4 that during a search warrant that was executed at the
5 defendant's home, at [REDACTED] Amanda Lane on April 17th of
6 2017, a quantity of marijuana was located underneath
7 the defendant's mattress; mattress and box springs.
8 The total weight of that marijuana is 473 grams. It
9 was found next to two loaded guns that were in the
10 master's bedroom that he shared with his wife. The
11 evidence will also show that a quantity of cocaine was
12 found in the top dresser drawer of the chest of
13 drawers accompanied by by several razor blades and
14 quantity of drugs which included 15 oxycodone
15 contained in a pill bottle that was the defendant's
16 pill bottle. A prescription pill bottle for Ibuprofen
17 and mixed into that these 15 oxycodone pills. We do
18 not believe he had a prescription for and we believe
19 he possessed with intent to distribute. Within the
20 dresser drawer was indications of the defendant's
21 ownership of the contents of drawer including his
22 passport and credit cards contained in the drawer.
23 And we expect that the Court will see text messages
24 that are consistent with his ownership and dealing of
25 oxycodone. We expect the Court to hear from a witness

1 regarding buyer transactions involving Roxiecodone
2 that were made in close proximity to the time. And
3 additionally there was a scale found in the drawer.

4 THE COURT: Thank you, Miss Joyner. Mr. Wellborn.

5 MR. WELLBORN: Your Honor, quite simply, I'm going
6 to waive opening statement.

7 THE COURT: Okay.

8 MR. WELLBORN: This is a matter again because we
9 do not have conditional guilty pleas that we are
10 required to go through this hoop. Obviously their
11 will be times when I will cross examine. I already
12 explained this to my client. But we do not expect --
13 well, let's put it this way. I think there are some
14 things stated in particularly in State's opening
15 statement for lack of better term, that may in fact
16 may not be quite the way they paint. But that said, I
17 think that given your ruling on the search warrants
18 certainly a lot of this evidence will be before Your
19 Honor.

20 THE COURT: Okay. Mr. Joyner, call your first
21 witness.

22 MS. JOYNER: Thank you Your Honor.

23 The states first witness.

24 DIRECT EXAMINATION

25 BY MS. JOYNER:

1 Q Can you please state your name?

2 A Charity Chappellear.

3 Q How are you employed?

4 A I work for the South Carolina Law Enforcement Division.

5 Q How long have you with the the South Carolina Law
6 Enforcement Division?

7 A September 2008.

8 Q And what is your current job assignment with SLED?

9 A I am a lieutenant in the Special Victim's Unit,
10 specifically child fatalities.

11 Q And have you been in the Special Victim's Unit since
12 you began in 2008?

13 A No, ma'am. I believe I was moved at the end of 2009 or
14 2010 to the Special Victim's Unit.

15 Q Before that, the beginning of 2008, where were you
16 assigned?

17 A I worked for the low country region and then a short
18 time after that I work Piedmont region.

19 Q Did you have prior law enforcement experience before
20 SLED?

21 A Yes, ma'am. I worked for ten years at Spartanburg
22 County Sheriff's Office.

23 Q Were you working for SLED then on April 17th of 2017?

24 A Yes, ma'am, I was.

25 Q Was that the Monday after Easter?

1 A I don't recollect.

2 Q Okay. Do you recall being one of several officers of
3 SLED who went out and executed a search warrant on [REDACTED] Amanda
4 Lane?

5 A Yes, ma'am.

6 Q And do you recall -- do you recall the appearance of
7 the house?

8 A Cluttered would be my description of the house.

9 Q Okay. And when you arrived on scene for the execution
10 of the search warrant do you recall what other agents from SLED
11 were present?

12 A Yes, I do.

13 Q Who was present?

14 A Malice Wallace and Jason -- I'm sorry Jason, I can't
15 remember your last name right this moment. And I believe then
16 myself. We were the three SLED agents on scene and then I
17 believe a Rock Hill Police Officer was there. I don't know his
18 name.

19 Q And were you the supervisor on scene?

20 A Yes, ma'am.

21 Q And what -- what would you describe was your primary
22 function on scene that day?

23 A Primarily I was just there for support for the other
24 officers that were doing the search. I interacted with the man
25 and woman that lived in the home and they had three children I

1 believe that were there as well. So I really just tried to
2 manage the situation and be another set of eyes for the officers
3 there that were actually conducting the search.

4 Q Did the man on scene that lived there was that Harold
5 White?

6 A Yes, ma'am.

7 Q Was his wife, Julisa White, on the scene?

8 A Yes, ma'am.

9 Q And their children -- were their children older or
10 younger?

11 A One I believe was may be around nine months. I can't
12 remember. And then the little girl might have been around three
13 and then an older boy.

14 Q And were Mr. Mrs. White, Harold and Julisa White were
15 they present during the entire time the house was being
16 searched?

17 A Yes, ma'am. I believe they were on the front porch
18 most of the time.

19 Q And where were you most of the time?

20 A I was on the front porch most of the time as well.

21 Q And during the time that you were there, did you see
22 anybody else enter the house other than the SLED agents and the
23 Rock Hill Officer, and Mr. -- - well, any other law enforcement
24 enter the house besides yourself, Melissa Wallace and Jason
25 Wells and the Rock Hill Officer?

1 A Not to my recollection. I don't recollect anyone else.

2 Q Was Harold White and/or Julisa White at any point
3 allowed to enter the home while were you present?

4 A Yes, ma'am.

5 Q What was the purpose of them entering the home?

6 A My recollection may be to get something to drink. Also
7 I know some of the children went upstairs and got something to
8 drink as well.

9 Q When they were allow to come into the house were they
10 supervised?

11 A Yes, ma'am.

12 Q Okay and other than the times that they were allowed
13 to come in to get a drink or to get something for the children,
14 were they otherwise allowed inside the residence?

15 A No, ma'am.

16 Q And so were there any civilians allowed inside the
17 residence that were unsupervised during the search warrant?

18 A No, ma'am, not unsupervised. Maybe grandparents were
19 near the stoop as well but we wanted to supervise everybody that
20 came in the home.

21 Q Were you part of the -- were you part of the search of
22 the residence?

23 A I wouldn't categorize myself that way, no.

24 Q Did you look around the condition of the home?

25 A I did. I looked around. I probably walked into

1 probably every room or close to every room but as far as
2 actively searching I don't recollect doing that.

3 Q Was it Jason Wells and Melissa Wallace were primarily
4 searching?

5 A Yes, ma'am.

6 Q And how would you describe the condition of the home?

7 A Disarray. Cluttered. Not kept well.

8 Q So you were not part of searching. Were you part of
9 any kind of chain of custody on this case or any of the evidence
10 that was seized?

11 A No. Well, I know that Miss White handed me her phone.

12 Q Okay.

13 A And I believe the officer on the scene handed me Mr.
14 White's phone, but other than those two items that I was handed
15 pretty close to when we got there, I don't think that I touched
16 any other type of evidence.

17 Q Let me talk to you, with the handing of the phones did
18 that occur on the front stoop?

19 A Yes, ma'am, it did.

20 Q Were you present when the Rock Hill Officer took the
21 phone from Harold white?

22 A I watched the body cam video and I observed him taking
23 the phone from Mr. White and then handed it to me.

24 Q Okay. And did you give those phones to Jason Wells
25 ultimately?

1 A I really don't recollect who I gave them to at the
2 time. I just remember you know after watching the video I saw
3 that I had those two phones in my hands. I saw how I got those
4 two phones but I really don't recollect specifically who I
5 specifically handed them off to that day.

6 MR. JOYNER: Thank you. Please answer any
7 questions Mr. Wellborn has.

8 MR. WELLBORN: No questions. Thank you.

9 THE COURT: Ma'am, would spell your name for me.

10 THE WITNESS: First and last sir?

11 THE COURT: Just the last name.

12 THE WITNESS: C-h-a-p-p-e-l-e-a-r, Chappellear.

13 THE COURT: Thank you. You can step down.

14 MS. JOYNER: The next witness, Melissa Wallace.

15 MELISSA WALLACE, called as a witness, having been
16 duly sworn by the clerk, was examined and testified as
17 follows:

18 DIRECT EXAMINATION

19 BY MS. JOYNER:

20 Q Can you please state your full name for the record.

21 A Melissa Skipper Wallace.

22 Q And where do you work?

23 A I am employed by the South Carolina Law Enforcement
24 Division, commonly known as SLED.

25 Q How are you employed?

1 A I'm employed as special agent in Piedmont region under
2 investigative services.

3 Q How long have you been with SLED?

4 A Since July of 2005.

5 Q Prior to being in SLED do you have any other law
6 enforcement?

7 A Yes, ma'am. I was police officer in Rock Hill for four
8 years.

9 Q So were you working with SLED then on April 17th of
10 2017?

11 A I was.

12 Q And on that date were you part of a team that went to
13 [REDACTED] Amanda Lane to execute a search warrant?

14 A I was.

15 Q I am going to show you what has been marked as State's
16 Exhibit 7. Do you recognize that exhibit?

17 A I do.

18 Q And what does that appear to be a picture of?

19 A State's Exhibit 7 appears to be a photograph of the
20 front of the residence where we executed the search warrant.

21 Q 1635 Amanda Lane?

22 A Yes.

23 Q Is that sort of structurally and otherwise how it
24 appeared that day?

25 A Yes, ma'am. There were some cars in the driveway at

1 the time.

2 Q Okay.

3 MS. JOYNER: Your Honor, I would move State's
4 Exhibit 7 into evidence.

5 MR. WELLBORN: Without objection.

6 (State's Exhibit 7, photo, received in evidence as
7 of this date.)

8 Q So the 1635, that photograph, it appears it is a split
9 level home; is that correct?

10 A It is.

11 Q And while you were part of executing the search warrant
12 did you have a primary responsibility of also photographing?

13 A I did.

14 Q Okay. And through that, were you able to see sort of
15 makeup of the house?

16 A I did.

17 Q I am showing what has been marked as State's Exhibit 8
18 and 9. I will begin with State's Exhibit 8, which I marked as
19 the main floor. Does that diagram -- although not to scale --
20 give a correct -- correctly detail the layout of the main living
21 floor of this home?

22 A Yes, ma'am.

23 MS. JOYNER: Your Honor, we move State's Exhibit
24 eight into evidence.

25 MR. WELLBORN: Without objection.

1 MS. JOYNER: I will show you what has been marked
2 as State's Exhibit 9. Does that exhibit -- although
3 not to scale -- does it provide a correct depiction of
4 the layout of the ground level of the home.

5 A It does.

6 Q Okay.

7 MS. JOYNER: Your Honor, I move State's Exhibit 9
8 into evidence.

9 MR. WELLBORN: Without objection.

10 (State's Exhibit 9, photo, received in evidence as
11 of this date.)

12 Q When you arrived at the residence and went inside, did
13 you have an impression of the overall condition of the inside of
14 the home?

15 A Yes.

16 Q What was that?

17 A It was pretty messy. There was a lot of stuff on the
18 floor. It seemed to be in disarray. Things kind of just thrown
19 about.

20 Q Okay. Was that disarray on the ground floor and the
21 main floor?

22 A It was mostly the main floor. The ground floor was
23 fairly organized.

24 Q Okay. So kind of going through and giving a general
25 understanding of the layout, I will start with the ground floor,

1 depicted in State's Exhibit 9.

2 Is it correct that a large part of the ground floor is the
3 garage?

4 A Yes.

5 Q Was there running behind the garage a hallway?

6 A There was.

7 Q And did that hallway also lead in eventually --

8 MR. WELLBORN: Your Honor, I will object as to
9 leading. The witness can be asked what the layout is
10 without Miss Joyner telling her piece-by-piece what
11 that layout is.

12 THE COURT: Mr. Wellborn, your objection is
13 technically correct, but given it's a been trial...

14 MR. WELLBORN: Well, if Your Honor has a standing
15 ruling that all leading questions are fine then I
16 certainly will accept that.

17 THE COURT: If you're making the objection I will
18 sustain it.

19 MS. JOYNER: Thank you, Your Honor. I'll rephrase
20 my question.

21 Q Was there additional -- was there a room on the ground
22 floor?

23 A Yes, there was a bathroom, a couple of closets and then
24 there was kind of like a den type area and then there was that
25 hallway as you described at the back.

1 Q Was -- okay. So, going up to the main floor, how many
2 bedrooms did the main floor have?

3 A The main floor had three bedrooms.

4 Q Okay. Did it have master suite with a bathroom inside
5 in the suite?

6 A It did.

7 Q Okay. So, if you were to walk up the stairs from the
8 landing and you walked to the top of the stairs, which direction
9 would you go to get to get to the master?

10 A The master bedroom suite area was to the immediate left
11 and it was that whole front corner of the house to the left of
12 the door.

13 Q Okay. Were there other bedrooms on the same side as
14 the master or on the other side?

15 A They were on the opposite side of the house.

16 Q And from the furniture that was contained in those
17 other bedrooms, did it appear to be furniture consistent with
18 children living there or adults living there?

19 A It was consistent with children.

20 Q When you were on scene was -- who -- who of the
21 residence at the home were present when you were searching the
22 house?

23 A There were three kids and both parents.

24 Q And was one of those individuals Haorld White?

25 A Yes.

1 Q Do you see him in the courtroom?

2 A Yes, ma'am.

3 Q Could you please point him out to the judge?

4 A He is sitting at the defense with a white button-up
5 shirt with black lettering.

6 MS. JOYNER: Your Honor, let the record she
7 identified the defendant.

8 THE COURT: The record will so reflect.

9 Q So, part of your job, am I correct, you were to take
10 photographs of the scene?

11 A Correct.

12 Q Did you also assist in searching?

13 A I did.

14 Q Okay. I am going to hand you a packet of photographs
15 that have been marked as State's Exhibit 10 and they are sub-
16 marked on the back with different numbers. Have you had prior
17 to testifying did you go through the stack of photographs?

18 A I did.

19 Q And are these photographs -- were those photographs
20 ones that you had seen before?

21 A Yes.

22 Q Did you in fact take these photographs?

23 A Yes.

24 Q Were they taken at [REDACTED] Amanda Lane on April 17th of
25 2017?

1 A Yes, ma'am.

2 Q Okay. And do they truthfully and accurately reflect
3 what you saw at Amanda Lane?

4 A Yes, ma'am.

5 Q Have they been altered in any way?

6 A They do not appear to be so.

7 MS. JOYNER: Your Honor, we move this packet into
8 evidence.

9 THE COURT: Mr. Wellborn.

10 MR. WELLBORN: Object as to relevance.

11 THE COURT: The photos of the scene are not
12 relevant?

13 MR. WELLBORN: Well, they're relevant if they
14 tend to prove or disapprove that my client is guilty
15 of the three charges that my client is on trial. But
16 those are photographs of a messy or messy rooms,
17 plural.

18 THE COURT: I will overrule the objection.

19 MS. JOYNER: Thank you, Your Honor.

20 (State's Exhibit 10, Packet, receive in
21 evidence as of this date.)

22 CONT'D DIRECT:

23 Q I am going to show you what has been marked as LL under
24 State's 10. What room is that a picture of?

25 A That is a photograph of the master bedroom looking

1 straight down the interior wall from the doorway.

2 Q And I will show you what has been marked as NN. Is
3 that the same chest of drawers from a different angle?

4 A It is.

5 Q Is that the chest of drawers -- were you present when
6 this room, this master bedroom was searched?

7 A For most of it, yes.

8 Q Were you aware and did you ultimately take pictures of
9 drugs that were recovered from the chest of drawers or what
10 appeared to be drugs recovered from a chest of drawers?

11 A Yes, ma'am.

12 Q Was this the chest of drawers in question?

13 A What you are pointing to appear to be the dresser. The
14 chest of drawers was the piece of furniture that the TV was
15 sitting on.

16 Q Okay. So then no drugs were then recovered from this?

17 A Not that I remember.

18 Q Okay. I am going to show you what's marked as KK and
19 JJ from State's Exhibit 10. Are those also taken in the master
20 bedroom.

21 A JJ is taken just outside the doorway of the master
22 bedroom but it is a photograph of the master bedroom.

23 Q Okay.

24 A And KK is just inside that doorway but it is of that
25 master bedroom.

1 Q Okay. Is this piece of furniture with the TV on top is
2 that what you would consider the chest of drawers?

3 A Yes, ma'am.

4 Q And did you ultimately take pictures of the contents of
5 the top drawer of the chest of drawers?

6 A Yes, ma'am.

7 Q I am going to show you what has been marked as triple
8 B. Do you recognize that photograph?

9 A Yes, ma'am.

10 Q And what is is that a photograph of?

11 A Triple B is a photograph of a pill bottle that was
12 located in that top drawer of that chest of drawers.

13 Q Whose name is on that pill bottle?

14 A Harold White.

15 Q And what does it purport to be?

16 A Ibuprofen, 800 milligrams.

17 Q We will come back to that in just a moment.

18 Do you recognize the photograph, triple C, triple D and
19 triple E. Can you look at those photographs and tell me.

20 Q C is a general photograph of a Love's diaper box that
21 was near the floor of the bed in the master bedroom. There's
22 some pill bottles located in it. Trouble D is a close-up
23 photograph of two of those pill bottles. And trouble E is
24 another close-up of one of those pill bottles.

25 Q Okay. When we look at triple E, what is the name on

1 that pill bottle?

2 A Yvonne Davis.

3 Q Did you encounter a person named Yvonne Davis residing
4 in that home?

5 A Not to my recollection.

6 Q Is that empty bottle?

7 A I don't remember.

8 Q And what type of prescription is listed?

9 A It says hydrocodone.

10 Q Okay. Looking closely at triple D, are you able to
11 make out the name on the pill bottle next to Yvonne Davis, does
12 it say Douglas Smarr?

13 A It does.

14 Q Did you encounter a Douglas Smarr residing at the
15 residence?

16 A No, ma'am.

17 Q Okay. I am going to show you now what has been marked
18 as double O, double R, double Q and double P. Are those also
19 pictures from the master bedroom?

20 A Yes, they are.

21 Q Okay. Now, when you confront a room such as this, that
22 in this state of disarray does it make easier or harder to
23 search?

24 A Harder.

25 Q And -- now ultimately, is a part of your routine and

1 practice when you were searching for -- searching a room
2 pursuant to the search warrant do you lift up the mattress?

3 A Yes, ma'am.

4 Q And did you all lift up the mattress in this case?

5 A Yes, ma'am.

6 Q And I am going to show you what's marked as triple G,
7 triple H and triple J. Are those photographs that you took once
8 the mattress was raised up?

9 A I don't know if you said but there is four photographs
10 there.

11 Q I'm sorry, is there one stuck together? Triple I,
12 triple G, triple H and triple J.

13 Were were those all taken once you had raised up the
14 mattress.

15 A Yes, ma'am.

16 Q And what -- were those -- were those guns loaded when
17 you raised up the mattress do you recall?

18 A I don't remember.

19 Q Okay. Going to double T and double S. Are those
20 pictures of the master bathroom?

21 A They are.

22 Q Okay. Do you recall anything of evidentiary value
23 being recovered in the bathroom?

24 A I remember there was pill bottle in like a plastic type
25 container in the bathroom, but I don't remember the name on the

1 bottle or anything.

2 Q When you were in this master bathroom did you observe
3 male and female clothing, do you recall?

4 A I don't remember.

5 Q Okay. I am going to show you triple U, triple N and
6 triple P. If you could tell the Court what those pictures
7 depict.

8 A Triple U is a general photograph of a like a sport coat
9 hanging in the closet of the master bedroom suite. Trouble O is
10 a photograph down into one of the front pockets on the coat and
11 then triple P is a photograph of a bag of what appears to be a
12 green leafy substance once it was removed from that pocket.

13 Q Do that appear to be a male sport's coat?

14 A Yes, ma'am.

15 Q And triple M and double M, are those also pictures of
16 the closet from the master bedroom?

17 A Yes, ma'am.

18 Q Okay. I am going to show you double F, double H,
19 double G, double E and double I. What rooms are these pictures
20 of?

21 A Double I is a photograph of the kitchen. Double E is a
22 photograph of the dining area. Double G is a photograph of the
23 it's like a pantry or laundry area just off of the kitchen.
24 Durable H is a photograph of the kitchen and double F is also a
25 photograph of the kitchen and dining area.

1 Q And did all those areas have to be searched as well?

2 A Yes, ma'am.

3 Q Okay. I am going to show you double B, double C and T
4 and S. Are those pictures of the living room area?

5 A Double D, double B, double C and S are general
6 photographs of the living room. T is a part of a small part of
7 the living room and it is taking a photograph back into the
8 bathroom.

9 Q Okay. So this bathroom in T is that on the opposite
10 side of the master?

11 A Correct.

12 Q It that bathroom remain located between the children's
13 bedrooms?

14 A It would appear to be their rooms, yes.

15 Q Let me show you double A and S? Are those photographs
16 of children's bedroom?

17 A Yes, ma'am.

18 Q Did you have to search that room?

19 A Yes, ma'am.

20 Q Was anything of evidently value located?

21 A Not that I remember.

22 Q Okay. And I am going to show you picture X. Is that
23 the children's bathroom?

24 A Yes, ma'am.

25 Q That's fairly tidy, is that correct?

1 Q Yes, ma'am.

2 Q Was there anything of evidentiary value located there?

3 A No, ma'am.

4 Q And W, does that show -- what that picture in W show?

5 A W is kind of the entryway into that -- I'm sorry. That
6 is small hallway out in front of that spare bathroom which runs
7 between what appears to be the kids room?

8 Q Okay. I will show you Y. Is that the linen closet on
9 that side of the house?

10 A Yes, ma'am.

11 Q Was anything of evidentiary value found there?

12 A No, ma'am.

13 Q And I will show you U, and V. Do you recognize those
14 photographs as the baby's room?

15 A Yes, ma'am.

16 Q Okay. What was the condition of the baby -- the
17 youngest baby's room?

18 A It was fairly messy.

19 Q Was anything of evidentiary value found in the baby's
20 room?

21 A Not that I remember.

22 Q And before we come back to just a few pictures of the
23 drawer. I want to go downstairs. I am just going to show you
24 picture A. What is that a picture of?

25 A That is a photograph of looking down the stairway from

1 that main entry point into kind of living area of the basement
2 or the bottom floor.

3 Q Okay. I had show you picture B. Is that of the same
4 area that picture A is taken?

5 A It is. There a closet that was to the right -- I'm
6 sorry, to the left of the bottom of the stairs and that's the
7 photograph of the closet.

8 Q Okay. Did all the closets have to be searched as well?

9 A Yes, ma'am.

10 Q Was was the general condition of the closets?

11 A Most of them were full. Nothing really like hanging,
12 so to speak, except in the master. Stuff just kind of piled up.

13 Q Was that difficult to search?

14 A Yes, ma'am.

15 Q Okay. Let me show you what's marked as picture C. Do
16 you recognize -- is that a picture of one of the insides of one
17 of the closet.

18 A It is. It's the same closet to the left of the bottom
19 of landing.

20 Q Same one depicted in B?

21 A Yes.

22 Q So that closet was searched?

23 A Yes, ma'am.

24 Q Was anything of evidentiary value found?

25 A No, ma'am.

1 Q Okay. I will show you picture D. What is that a
2 picture of?

3 A That is an open doorway leading into that back hallway
4 in that basement area. It's taken from inside that living area
5 from the downstairs area.

6 Q Are are L, K and J pictures of that back hallway?

7 A They are.

8 Q Did you photograph the garage?

9 A I did.

10 Q I am going to show O, P, Q, M and N. Are those
11 photographs of the garage that you took?

12 A They are.

13 Q Do you recall were any suspected drugs recovered in the
14 garage?

15 A Not in that portion, no.

16 Q Okay. Now I am going to show you F, I, H, G and E.
17 What are those pictures of?

18 A These are photographs of that den area in the
19 downstairs living area, closet and also a spare bathroom.

20 Q What was the general condition of that room?

21 A It was fairly messy.

22 Q Were you involved in the search of that room?

23 A Yes, I did part of it.

24 Q Okay. I am going to show double U., double X, double B
25 and double W. What are those photographs of?

1 A Those are photographs of the same area. It was an air
2 hockey table in that den area. There was a bag there. We found
3 some of what appeared to be marijuana, green leafy substance.

4 Q And you photograph what was located?

5 A Yes, ma'am.

6 Q Okay. So coming back just to finish up with some of
7 these photographs, with the master suite. You've already
8 testified about triple B. Triple V, is that a photograph of
9 that same Ibuprofen bottle from another angle?

10 A Yes, ma'am. I removed it from the drawer and sat it up
11 on the top of it so I could take another photograph.

12 Q Okay. I am going to show you double L -- I'm sorry,
13 triple L, triple K, triple A, double Z, triple R, triple S,
14 triple T and triple U. If you could take a look as of those
15 photos.

16 A Okay. They stick together, I'm sorry.

17 A That's okay.

18 Q I am not sure if you said, double Z is also in here.

19 Q Okay. Are those photographs of the top drawer of the
20 chest of drawers?

21 A Yes, ma'am.

22 Q And the contents of that drawer?

23 A Yes, ma'am.

24 Q Okay. And other than we you might move a bottle --
25 well, you said you moved a bottle to take a photograph of it.

1 Other than maybe repositioning items to take a photograph, did
2 you or anybody else that you saw add anything to that drawer?

3 A No, ma'am.

4 Q Or take anything away from that drawer that wasn't
5 later put into evidence?

6 A No, ma'am.

7 Q Okay. And while you were there during the search
8 warrant, other than the family being allowed entry under
9 supervision, did you observe anybody else come in to the house
10 other than law enforcement?

11 A No, ma'am.

12 Q Let me show you what has been marked as State's Exhibit
13 12 for identification and I will direct your attention to the
14 second to last page that's numbered 3079. I ask you to take a
15 look at the second thumbnail, third, fourth and fifth thumbnail
16 nail on the page. If you can look closely at those.

17 A Okay.

18 Q Having been inside 1635 Amanda Land do those thumbnails
19 appear -- do they appear to be the living room of Amanda Lane?

20 A They do.

21 Q As part of -- after the search was completed at the
22 residence, did you along with Special Agent Jason Wells make an
23 inventory of what was recovered from the property?

24 A Yes.

25 Q Okay. And did you fill out the return?

1 A I did.

2 Q And make the return back to the Magistrate?

3 A I did.

4 Q Okay. I'm going to show you what has been marked as a
5 Court's Exhibit 1, in case you need your recollection refreshed.
6 Did you provide -- did you leave a copy of the search warrant
7 with one of the residents of the house at [REDACTED] Amanda Lane?

8 A It says I left a copy with Julisa White.

9 Q And what day did you file the return with the
10 Magistrate?

11 A April 17, 2017.

12 Q Now, you made the inventory along with Special Agent
13 Wells. Were you the person who was in possession of the
14 evidence seized or was he?

15 A He was in possession.

16 Q Okay. Did you at any point take possession of the
17 drugs from him?

18 A No.

19 Q Okay. Did you on April of 2017, did you take from
20 Special Agent Wells the phones that had been recovered from the
21 search warrant and transport them to Agent Trista Baird?

22 A I received the phones that day. I'm not sure if I
23 carried them to Agent Baird that day.

24 Q Does this refresh your recollection about what day you
25 received the phones and what date you transported them?

1 A Yes, ma'am. I received the phones from Agent Wells or
2 Lieutenant Wells on April 18th and I provided them to Agent
3 Baird on the 19th of April, 2017.

4 Q And from the time that you took the phones from
5 Lieutenant Wells to the time that you give them to Miss Baird,
6 did you manipulate the phones in any way?

7 A No, ma'am.

8 Q Did you allow anybody else to take or manipulate the
9 the phones?

10 A No, ma'am.

11 Q And one of those phones included a white LG cell phone
12 that had been taken from Harold White's person during the search
13 warrant?

14 A Yes, ma'am.

15 MS. JOYNER: Thank you. Please answer any
16 questions that Mr. Wellborn has.

17 MR. WELLBORN: Thank you. I will be somewhat
18 brief.

19 CROSS EXAMINATION

20 BY MR. WELLBORN:

21 Q Do you had given all the phones to Agent Baird that had
22 been given to you by Agent Wells that were taken as result of
23 the search warrant, correct?

24 A Correct.

25 Q So I will ask you very, very quickly. You had never

1 been in this house prior to April 17th of 2017, correct?

2 A Not to my recollection, no, sir.

3 Q Well, you would recollect if you had been there before,
4 right?

5 A I can't recall recall every address I went to when I
6 worked for the City of Rock Hill.

7 Q Fair enough. But you don't have any recollection of
8 being there?

9 A No, not that house specifically.

10 Q Okay. So, talking about the master bedroom. Who went
11 in to the master bedroom other than you agents? Who typically
12 went into that master bedroom, do you have any specific
13 knowledge?

14 Let's put it this way. Have you ever observed anybody prior
15 to April 17th of 2017 go into that master bedroom?

16 A No, sir.

17 Q Okay. So to be fair you don't know who went in to that
18 master bedroom on a regular basis or any basis at all, do you?

19 A No, sir.

20 Q Fair enough. Or how often that person would go into
21 the master bedroom?

22 A No, sir.

23 Q Okay. Or what they did once they got into the master
24 bedroom?

25 A No, sir.

1 Q Okay. How long they were in the master bedroom,
2 correct?

3 A Other than typical occupants, no, sir.

4 Q But again, you don't know who typically went into the
5 the master bedroom, right?

6 A No, sir.

7 Q So we don't know what typical occupants we are talking
8 about? That would just be a guess, right?

9 A Yes, sir.

10 Q And if someone went into the master bedroom prior to
11 April 17th of 2017 you don't know what they would have seen,
12 right?

13 A No, sir.

14 Q Or what they would have done in there, correct?

15 A That's correct.

16 Q All right. There were I believe you said there were
17 pill bottles found in the chest in the master bedroom in the top
18 drawer, correct? Just underneath the TV, is that correct?

19 A I think it was just one found in there.

20 Q One pill bottle found in the the chest of drawers
21 underneath the TV?

22 A That's correct.

23 Q You don't know who placed the bill bottle there?

24 A No, sir.

25 Q You don't know who if anyone other than that person who

1 placed the pill bottle there ever saw that pill bottle?

2 A No, sir.

3 Q Touch the pill bottle?

4 A No, sir.

5 Q Or was aware that the pill bottle was even there,
6 correct?

7 A Correct.

8 Q Who lifted up the mattress prior to April 17th of 2016?
9 Who would have lifted up the mattress?

10 A I don't know.

11 Q So you don't know who would have placed the guns that
12 were unloaded or presumably unloaded because you didn't know if
13 they were loaded or not underneath the mattress, right?

14 A I don't know.

15 Q Fair enough. In the den area you said there was a bag
16 of marijuana. Where was that bag specifically in the den?

17 A You're talking about the downstairs den?

18 Q Yes, ma'am.

19 A That was on top of an air hockey table.

20 Q On an air hockey table. Who typically went into the
21 den?

22 A I don't know.

23 Q Who placed the bag of marijuana in the den?

24 A I don't know.

25 Q When was the bag of marijuana placed in the den?

1 A I don't know.

2 Q Who was present when the bag of marijuana was placed in
3 the den?

4 A I don't know.

5 MR. WELLBORN: That is all the questions I have.
6 Thank you.

7 THE COURT: Any redirect Miss Joyner?

8 MS. JOYNER: No, sir.

9 THE COURT: Thank you, ma'am. You may step down.
10 Let's take a short recess until 3:30.

11 THE COURT: All right. Call your next witness.

12 MS. JOYNER: Thank you, Your Honor. The next
13 witness we are going to call a little out of order
14 just from a logical progression of the case. Mr.
15 Willy Wylie is a witness who will testify regarding
16 any prior drug dealings. Please have him come out.

17 MR. WELLBORN: And Your Honor, just so you are
18 aware as a courtesy to you, this is where there will
19 probably be for every discreet incident that he talks
20 about we will have to go through a full Lyle analysis
21 --

22 THE COURT: Okay.

23 MR. WELLBORN: -- and 403 analysis as well. Thank
24 you.

25 THE COURT: All right.

1 Counsel, do you have any objection to the witness
2 being present during those discussions or if I will
3 have to send him back out then we better do it right
4 now.

5 There is no jury here.

6 MR. WELLBORN: No, I understand that, but the
7 thing is he may testify again at some point in some
8 other matter so my preference would be that we handle
9 it before he takes the stand.

10 THE COURT: Let's bring him in. Let's start the
11 testimony and the first time the issue comes up we
12 will send him back into the holding cell.

13 MR. WELLBORN: Thank you.

14 WILLY WYLIE, called as a witness, having been duly
15 sworn by the clerk, was examined and testified as
16 follows:

17 DIRECT EXAMINATION

18 BY MS. JOYNER:

19 Q Good afternoon Mr. Wylie.

20 A Goods afternoon.

21 Q Can you please state your full name for the record?

22 A William Daniel Wylie.

23 Q Mr. Wylie, how old are you?

24 A I'm 49.

25 Q And are you -- where are you originally from?

1 A West Virginia.

2 Q And right now are you living up in Henderson, North
3 Carolina?

4 A Yes, ma'am.

5 Q At some point -- are you married?

6 A Yes.

7 Q What is the name of your wife ?

8 A Amanda Jo Wylie.

9 Q Is her maiden name Pettrey, Amanda Pettrey?

10 A It is.

11 Q At some point did you live Rock Hill?

12 A Yes, ma'am.

13 Q How did you come to live in Rock Hill?

14 A Well, I got a job here with T Masonry, T&T masonry.

15 Q Okay. And did you move to Rock Hill before you got the
16 job or got the job and then moved to Rock Hill?

17 A Yeah. Well, I needed a job when I moved here. I got
18 another job when I moved here but I ended up working with that
19 company.

20 Q And did Amanda move here with you?

21 A Yeah, she did.

22 Q Was that back in 2017?

23 A It was.

24 Q And at some point when you were working what were you
25 doing?

1 A I was laying brick and block.

2 Q Did you met a gentleman named Robert Adams?

3 A I did.

4 Q How did you met him?

5 A He worked for the same company that I did, he was a
6 mason too.

7 Q At some time while you were working for that company
8 did you Amanda lose your place to live?

9 A We did.

10 Q And did Robert make any offer to you?

11 A Yeah, he said we could stay and .

12 MR. WELLBORN: Your Honor, I am going to object
13 as to what someone else said. That would be hearsay
14 and this is going to be critically important because.
15 There may be later testimony what he heard from some
16 other source. Just so we're clear, what Mr. Adams
17 told him is again, would be hearsay.

18 I don't object as to what he did as a result of
19 what he was told or where he went as a result of what
20 he was told but I do object as to what some other
21 individual told him.

22 THE COURT: Ms. Joyner, is there a hearsay
23 exception you want to argue?

24 MS. JOYNER: No, I'm just trying to establish why
25 he moved to residence. So I'll rephrase the question.

1 Q Mr. Wylie, at some point were you allowed to move onto
2 the property where Mr. Robert Adam's lived?

3 A Yes, I was.

4 Q And did Mr. Robert Adams live in Rock Hill?

5 A Yes, he does or he did.

6 Q Do you remember what the address was?

7 A I can't quite remember the address.

8 Q That's okay. We will move on. Did he he have a wife?

9 A He did.

10 Q And do you remember what her name was?

11 A Well we called her Reecie. I believe her name was
12 Wanda, I think.

13 Q Okay. And the house where -- the place where you
14 lived, did they let you live inside the house or did you live
15 somewhere different?

16 A No, I set a tent up in the back yard.

17 Q Did Amanda live in the tent with you as well?

18 A She did.

19 Q Okay. Now, do you recall the dates, the exact dates
20 that you lived there?

21 A No, ma'am.

22 Q Okay. Can I ask you about some things, specific
23 things, that happened while you were living there?

24 A Yes.

25 Q Do you recall while you were living in the tent behind

1 Mr. Robert Adam's house did a child pass away in the home?

2 A Yes. Yes.

3 Q And about how long had you lived there at the time that
4 the child passed away?

5 A We hadn't been there long. A few weeks.

6 Q Now, do you recall giving a written statement to law
7 enforcement?

8 A Yes, I do.

9 Q All right. At the time that you gave the written
10 statement to law enforcement were you still living in the tent
11 behind Mr. Robert Adam's house?

12 A I was.

13 Q Okay. When did you stop living in the tent behind his
14 house?

15 A A little after that incident.

16 Q A little after what?

17 A The incident. After I made the statement. A little
18 after that.

19 Q Okay. So, back during this period of time, did you use
20 oxycodone?

21 A Yes, I did.

22 Q Were you addicted to oxycodone?

23 A Yes, I was.

24 Q And -- now, when you were living in the tent behind the
25 house, can you tell me who, to the best of your knowledge, lived

1 inside the main house?

2 A Reecie and Robert, the two kids. That was about it.

3 Q Did you ever have occasion to see any relatives of

4 Reecie or Miss Adams come to the home?

5 A Yeah, occasionally they were people coming and going. I
6 tried to mind my own business there.

7 Q Did you ever have an occasion to see Miss Yolanda
8 Adams' son?

9 A Yeah. Yeah, I did on occasion.

10 Q What did you know him as?

11 A Pumpkin.

12 Q And do you see Pumpkin in the courtroom?

13 A Yes, he's sitting over there.

14 Q What color shirt is he wearing?

15 A White.

16 MS. JOYNER: Your Honor, let the record reflect he
17 is indicating the defendant.

18 THE COURT: So reflect.

19 Q Now, did you have conversations with Pumpkin?

20 A No.

21 Q Tell me about -- I'm going to go back to the oxycodone
22 that you were using at the time. How did you refer to the
23 oxycodone that you used?

24 A Roxy 30's.

25 Q Roxy 30. What is a Roxy 30's.

1 A It's instant relief, 30 milligram oxycodine.

2 Q How would you use the oxycodone?

3 A We's either broken them down and shot them with a
4 syringe or we snorted them.

5 Q And during this period of time when you were living in
6 the tent where were you getting your oxycodone?

7 A I was getting them through Robert.

8 Q Okay. So, by Robert do you mean Robert Adams?

9 A Yes, ma'am.

10 Q Can you kind of explain to me how often would you get
11 pills from Robert?

12 A Generally just a couple times a week. Maybe once or
13 twice.

14 Q How much would you pay for a pill?

15 A They WERE 30.

16 Q So Roxy 30. Is that 30 represent the amount?

17 A Thirty dollars.

18 Q Were you aware of where --

19 MR. WELLBORN: Your Honor, I'm going to object to
20 that. A, "were you aware", there has got to be a
21 foundation of how such awareness came to be. So we
22 are going have to have to be a little bit careful
23 about this. Maybe if we approach the bench. Theirs
24 is no point un-ringing the bell once the bell has
25 already been rung.

1 MS. JOYNER: Your Honor, this being a bench trial.

2 THE COURT: I was going to say the same thing. In
3 the interest of speeding things along, it is a bench
4 trial.

5 MR. WELLBORN: I understand. There is also going
6 to be a record that is going to be reflected of
7 something or not reflected of something as it's
8 reviewed on appeal, and so that's my concern. Not
9 whether or not it's going to effect Your Honor, as
10 finder of fact, but there's still going to be a record
11 that has to be reviewed.

12 THE COURT: Right, but I mean, it would be the
13 same thing in a proffer, right? Miss Joyner can make
14 a proffer of testimony as to it's admissibility. It's
15 in the record. Isn't that the same thing?

16 MR. WELLBORN: Well, as long as Your Honor is not
17 taking the position that everything is admissible and
18 it will all be sorted out later on appeal.

19 THE COURT: No. Certainly not.

20 MR. WELLBORN: All right.

21 Q Now Mr. Wylie, were you aware of where Robert obtained
22 the Roxies that he sold to you?

23 A Yes.

24 Q And where did you believe he obtained rock sees?

25 A From Pumpkin.

1 Q Pumpkin. Okay. Can you explain to me a little bit
2 about why you believed that the Roxies were coming from Pumpkin?

3 A Well, he told me so. Plus we waited on him to --

4 MR. WELLBORN: Your Honor, I'm going to object to
5 that. It's hearsay and I move to strike.

6 MS. JOYNER: Well, I think there is an exception
7 to hearsay for this. I think that if Mr. Wylie can
8 just be allowed to elaborate a little bit I think that
9 when we go to Rule 801(d)(2)(E), a statement of a
10 coconspirator of a party during the course and in
11 furtherance of conspiracy.

12 Now, they can be indicted or unindicted, but
13 clearly Robert is -- according to -- if he could get
14 the full story out, I think it would be clear, but I
15 think that --

16 THE COURT: Wait a minute. I'm pulling it up.

17 MR. WELLBORN: I will point out there is no
18 conspiracy alleged.

19 THE COURT: Does she have to alleged it? Does it
20 have to be charged?

21 MR. WELLBORN: Yes, there has to be evidence of a
22 conspiracy and there has got to be evidence of a
23 agreement to make it a conspiracy. Right now we are
24 saying it is A conspiracy because somebody else told
25 him that's where he got the drugs which is completely

1 inadmissible.

2 I would also suggest that it's also a Bruton issue
3 as well. Bruton versus United States. So I'd object
4 under Bruton grounds as well as just a general rule of
5 evidence grounds.

6 THE COURT: In the interest of time, my suggestion
7 is we let the witness just testify and we consider it
8 a proffer by Miss Joyner and then you can make your
9 objections and I will rule on what testimony is
10 admissible and what is not. Is that fair?

11 MR. WELLBORN: That's fine.

12 THE COURT: Just to make sure. I am ruling I'll
13 let him testify and you have not waived any objection
14 to any part of his testimony. When the testimony is
15 over you can make your objections known.

16 MR. WELLBORN: Thank you, Your Honor.

17 THE COURT: We're considering this a proffer.

18 Q Mr. Wylie, so let's start again. When you needed a
19 Roxy who would you approach and ask?

20 A I'd ask Robert.

21 Q Okay. When -- during conversations that you had with
22 Robert in which you were attempting to obtain Roxies from him,
23 can you please tell the Court about what statements, if any,
24 Robert Adams made regarding his source of the Roxies?

25 A Well, he's just tell me I had to wait on him, Pumpkin.

1 I had to wait on him.

2 Q So, Mr. Adams would tell you to wait on Pumpkin. And
3 how would you wait on Pumpkin?

4 A On the front porch or the living room generally.

5 Q Just to make sure I understand. You would approach Mr.
6 Addams and then he would say you've got to wait for Pumpkin?

7 A Right.

8 Q And then how many times -- do you know how many times
9 that you waited for Pumpkin?

10 A Probably around seven or eight times. I'm a not sure.

11 Q Okay. And those times that you would wait for Pumpkin
12 what would happen?

13 A Well, as soon as he got there, you know, I'd get the
14 pills after he left. Around that time.

15 Q So you would be waiting for him and he would get there
16 and then what would happen?

17 A Well, they go back in the back and then one of them
18 would come out. Generally Robert would come out and hand me the
19 pills and I'd do my thing.

20 Q When you say "they" would go in the back, who is
21 "they"?

22 A Pumpkin, Reecie and Robert.

23 Q So they would leave your line of sight?

24 A Yeah.

25 Q And how quickly would they come back?

1 A Pretty quick. Usually five or ten minutes.

2 Q And when they would come back what would you be
3 provided?

4 A I got the pills.

5 Q Who would normally give those to you?

6 A Robert.

7 Q And did you use those pills?

8 A Yes, ma'am.

9 Q And you have used oxycodone many times?

10 A Yes. Yes.

11 Q Okay. And without getting into what other parts of the
12 oxycodone, the pills that you used, did you believe the pills to
13 be oxycodone?

14 A Some of them were pressed. Some of them weren't real.

15 Q Okay. But were some of them real?

16 A Some of them were, yeah.

17 Q Okay. The pills that you would buy what color would
18 they be?

19 A Blue.

20 Q Did you ever observe, personally observe, Pumpkin hand
21 out or distribute pills?

22 A No, ma'am.

23 Q Okay. Are there any -- you call them Roxy 30. Are
24 there any other street names for the type of drug that you were
25 buying?

1 A Blues. I don't know, I just call them 30's. Generally
2 most people do.

3 Q Did you just say blues?

4 A Yeah, occasionally. It can be called that but so to can
5 xanax.

6 Q Say that again?

7 A So to can xanax. They're blue too.

8 Q Okay. Kind of going back to when you were waiting for
9 Pumpkin and Robert would come out and give you the pills. Where
10 would Pumpkin be when Robert was handing you the pills?

11 A Sometimes he would still be in the back. Sometimes he
12 then be gone. He didn't spend too much time there. He was in
13 and out rather quickly.

14 Q I'm sorry. Say that again.

15 A He was in an out rather quickly.

16 Q Okay. And just not to embarrass you, I know the Court
17 wonders, you're wearing a jumpsuit. You're not charged here in
18 York County with any crime are you?

19 A No, ma'am.

20 Q You were brought here from another detention center?

21 A Yes.

22 Q Did you come here voluntarily?

23 A I did.

24 Q Okay.

25 MS. JOYNER: Please answer any questions Mr.

1 Wellborn may have.

2 THE COURT: Mr. Wellborn, why don't you make your
3 objections now. I don't want you to waive your
4 objections by asking questions. I think now is
5 probably the time to make your objections before the
6 testimony. Unless you want to go in the other order.

7 MR. WELLBORN: It may help a little bit if I go
8 in the other order.

9 THE COURT: Okay.

10 MR. WELLBORN: It will underscore the objection.

11 CROSS EXAMINATION

12 BY MR. WELLBORN:

13 Q So, do you know the difference between oxycodone and
14 what a Roxy is?

15 A Yeah.

16 Q Okay. So you were not using oxycodone. You were
17 using roxies, right?

18 A Roxicodine is oxycodine. It's instant release
19 oxycodine. In fact roxicodine was the brand name for it before.
20 I think they quit making it roxycodine and they just started
21 instant release oxy 30's.

22 Q Isn't roxy 30 actually percocet?

23 A Roxy 30 is -- percocet is the same thing. Only
24 percocet has Tylenol in it.

25 Q Okay.

1 A Oxycodine as well.

2 Q Okay. All right. So you weren't getting straight
3 oxycodine. You were getting roxy 30's which you believed had
4 oxycodone in them?

5 A Yeah, yes.

6 Q Okay. And other than your background as a drug addict,
7 do you have any background of pharmacology or working for
8 pharmacies or anything like that?

9 A No. I've just been taking the drug for about 17 years.
10 I have been prescribed it for a long time.

11 Q Okay. Fair enough. And the blue pills you said could
12 also be xanax, right?

13 A Xanax is oval shaped. It's got different numbers on
14 it. But yeah, they're the same color. There's a lot of blue
15 pills.

16 Q All right. And you said you never saw Harold White
17 actually hand out any pills to anybody, right?

18 A No, sir.

19 Q And the only evidence or belief that you have that you
20 were getting your roxies from initially Harold White is because
21 that's what you said Robert Adams told you?

22 A Yes, sir.

23 Q Okay. When was the first time Robert Adams gave you a
24 pill?

25 A It was in the summer of 2017. I can't remember the

1 exact date.

2 Q Okay. It was in summer of 2017?

3 A Yeah, spring.

4 Q Spring. Okay.

5 A Spring through summer. I worked for the company. I'm
6 a brick layer. I don't have to pay too much attention to dates.

7 Q Fair enough. So, was it before or after the forth of
8 July?

9 A It was before.

10 Q Okay. Was it before or after Easter?

11 A It was around it was around after Easter I suppose.

12 Q After Easter. Okay. So after Easter of 2017 is the
13 first time Robert Adams gave you a one of these roxy 30's.

14 A I can't quite remember. Like I said, I don't remember
15 the dates. All I know I was going to work, coming home and I
16 needed some pills and I talked to him about it and he provided
17 them.

18 Q So realistically, you think it could have been after
19 Easter. Sometime in the summer. Sometime in spring. You don't
20 know when he actually gave you these pills, do you?

21 A I don't see that that relevant.

22 Q With all due respect with your feeling about relevance,
23 my question is -- and I don't believe you've answered it. You
24 don't know when he gave you these pills, do you?

25 A The exact date?

1 Q Or month.

2 A It was during the spring and summer.

3 Q Spring and summer and you think it was after Easter?

4 A It seemed to be.

5 Q Seemed to be after Easter?

6 A I suppose. I ain't got no children. I don't have time
7 to hunt Easter eggs.

8 Q All right. You've never talked to Harold White?

9 A No.

10 Q Okay. And the first time -- sometime after Easter of
11 2017 Robert Adams gave you the first pill and then you get a
12 pill a couple of times a week, right?

13 A Yeah, generally.

14 Q Okay.

15 A The whole time I was working for that company.

16 Q When did you stop working for the company?

17 A It was during the spring, that's all I remember.

18 Q During the spring?

19 A Yeah. Like I said, I'm bricklayer.

20 Q I got you. All right.

21 MR. WELLBORN: That's all the questions I have. I
22 do have objection.

23 THE COURT: Any redirect?

24 MS. JOYNER: I do, Your Honor.

25 THE COURT: Okay.

1 RE CROSS EXAMINATION

2 BY MS. JOYNER:

3 Q Mr. Wylie, I just want to come back to some dates. I
4 think you already testified you weren't good with dates and I
5 just want to clarify.

6 So you remember the child dying in the house?

7 A I do.

8 Q Is it -- how long had you been living at the home prior
9 to the child's death?

10 A It seemed like a couple of months. Maybe a month or
11 so. I don't know. Kind of vague on that.

12 Q All right. Okay. Do you -- Mr. Wylie, you previously
13 testified about giving a statement. I am just going to show you
14 this and I will bring your attention to that second paragraph.
15 The beginning of that second paragraph can you just read that
16 and tell me if that refreshes your recollection about how long?

17 A I am having trouble reading it. I don't have my
18 glasses.

19 MR. WELLBORN: Your Honor, if I may, we probably
20 need to clear something up about this statement. My
21 understanding from the statement itself is Mr. Wylie
22 didn't actually write this. Someone else wrote it for
23 him.

24 THE COURT: You can ask that on cross.

25 A Someone else wrote it for me, but I was the one

1 speaking. All they did was copy down what I said.

2 Q Are you able to read it without your glasses?

3 A Yeah. I am struggling, but I'm reading it somewhat.

4 Q Does it refresh your recollection about when you moved
5 into the tent?

6 A It don't specifically say a specific date, does it. I
7 don't know see it if it does. I don't know see a specific date.
8 I know it was during the spring.

9 Q Okay. Mr. Wylie can you not read this without your
10 glasses on?

11 A No, I am having difficulty.

12 Q Okay. All right. Did you move into the house prior to
13 the child's passing?

14 A No. No, I never was in the house. I was in the back
15 yard anyway.

16 Q Okay. Were you in the tent prior to the child's
17 passing?

18 A Yeah.

19 Q Okay. And do you recall giving a statement to law
20 enforcement?

21 A I do, yeah.

22 Q Okay. Do you remember the date that you gave the
23 statement to law enforcement?

24 A No. I can't remember the date. I remember the
25 officer. She's sitting right there.

1 Q Do you remember the circumstances of what was going on
2 on the date that you gave a statement?

3 A Yeah. They come back to the house to investigate.

4 Q Did she have a search warrant?

5 A They did.

6 Q So did you give a statement on the date they had served
7 the search warrant?

8 A Yes, ma'am, I did.

9 Q And how long after that did you leave the tent and
10 move?

11 A It was the week after that. It was right away. I left
12 right after that as a matter of fact.

13 Q Okay. Now, did you -- did you purchase pills from
14 Robert prior to the child's passing?

15 A Yeah.

16 Q Did you purchase pills from Robert after the child's
17 passing and before you gave a statement to law enforcement?

18 A After the child's passing. No. No.

19 MS. JOYNER: No further questions, Your Honor.

20 THE COURT: Mr. Wellborn.

21 MR. WELLBORN: Your Honor, so the issue would be
22 the admissibility of this testimony.

23 THE COURT: Do do you have any more questions?

24 MR. WELLBORN: I don't.

25 THE COURT: Okay. Any objection to letting Mr.

1 Wylie get back to the holding cell?

2 MS. JOYNER: No, sir.

3 THE COURT: Thank you, Mr. Wylie. You may step
4 down.

5 (WHEREUPON, the witness leaves the stand.

6 THE COURT: Mr. Wellborn, as I said I will hear
7 any objections.

8 MR. WELLBORN: Well, first of all, its another
9 act that the State is seeking to get into evidence.

10 THE COURT: The purchase of pills is what you are
11 referring to?

12 MR. WELLBORN: The purchase of pills by Mr. Wylie
13 from Robert Adams.

14 THE COURT: All right.

15 MR. WELLBORN: Mr. Wylie has not identified that
16 he observed any other act or other bad act by my
17 client. Only that he heard from a third party that my
18 client might have committed that other act.

19 So, the first part of the matrix under 403(B)
20 and/or Lyle, is whether or not there is clear and
21 convincing evidence. Not only that the other act
22 occurred but my client committed the other act and the
23 only evidence in the record that my client committed
24 some act at some undefined point in time during a time
25 period some individual told Mr. Wylie that my client

1 had delivered pills to him. That's it. That's not
2 clear and convincing evidence under any standard that
3 we have. Specifically State versus Connors is the
4 issue -- or the case that talks about whether or not
5 it must be clear and convincing.

6 Second of all --

7 THE COURT: Mr. Wellborn, it was more to that.
8 Didn't he say that he would want to buy a pill and Mr.
9 Adams would say we need to wait on Pumpkin to bring
10 the pill?

11 MR. WELLBORN: Correct. But again, that isn't
12 evidence that my client actually brought a pill. It's
13 evidence that Mr. Adams said we have to wait on him to
14 bring a pill. But we don't know that he actually
15 brought it. Because again, Mr. Adams (sic) said under
16 oath that he never observed my client actual handing
17 out a pill. Only that Mr. Adams said that's what his
18 source was.

19 THE COURT: Okay. But on multiple occasions he
20 would ask for a pill. Mr. Adams would say wait for
21 Pumpkin and Pumpkin would appear. He would meet with
22 Adams and Adams would come out and hand him a pill.

23 MR. WELLBORN: No question about that's what he
24 say.

25 What I'm getting at judge, is the act that has to

1 be proved by clear and convincing evidence is not that
2 somebody else says something happened but that the act
3 itself actually happened. My client actually
4 distributed something.

5 There's no evidence that my client ever
6 distributed anything to Mr. Wylie. There's no
7 evidence other than this idea it must have happened
8 that way because Mr. Adams said it happened that way
9 which is hearsay, that my client did an act where he
10 distributed anything to Mr. Adams. So that's the
11 first part, is whether or not it is clear and
12 convincing.

13 Second of all, there has to be -- again, it has to
14 be based on -- and this is doubly important because
15 there's no conviction in the case. This is an
16 un-adjudicated act. And there is a different standard
17 under Lyle for un-adjudicated acts. And of course the
18 overall problem with Lyle and why it's a rule of
19 exclusion, is that inadmissible to show propensity.
20 You can't say because someone has done something
21 before that therefore they have done it again.

22 Now in this case they're showing propensity not
23 because they actually have my client doing something
24 but because hearsay from Mr. Adams is that he would
25 get a pill and then Mr. Adams would then give a pill

1 or two. We don't know how many pills these were. So
2 we don't even know if it was a propensity just to
3 distribute a pill or if it's a propensity for the --
4 to possess a certain amount, which is the other
5 problem that we have.

6 Also, under State versus Stokes, there must be
7 more than a general similarity. The charge for which
8 my client is on trial is on April 17, 2017 he had a
9 certain amount of oxycodone, which therefore they
10 infer he intended to distribute. Lyle issue, or the
11 404(B) and Lyle evidence they're trying to get in
12 says, well, in the pass somebody says they got their
13 pills from my client which they then distributed to
14 me. That's the act they're trying to get in.

15 So, then the other issue is, that there is the
16 necessity of use element of Lyle. Under State versus
17 Parker, which is 433 S.E.2d 831.

18 THE COURT: Slow down. State versus Parker. And
19 the cite.

20 MR. WELLBORN: 433 S.E.2d 831. Specifically at
21 page 833, 1933 opinion, and State versus Bell, 393
22 S.E.2d 464. These prior acts are never admissible
23 unless necessary to establish a material fact or
24 element of the crime charged. It isn't necessary in
25 this case because the mere inference level of what

1 they found at [REDACTED] Amanda Land on April 17, 2017 gets
2 us there.

3 Now, there are some interesting cases again from
4 South Carolina that are drug cases. And I am going to
5 address those. And I believe I handed a set of cases
6 up to Your Honor. You should have them at the bench.
7 There's State versus Bostic.

8 In State versus Bostick there was information that
9 the police -- or excuse me -- the police had
10 information that the defendant had been selling crack
11 prior to the incident which of course was an
12 un-adjudicated bad act. And that again was not proved
13 by clear and convincing evidence.

14 THE COURT: State versus --

15 MR. WELLBORN: Bostick, B-o-s-t-i-c-k 414 S.E.2d
16 175, 1992 Court of Appeals opinion.

17 THE COURT: I'm just looking. I don't see it in my
18 packet up here.

19 MR. WELLBORN: I'll be glad to hand you my copy.

20 THE COURT: Hold on.

21 MR. WELLBORN: The really interesting case though
22 are State versus Charles Carter and State versus
23 Campbell. Carter quotes Campbell.

24 THE COURT: What is the cite for Carter?

25 MR. WELLBORN: Cite for Carter is 476 S.E.2d 916,

1 1976 Supreme Court opinion. Court of Appeals opinion.
2 I apologize. And then State versus Campbell which is
3 found at 454 S.E.2d 899. And there the Court found
4 that the evidence was not admissible even though the
5 prior drug sales prior to the case on trial used a
6 similar sales technique and the Court said it was
7 inadmissible because basically it was propensity
8 evidence which is exactly what Lyle says you can't do.

9 The most recent case that I was able to find that
10 again, it relates just to the drug cases, is State
11 versus Tuffour, T-u-f-f-o-u-r, and that is found at
12 613 S.E.2d 814, also a Court of Appeals case. And
13 Tuffour is a drug case and it says -- it was a
14 reversal. In that case the defendant was convicted of
15 trafficking in crack. Let me get to the Lyle bit. So
16 there was an issue about admissibility of prior drug
17 sales and in that case what was reversed was an
18 alleged common scheme or plan where they were saying
19 it was a similar way of selling, similar way of doing
20 things and that case -- page -- starting on page three
21 of six, really going into it. Excuse me. On page
22 four is a very good overview of what is required.
23 Starting on the top it says "Prosecution of one crime
24 proof of another, direct substantive crimes are never
25 admissible unless there are some legal connection

1 between the two in which it can be said that one tends
2 to establish the other, or some essential fact.

3 Further noting, that evidence of prior acts must be
4 relevant to prove the alleged crime.

5 Here they're trying to say because Mr. Wylie
6 purchased Roxy 30's from Robert Adams in March it
7 therefor proves that Harold White in April possessed
8 oxycodone with intent to distribute. That's the
9 problem. That's the connection they're trying to
10 make. And again, that connection only comes if you
11 find by clear and convincing evidence as the first
12 threshold that because Robert -- because Mr. Wylie
13 says Robert Adams told him this therefore it has been
14 proven by clear and convincing evidence. I would
15 suggest to you that this is no facts that back that
16 proposition up.

17 The Court in Tuffour then goes on to say, the
18 appellant courts of this state have unwavering
19 exclusion of prior bad evidence to show criminal
20 propensity or that the defendant is bad person
21 unworthy of the presumption of innocence. It bears
22 reminder that Lyle and Rule 404(b) set forth a rule of
23 exclusion not inclusion. So, then they go into Lyle.
24 They talk about what is in fact a connection. What
25 isn't a connection. And then towards the bottom they

1 say we find instructive the case of State versus
2 Campbell where Campbell is charged and convicted of
3 distribution of crack cocaine. A police informant
4 conducted a purchase of crack cocaine from Campbell,
5 which resulted in the charged offense. Over
6 Campbell's objection, the trial court allowed Bellany
7 to testified pursuant to common scheme or plan that he
8 purchased crack cocaine from Campbell on two prior
9 occasions.

10 There you actually got somebody saying, yes, I
11 observed the bad act. In this case we don't have
12 that. We have somebody told me the bad act occurred,
13 but that person isn't here.

14 So we have no way to judge their credibility. You
15 don't, as the finder of fact, even though you are
16 charged with finding it either is or is not proved by
17 clear and convincing evidence.

18 The Court reversed saying, this Court stating,
19 here, the testimony is of prior drug sales using a
20 similar sales technique. However, this is not enough
21 to satisfy Lyle. Campbell was tried on a single
22 charge of distribution. The methodology of prior drug
23 sales is not relevant to prove this transaction. Et
24 cetera, et cetera.

25 So, Campbell you got actually arguably much more

1 direct connection to the case on trial and the Lyle
2 testimony then we do here. Here the connection is so
3 tenuous. We're saying that a month earlier, at a
4 different location, somebody purchased two pills or
5 three pills or four pills. He's a little vague on
6 when all that was and he purchased them not from my
7 client but some other individual but -- but that
8 individual said, well, I'm getting them for my client.
9 And somehow that is suppose to be direct evidence of
10 his guilt of possession with intent to distribute a
11 month later at a different location.

12 With all due respect this does not meet the Lyle
13 standard.

14 THE COURT: Mr. Wellborn, I will let Miss Joyner
15 speak.

16 I think the first issue is the hearsay, before we
17 even get to what your talking about. Why don't you
18 give me your argument on the issue whether the
19 statement that I was told the pills came from...

20 MR. WELLBORN: Absolutely. For hearsay to be
21 admissible it has to met a recognized exception. It's
22 not an admission of a party. It's not -- it does not
23 fit any of the standard hearsay exception under the
24 common law exceptions. Furthermore, you as a
25 gatekeeper judge, have to judge the reliability of the

1 statement. Is that statement reliable. What gives us
2 indicia of reliability from either Mr. Adams or Mr.
3 Wylie. How do we know that Mr. Adams is saying
4 something that is true.

5 Typically, you have something like a business
6 record exception or a dying declaration or multiple
7 things, or something that would make the statement
8 reliable. Or an admission of a party. That
9 traditionally has made the statement reliable and
10 these courts have been able to weigh that in. In this
11 case we have no indicia of reliability that when Mr.
12 Adams supposedly told Mr. Wylie he was getting these
13 blue pills from Harold White that in fact he was
14 actually getting these blue pills from Harold White.
15 That's the problem. And furthermore, your not even
16 getting a statement that Mr. Adams said Mr. White told
17 me that these blue pills are the best and give these
18 to Mr. Wylie, or these are for Mr. Wylie. It's simply
19 Mr. Adams saying, by the way, I am getting them from
20 Harold White. So, you can't get to admissible hearsay
21 unless you again make a finding on the record that
22 there is something inherently reliable about that
23 statement.

24 Furthermore, it does not meet any of the standard
25 hearsay exceptions. Now they're saying it is

1 conspiracy. But would I point out to the Court that a
2 conspiracy is not alleged under this indictment. He's
3 charged with possession with intent to distribute.
4 There is no conspiracy alleged. There argument is we
5 don't have to allege a conspiracy. Well, fine, but
6 before you can say something is admissible because
7 it's part of a conspiracy you at least have to suggest
8 or have to show something that a conspiracy exists and
9 there's no evidence of an existence of any conspiracy.

10 THE COURT: Miss Joyner.

11 MS. JOYNER: Your Honor, I think that --

12 THE COURT: If you don't mind, start with the
13 hearsay issue.

14 MS. JOYNER: Okay, certainly, sir. Your Honor, I
15 think that in this case what we have, is we have a
16 clear statement by the defendant's stepfather to Mr.
17 Wylie on more than one occasion while Mr. Wylie is
18 living in a tent behind the house and attempting to
19 purchase drugs from the defendant's stepfather. The
20 stepfather then says you have to wait for Pumpkin.
21 And Mr. Wylie identified the defendant as the person
22 he knew as Pumpkin. That he would be at the
23 stepfather's residence which is the same residence his
24 where his mother lives. And Mr. Wylie would be
25 waiting and would see the defendant get there, go into

1 the back room with his stepfather and/or his mother
2 and the stepfather would come out and give him the
3 pills that he had previously asked for when the
4 stepfather had said you have got to wait for Pumpkin.
5 So I think that what we have here we don't have to
6 have is a charge of conspiracy to go forward under
7 801(d)(2)(e) a statement is not hearsay if the
8 statement is offered against a party and under
9 subsection (e), the statement -- and is a statement by
10 a coconspirator of a party during and in furtherance
11 of an conspiracy.

12 I think the circumstances described by Mr. Wylie
13 are evidence that there is a conspiracy between his --
14 between the defendant's stepfather Robert Adams and
15 the defendant and that involves selling drugs to Mr.
16 Wylie. And so I think that what we have here when we
17 have the statement of Mr. Robert Adams and Mr. Wylie
18 that you have to wait for Pumpkin we have statements
19 of unindicted coconspirator within the language of the
20 rule and clearly in furtherance of the conspiracy to
21 distribute drugs.

22 So I think that the statement fits perfectly
23 within the rule and I believe those statements should
24 be admissible.

25 THE COURT: I am going to agree with Miss Joyner

1 on that. I think there is enough evidence of a
2 conspiracy without the statement. Without the
3 statement he says, you know, I asked for drugs.
4 Pumpkin shows up. Pumpkin goes in the back room,
5 meets with Adams. Adams comes out and hands me the
6 pills. I think that is enough evidence of a
7 conspiracy but then you can then use the coconspirator
8 exception. I will rule it is not hearsay. It's
9 admissible.

10 MR. WELLBORN: And Your Honor, just very briefly.
11 That still doesn't resolve the fact that it would
12 still be inadmissible under 403.

13 THE COURT: I agree. I will let Miss Joyner speak
14 to that now.

15 MS. JOYNER: Your Honor, I do take issue with some
16 -- I do not take issue with the clear and convincing
17 evidence standard. I agree. Case law is very clear
18 that we must prove the act by clear and convincing
19 evidence.

20 I do take issue with Mr. Wellborn's argument that
21 there's some sort of necessity element to the
22 admission of 404(b) evidence. I don't think that is
23 the case.

24 I distinguish -- some of the cases that he cited
25 are cases that are not drug cases and they're common

1 scheme or plan cases. And so, it's a little difficult
2 to see how they would apply or support his position.
3 Going to the case as he cited of Carter and Campbell.
4 Carter and Campbell were both distribution cases and
5 and I think that the admissibility of prior bad act
6 evidence at a single distribution I think that is a
7 completely different analysis than omission of prior
8 bad act for purposes of establishing intent under
9 404(b). So particularly we get to Carter. Carter was
10 a single distribution and they admitted the evidence
11 under the common scheme or plan which is not what we
12 are asking the Court to do. Two four is also going
13 forward under a common scheme or plan, and analysis is
14 very different between 404(b) depending on what type of
15 evidence you are trying to offer.

16 So we're trying to offer it as to intent and we
17 already previously handed --

18 THE COURT: Just for the record intent on what? I
19 think I know what you're going to say.

20 MS. JOYNER: The intent.

21 THE COURT: Intent on?

22 MS. JOYNER: The PWID, oxycodone. I already
23 handed Mr. Wellborn some cases earlier and I will hand
24 those up to the Court now. (Handed).

25 Wilson and King. And Wilson and King are both

1 possession with intent to distribute cases. And I
2 think these are more on point with what the State is
3 trying to do. So in State versus King the defendant
4 was charged with PWID crack and the Court upheld the
5 admission of testimony regarding prior drugs
6 transactions. I think in that case -- I think in King
7 it was his girlfriend, who testified about her drug
8 transactions with the defendant, as well as her
9 observations of the drug sales to others. The State
10 offered those in King as to intent. And the Court
11 found that was proper.

12 The same with State versus Wilson. It was also
13 PWID crack cocaine. Wilson's cite for the record is
14 345 S.C.(1). That is a South Carolina Supreme Court
15 decision from 2001. And they found that prior drug
16 transaction -- a prior drug deal two days prior was
17 properly admitted. It was relevant on the issue of
18 intent. And, Your Honor, I may have misspoke. This
19 Wilson is where the girlfriend testified. I'm not
20 sure if the witness in King was a girlfriend or not.
21 But it was a witness who testified.

22 THE COURT: The witness is Kirkin. I'm not sure
23 who Kirkin is.

24 MS. JOYNER: And I think I misspoke. I was
25 confusing the two; Wilson and the girlfriend.

1 THE COURT: It says they were friends.

2 If you don't mind let me give Mr. Wellborn an
3 opportunity to reply. Mr. Wellborn, you kept
4 referring to the propensity evidence. And I know you
5 said that you're over the inference weight, but that's
6 just an inference that can be rebutted. Isn't the
7 State entitled to put evidence in on intent?

8 MR. WELLBORN: If it is properly admissible
9 evidence, yes. But here's the problem. They're
10 intending to get in evidence of intent not by showing
11 that my client committed an act because there is
12 nobody who testified that can say that they can say
13 they observed my client or were aware of my client
14 committing a prior act. Just that somebody else told
15 them my client permitted that act.

16 So that's the problem. Every one of these cases
17 where it has been ruled -- where it has been ruled on
18 in prior acts have all involved somebody who testified
19 to the actual act. Not simply, hey, I heard the act
20 occurred. Trust me because I trust that guy who just
21 sold me Roxy 30 it must be true. That's problem
22 number 1.

23 Problem number two, the State is trying to say
24 that because my client in March at some undefined time
25 supposedly gave a Roxy 30 to Robert Adams and that's

1 all we have, is supposedly, because no one saw him do
2 it. No one has testified to him doing it. That
3 therefore in April, a month later, he possessed
4 oxycodone with intent to distribute. That is the
5 problem that we have. That connection is missing.
6 Lyle exceptions, if they're going with intent, you as
7 the judge have to believe that number one, the events
8 of March occurred as Mr. Wylie said they occurred.
9 And actually more than that. You got to not only
10 believe that Mr. Wylie was telling the truth when he
11 says Robert Adams told me this, but also that Robert
12 Adams was telling the truth and you have no way of
13 accessing that because Robert Adams has not been
14 before this Court.

15 You can't just guess at it and say, well, it must
16 be true because after all we think he's a
17 coconspirator. May be it is true. Maybe it's not
18 true. We don't know. But the record is devoid of any
19 way of accessing whether Robert Adams is telling the
20 truth. But you have to believe that Robert Adams was
21 telling the truth to Mr. Wylie and that on some point
22 in March Harold White gave Roxy 30's to Robert Adams
23 and therefore that intends to show that a month later
24 he possessed this oxycodone with intent to distribute
25 at a different location, different time, different

1 date.

2 THE COURT: Okay. But Roxy 30's are oxycodone.

3 MR. WELLBORN: According to --

4 THE COURT: He's right.

5 MR. WELLBORN: Yeah, they I think arguably they
6 have some oxycodone in them. But whether or not
7 that's true or not it doesn't matter. The point is
8 you still have to make a finding that, hey, its
9 absolutely true that Harold White gave Robert Adams
10 these Roxy 30's because that's what Robert Adams who
11 never testified told Mr. Wylie. You have to make that
12 finding and without you making that finding with
13 absolutely nothing in the record to support it, it
14 doesn't come in because it's not proved by clear and
15 convincing evidence. And then the next thing you have
16 to say is after I've made that finding I also find
17 that tends to show intent a month later of Mr. White.
18 And you have to make a further finding that the
19 evidence is more probative then it is prejudicial
20 under 403. You've got to go through all three steps
21 for this evidence to be admissible against my client
22 and therefore part of the record.

23 THE COURT: Mr. Wellborn, you argued that very
24 well. I rule against you. I think, had we just had
25 the statement that I got the pills from Pumpkin I

1 would have ruled in your favor. I don't think that's
2 clear and convincing. But we didn't just have the
3 statement. We had the eye-witness testimony that when
4 he would request the pill that Adams would say we need
5 to wait on Pumpkin. Pumpkin would show up. Pumpkin
6 would go meet with Adams and Adams would come out with
7 the pills and that in combination with the testimony I
8 do find it's clear and convincing and I do find
9 probative on the issue of intent and I find that it is
10 -- although it is prejudicial obviously to your
11 client, but I find the fact that he was supplying the
12 previously month, was supplying Roxicodone it is more
13 probative then prejudicial.

14 MR. WELLBORN: Thank you, Your Honor.

15 MS. JOYNER: Thank you, Your Honor.

16 THE COURT: Any other basis for objection to that
17 testimony Mr. Wellborn?

18 MR. WELLBORN: No, sir.

19 THE COURT: Okay. Counsel, unless you have
20 anything we can take up quickly Mr. Wellborn asked if
21 we could end by five o'clock today because he has a
22 phone call he has to be on. Unless there is a quick
23 matter I would suggest we end right now.

24 MS. JOYNER: Yes, sir.

25 THE COURT: Any objection?

1 MS. JOYNER: No, Your Honor.

2 THE COURT: Court will be in recess until 9:30
3 tomorrow morning.

4 (WHEREUPON, court was in recess and resumed on
5 3/13/19)

6 THE COURT: We have somewhat unusual situation in
7 this case. We came in this morning and defense
8 counsel proposed a stipulation to the remaining
9 factual issues in the case to move things along. And
10 defense counsel, I believe is that the idea was that
11 his primary argument is an appellant issue on my
12 search warrant ruling. Is that correct?

13 MR. WELLBORN: Appellant issue on the search
14 warrant issue and also a companion appellant issue on
15 the admission of the alleged Lyle of Mr. Wylie. On
16 two grounds.

17 Specifically the grounds of not proof by clear --
18 well, three grounds. Not proof by clear and
19 convincing evidence, hearsay, and does not meet any of
20 the requisite Lyle exceptions.

21 THE COURT: And as part of that discussion defense
22 counsel stated that he's been reading a novel during
23 the first day of trial and given that disclosure the
24 Court is concerned about PCR issues. So the Court is
25 inclined to grant a mistrial.

1 My understanding of the law I just read State
2 versus Bong (phonetics) is that a mistrial over the
3 defendant's objection can create a double jeopardy,
4 but a mistrial with the defendant's consent does not
5 create that issue. So I am going to ask the defendant
6 to please stand and then we will swear you in.

7 THE CLERK: Do you swear to tell the truth, the
8 whole truth and nothing but the truth, so help you
9 God?

10 THE DEFENDANT: I do.

11 THE COURT: Thank you.

12 Can you state your full name for the record.

13 THE DEFENDANT: Harold Gene White III.

14 THE COURT: Mr. White, now, do you understand what
15 a mistrial means?

16 THE DEFENDANT: Yes, Your Honor.

17 THE COURT: What's your understanding of what a
18 mistrial means?

19 THE DEFENDANT: That we have another trial.

20 THE COURT: Okay. And that is generally the case,
21 but there is an exception. My understanding of the
22 law is, if you, as a defendant, if you don't agree
23 with my grant of a mistrial you may be able to prevent
24 a new trial. Do you understand that?

25 THE DEFENDANT: Right.

1 THE COURT: You have a constitutional protection,
2 you can't be tried twice for the same offense and
3 because you're the defendant if I grant a mistrial
4 over your objection, you maybe able prevent a new
5 trial in that case. Okay.

6 So my question is, do you agree to a mistrial?

7 THE DEFENDANT: Yes, Your Honor.

8 THE COURT: You do.

9 Okay. And do understand that by agreeing to the
10 mistrial you are giving up a right to claim later down
11 the road that you can't be tried again.

12 THE DEFENDANT: Right.

13 THE COURT: Okay. Do you have any questions about
14 your rights? Do you understand why I am wanting to do
15 a mistrial in case?

16 THE DEFENDANT: Yes, Your Honor.

17 THE COURT: What was your understanding of what I
18 said.

19 THE DEFENDANT: Because of the defense counsel and
20 the novel.

21 THE COURT: Yes, sir. And you understand my
22 concern is down the road if you were convicted, if I
23 found you guilty, that might create an issue where you
24 could claim your lawyer was ineffective in a PCR. Do
25 you understand these terms?

1 Do you understand that my concern is that your
2 counsel's statement in chambers that he was reading a
3 novel yesterday?

4 THE DEFENDANT: Yes, Your Honor.

5 THE COURT: Okay. Do you have any questions about
6 what we're talking about mistrials and the right of a
7 second trial.

8 THE DEFENDANT: No.

9 THE COURT: Make sure one more time. Do you
10 understand if you agree to a mistrial, the trial is
11 over, but you will not be able to claim down the road
12 that you can't be tried a second time. You'll be able
13 to be tried a second time. Do you understand that?

14 THE DEFENDANT: Yes, Your Honor.

15 THE COURT: And you agree to the mistrial?

16 THE DEFENDANT: Yes.

17 THE COURT: Okay.

18 Miss Joyner, any further questions you'd like me
19 to ask Mr. White?

20 MS. JOYNER: No, sir, Your Honor. We request,
21 have it noted for the record, this is a motion on our
22 behalf. I know you already stated this is sui sponte.

23 THE COURT: Yes, I will state for the record this
24 is a sui sponte motion by the Court. And further, I
25 do think manifest necessity also applies here. I

1 think it applies because if I proceed with this trial
2 we're setting up a PCR and so I think the interest of
3 justice manifests necessity will require me granting a
4 mistrial.

5 MR. WELLBORN: Your Honor, if I might be heard
6 briefly.

7 THE COURT: Yes, sir.

8 MR. WELLBORN: And I understand the Court's
9 concern. I would like to state on the record the
10 following things: Number one, there were extensive
11 pretrial motions that related to the search warrant.
12 Testimony was taken. There was cross examination.
13 There was extensive legal argument on the search
14 warrants. At no time, I don't think that the Court
15 would perceive and I think the Court would acknowledge
16 that at no time I was inattentive during that process,
17 pretrial.

18 The first witness that testified under oath was *
19 Charity C from SLED, who indicated that she was -- had
20 basically no particular part of the search. Was in
21 the front porch area. At some point took possession
22 of I believe a phone and then handed it to someone
23 else. I did not question her because there was no
24 evidence related to drugs or anything else that came
25 in as a result of her testimony. But I did listen to

1 her testimony. The next person who testified was
2 Agent Melissa Skipper-Wallace of SLED and she went
3 into great detail of various rooms that she went in to
4 and there was a long colloquy with Miss Joyner about
5 various photographs. The vast majority of which she
6 was shown photographs where, quote, nothing of
7 evidentiary value was found. If I can paraphrase the
8 exact language. There were -- of course she did
9 mention that she found a pill bottle in the top drawer
10 of a dresser in the master bedroom under a TV. She
11 also found a bag of marijuana downstairs in the den on
12 top of the I believe it was either the ping pong or
13 air hockey table.

14 She was cross examined extensively, regarding her
15 lack of any knowledge of who put these items in these
16 two specific locations, who was present, who had
17 knowledge that they were there, who else would have
18 known that they were there. She also testified about
19 looking under the mattress and under the mattress
20 there were guns found but she did not know if they
21 were loaded or not. Again, there was cross
22 examination on who knew these guns were there, who was
23 present, etc., etc.. Clearly I was attentive during
24 her testimony because otherwise I wouldn't be able to
25 cross examine her on any of this stuff.

1 After that testimony, Mr. Whyllie testified. I was
2 not reading anything during Mr. Whyllie's testimony. I
3 was keenly interested in Mr. Whyllie's testimony. Mr.
4 Whyllie was sort of all over the map, not remembering
5 exact dates. It was only after Miss Joyner refreshed
6 him with his recollection with a statement that
7 someone else had written for him that he was able to
8 recall whatever he was talking about, had happened
9 prior to the death of the child which would have been
10 March 29th of 2017. Mr. Whyllie testified that
11 undefined times prior to that date he was sold roxie
12 30 pills. One pill, sometimes two at a time, by Mr.
13 Robert Adams. That he also testified in detail that
14 he never saw my client distribute, sell or do
15 anything. Actually never saw my client commit any bad
16 act. But that occurred from Mr. Adams that the source
17 of these pills came from my client. He was cross
18 examined to some extent because there really wasn't
19 much to get into with him.

20 There was a cross examination that occurred about
21 the difference between oxycodone and roxy 30's which I
22 cross examined him based on his experience as an
23 addict, what he knew.

24 We then went into to an extensive argument on the
25 Lyle issues, 404(b) issues, the hearsay issues.

1 Specifically what hearsay exception this applied or
2 would apply. The fact that there was an argument from
3 the State that this was a conspiracy, even though
4 conspiracy is not alleged against my client.
5 Conspiracy is not on trial.

6 Your Honor, found that met the hearsay exception
7 because its was a conspiracy. There was also an
8 argument extensively about whether or not this had
9 been proved clear and convincingly which is a Lyle
10 requirement, predicate condition under up Lyle. There
11 was also an argument as to which Lyle exception it
12 met.

13 Ultimately, the Court found the evidence was
14 admissible. During that argument there were cases
15 cited. I cited State versus Jones, State versus Davis
16 and I mention all this is clearly I was awake, alert
17 and attentive during his testimony.

18 THE COURT: I understand -- you told me in
19 chambers you were reading a novel. So were you
20 reading a novel yesterday?

21 MR. WELLBORN: I was.

22 THE COURT: Okay. During what parts of the
23 testimony?

24 MR. WELLBORN: Periodically throughout the
25 testimony.

1 THE COURT: Let me ask a question please. So there
2 were times when your attention was split between a
3 novel and what was going on in the court?

4 MR. WELLBORN: There were times when there were
5 people either testifying or Miss Joyner was looking
6 for various documents which she then intended to at
7 some point to get to questioning on where I went back
8 to the novel. That is correct.

9 THE COURT: So now are you saying you only read
10 the novel during breaks in Court when Miss Joyner was
11 looking for documents?

12 MR. WELLBORN: What I am saying, judge, is at that
13 no point was my representation in my opinion, and it
14 is just in my opinion, the Court obviously has to make
15 its own decision, but at no point did I feel as though
16 my representation was deficient.

17 THE COURT: What I thought you with telling me in
18 chambers was while witnesses were on the stand, you
19 were reading a novel. Is that the case?

20 MR. WELLBORN: There were portions of times while
21 witnesses were on the stand I was looking at the
22 novel. I was also listening.

23 THE COURT: Your attention was split.

24 MR. WELLBORN: Well, that's one way of putting it.
25 Another way of putting it is I am looking at a page

1 and I am also just like I might be looking at my notes
2 as I am listening to someone testifying during a trial
3 or I might be looking up a case as I listen.

4 I understand the Court's concern. Obviously the
5 Court is concerned. Obviously my client does not
6 object to the mistrial, but I just wanted to state
7 where I was yesterday because I don't want the record
8 to reflect I was doing nothing but reading a novel
9 throughout the trial, because clearly anybody who
10 observed the cross examination, the oral arguments or
11 anything else would know that my attention was drawn
12 to the case.

13 THE COURT: Anything further from the State?

14 MS. JOYNER: Your Honor, just according to Mr.
15 Wellborn he was paying close attention to what was
16 going on in Court, but the Court is aware that the
17 State does wish that we still keep going in the trial
18 but we understand the Court's concern.

19 THE COURT: I will take a short recess and I will
20 come back. Give me a couple of minutes to think about
21 this.

22 (WHEREUPON, there was a brief recess.)

23 THE COURT: Please be seated.

24 Okay. Just for the record, Mr. Wellborn, you do
25 not object to my granting of a mistrial?

1 MR. WELLBORN: Well, my client doesn't object and
2 and on behalf of my client I can represent that he
3 does not object. It is not my decision.

4 THE COURT: Correct.

5 THE COURT: Mr. White, you do not object to the
6 granting of a mistrial in this case?

7 MR. WHITE: Yes, Your Honor.

8 THE COURT: For the record, Miss Joyner, does the
9 State object to a mistrial?

10 MS. JOYNER: We do, Your Honor. We would prefer
11 to go forward.

12 THE COURT: I understand. I have given this quite
13 a bit of thought and I don't think it's fair to set up
14 a PCR which may not be successful. I understand what
15 Mr. Wellborn said about him being attentive. Mr.
16 Wellborn has testified and has stated in open Court he
17 was reading a novel yesterday. I don't think I want
18 this trial to go forward and I understand there is no
19 objection from the defense. I don't see any bar to
20 retrial, so I am going to grant the mistrial.

21 MR. WELLBORN: Thank you, Your Honor.

22 MS. JOYNER: Thank you, Your Honor.

23 Your Honor, while we are on the record, is the
24 Order complete regarding the trafficking hydrocodone.

25 THE COURT: It's halfway complete. It is being

1 worked on and its taking me quite a bit of time. It
2 is being worked on.

3 MS. JOYNER: I would assume that my clock begins
4 to run at the entry of the Order. That's my only
5 concern.

6 MR. WELLBORN: Judge, any Order you issue related
7 to the introduction of evidence or the suppression of
8 the charge I think will all potentially be heard de
9 novo.

10 THE COURT: I do not agree with you.

11 I will be happy to hear from you all on that.
12 Evidentiary issues are not final until they are ruled
13 on by the trial judge.

14 MR. WELLBORN: That is correct.

15 THE COURT: But my ruling was dismissing the
16 charge.

17 MR. WELLBORN: And I concede that. I thought
18 about it that way but I think you are right under
19 State versus Regina McKnight that would be an order
20 that would preclude the State from going forward, so I
21 think you are correct about that.

22 THE COURT: And then, yes, my understanding of the
23 rules is the written order is what starts your clock.
24 I orally indicated how I am going to rule but the
25 written order is forthcoming.

1 MS. JOYNER: Thank you, Your Honor.

2 THE COURT: Thank you, counsel.

3 (END OF TRANSCRIPT)

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C E R T I F I C A T E

I, the undersigned Aileen Butler, Official Court Reporter for the 16TH 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 in the captioned case, in the Circuit Court for York County, South Carolina, on the 12-13th day of March, 2019.

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

April 5, 2019

Aileen Butler

SOUTH CAROLINA LAW ENFORCEMENT DIVISION

FORENSIC SERVICES LABORATORY REPORT

HENRY D. MCMASTER
Governor



MARK A. KEEL
Chief

Jason Wells
South Carolina Law Enforcement Division
4400 Broad River Road
Columbia, SC 29210

DRUG ANALYSIS

April 25, 2017
SLED LAB: L17-05897
Your Case No: 55170056
Incident Date: 04/17/2017
[S] Harold White, III
[S] Julisa White

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

Mark A. Keel, Chief
South Carolina Law Enforcement Division

PARTIAL

ITEMS OF EVIDENCE:

Sub # 1 On April 19, 2017, items were received from Jason Wells of the South Carolina Law Enforcement Division.

Item: 2.1 Plastic bag containing compressed plant material.

RESULTS:

Marijuana (C-I) found in the sample tested; 1 tested. Net weight: 473 +/- 1 grams (16.69 +/- 0.04 ounces). Confidence level for the weight is 99.7%.

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



A handwritten signature in black ink, appearing to read "Douglas Robinson".

Douglas Robinson
Forensic Scientist



AN ASCLD/LAB-International ACCREDITED TESTING LABORATORY SINCE 09/19/2014

P.O. Box 21398, Columbia, South Carolina 29221-1398 Phone (803) 896-7300 Fax (803) 896-7351

FORM A

**REPORT OF ANALYSIS FOR
CONTROLLED DANGEROUS SUBSTANCES
(Substance Found)**

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

I have 9 years and 1 months experience as a Forensic Scientist. During that period, I have been qualified as an expert witness and testified in court no less than 25 times. I have received the following training as a Forensic Scientist.

B.S. Chemistry, University of South Carolina, Columbia, SC 2003
Environmental Chemical Analyst, GEL Laboratories, Charleston, SC 2005-2008
South Carolina Law and Legal Training, South Carolina Criminal Justice Academy, 2008
Training in Forensic Drug Analysis, South Carolina Law Enforcement Division, 2008
Drug Enforcement Administration, Forensic Chemist Seminar, 2009

Sub # 1 On April 19, 2017, items were received from Jason Wells of the South Carolina Law Enforcement Division.

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

☒ Chemical Test	☐ Gas Chromatography
☒ Microscopic Exam	☐ Mass Spectroscopy
☐ Infrared Spectroscopy	☐ Physical Test
☐ Visual Examination	☐ Published Literature

See Drug Analysis Report L17-05897 for Results.

Forensic Scientist



Douglas Robinson

Date: April 25, 2017



AN ASCLD/LAB-*International* ACCREDITED TESTING LABORATORY SINCE 09/19/2014
P.O. Box 21398, Columbia, South Carolina 29221-1398 Phone (803) 896-7300 Fax (803) 896-7351

SOUTH CAROLINA LAW ENFORCEMENT DIVISION

FORENSIC SERVICES LABORATORY REPORT

HENRY D. MCMASTER
Governor



MARK A. KEEL
Chief

Jason Wells
South Carolina Law Enforcement Division
4400 Broad River Road
Columbia, SC 29210

DRUG ANALYSIS
April 25, 2017
SLED LAB: L17-05897
Your Case No: 55170056
Incident Date: 04/17/2017
[S] Harold White, III
[S] Julisa White

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

Mark A. Keel, Chief
South Carolina Law Enforcement Division

PARTIAL

ITEMS OF EVIDENCE:

- Sub # 1 On April 19, 2017, items were received in B275204 from Jason Wells of the South Carolina Law Enforcement Division.
- Item: 1.1** Zip lock bag containing eighty-eight (88) oval white tablets (WATSON 3203).
RESULTS:
Hydrocodone and Acetaminophen (C-II) found in the sample tested; 1 tested.
- Item: 1.2** Zip lock bag containing two (2) round peach tablets.
RESULTS:
Alprazolam (C-IV) found in the sample tested; 1 tested.
- Item: 1.3** Zip lock bag containing fifty (50) oval white tablets (IBU 800).
RESULTS:
Ibuprofen (Rx) indicated in the sample tested; 1 tested.



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P.O. Box 21398, Columbia, South Carolina 29221-1398 Phone (803) 896-7300 Fax (803) 896-7351



- Item: 1.4** Prescription bottle containing...
- Item: 1.4.1** Thirty-seven (37) oval white tablets (IBU 800).
RESULTS:
Ibuprofen (Rx) indicated in the sample tested; 1 tested.
- Item: 1.4.2** Four (4) green capsules containing powder substance.
RESULTS:
No controlled substance(s) detected in the sample tested; 3 tested.
- Item: 1.4.3** Fifteen (15) round white tablets.
RESULTS:
Oxycodone (C-II) found in the sample tested; 1 tested.
- Item: 1.5** Zip lock bag containing prescription bottle containing ten (10) round yellow tablets.
RESULTS:
Cyclobenzaprine (Rx) found in the sample tested; 1 tested.
- Item: 1.6** Zip lock bag containing...
- Item: 1.6.1** Manila envelope containing glassine packet containing powder substance.
RESULTS:
No controlled substance(s) detected in the sample tested; 1 tested.
- Item: 1.6.2** Plastic corner bag containing powder substance.
RESULTS:
Cocaine (C-II) found in the sample tested; 1 tested. Net weight: 0.81 +/- 0.01 grams (12.49 +/- 0.15 grains). Confidence level for the weight is 99.7%.



AN ASCLD/LAB-International ACCREDITED TESTING LABORATORY SINCE 09/19/2014

P.O. Box 21398, Columbia, South Carolina 29221-1398 Phone (803) 896-7300 Fax (803) 896-7351

- Item: 1.7** Plastic sandwich bag containing plant material.
RESULTS:
Marijuana (C-I) found in the sample tested; 1 tested. Net weight: 6.03 +/- 0.01 grams (0.2128 +/- 0.0004 ounces). Confidence level for the weight is 99.7%.
- Item: 1.8** Zip lock bag containing plastic sandwich bag containing plant material.
RESULTS:
Marijuana (C-I) found in the sample tested; 1 tested. Net weight: 9.84 +/- 0.01 grams (0.3473 +/- 0.0004 ounces). Confidence level for the weight is 99.7%.

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



Douglas Robinson
Forensic Scientist



AN ASCLD/LAB-International ACCREDITED TESTING LABORATORY SINCE 09/19/2014

P.O. Box 21398, Columbia, South Carolina 29221-1398 Phone (803) 896-7300 Fax (803) 896-7351

FORM A**REPORT OF ANALYSIS FOR
CONTROLLED DANGEROUS SUBSTANCES
(Substance Found)**

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I have 9 years and 1 months experience as a Forensic Scientist. During that period, I have been qualified as an expert witness and testified in court no less than 25 times. I have received the following training as a Forensic Scientist.

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

☒ Chemical Test	☒ Gas Chromatography
☒ Microscopic Exam	☒ Mass Spectroscopy
☐ Infrared Spectroscopy	☐ Physical Test
☒ Visual Examination	☒ Published Literature

See Drug Analysis Report L17-05897 for Results.

Forensic Scientist



Douglas Robinson

Date: April 25, 2017



AN ASCLD/LAB-International ACCREDITED TESTING LABORATORY SINCE 09/19/2014
P.O. Box 21398, Columbia, South Carolina 29221-1398 Phone (803) 896-7300 Fax (803) 896-7351

STATE OF SOUTH CAROLINA
COUNTY OF YORK

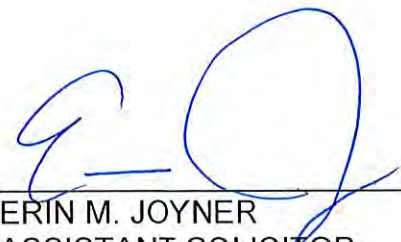
INDICTMENT

At a Court of General Sessions, convened on January 20, 2022, the Grand Jurors of York County present upon their oath:

POSSESSION WITH INTENT TO DISTRIBUTE HYDROCODONE

The defendant, Harold Gene White III, did on or about April 17, 2017, in York County, South Carolina, manufacture, distribute, dispense, deliver, purchase, aid, abet, attempt, or conspire to manufacture, distribute, dispense, deliver, or purchase, or possess with the intent to manufacture, distribute, dispense, deliver, or purchase hydrocodone, a schedule II controlled substance narcotic, all in violation of Section 44-53-370, Code of Laws South Carolina (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


ERIN M. JOYNER
ASSISTANT SOLICITOR

WITNESSES

SLED

Witnessing Officer: Baird

ARREST WARRANT NUMBER

Direct Indictment

ACTION OF GRAND JURY

TRUE BILL

Heather Bachinska 1/20/2022
Foreperson of Grand Jury

Date:

VERDICT

Guilty
Sgt. M. Sullivan 4/28/22
Foreperson of Petit Jury
Date:

Direct Indictment

DOCKET NO. 2022-GS-46-00076

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

JANUARY 20, TERM 2022

THE STATE

VS.

HAROLD GENE WHITE, III

INDICTMENT FOR

POSSESSION WITH INTENT TO
DISTRIBUTE HYDROCODONE

SC Code: § 44-53-370
CDR Code: 0184

After being fully advised as to my legal
rights, I hereby waive presentment to
the Grand Jury.

Defendant

I hereby appear in my own proper
person and plead guilty to the within
indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA
COUNTY OF YORK

INDICTMENT

At a Court of General Sessions, convened on October 11, 2018, the Grand Jurors of York County present upon their oath:

POSSESSION OF COCAINE

The defendant, Harold Gene White III, did on or about April 17, 2017, in York County, South Carolina, knowingly or intentionally possess cocaine, all in violation of Section 44-53-370, Code of Laws of South Carolina (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



ERIN M. JOYNER
ASSISTANT SOLICITOR

WITNESSES

DOCKET NO. 2018-GS-46-03874

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

SLED

Witnessing Officer: Baird

County of York

Defendant

ARREST WARRANT NUMBER

2018A4620300519

COURT OF GENERAL SESSIONS

OCTOBER 11, TERM 2018

I hereby appear in my own proper person and plead guilty to the within indictment or to

ACTION OF GRAND JURY

THE STATE

Defendant

TRUE BILL

HAROLD GENE WHITE, III

Witness:

Foreperson of Grand Jury
Date: 10-11-18

VERDICT

INDICTMENT FOR

C.C.C. PLS. AND G.S.

POSSESSION OF COCAINE

Foreperson of Petit Jury
Date: 4/29/22

SC Code: § 44-53-370
CDR Code: 3012

STATE OF SOUTH CAROLINA
COUNTY OF YORK

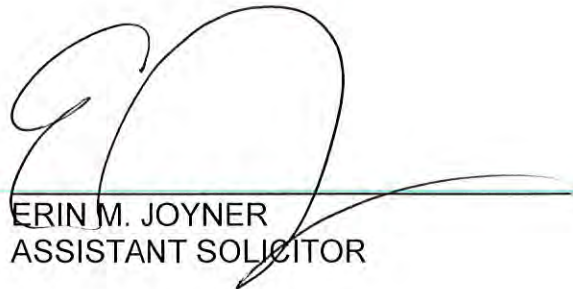
INDICTMENT

At a Court of General Sessions, convened on October 11, 2018, the Grand Jurors of York County present upon their oath:

POSSESSION WITH INTENT TO DISTRIBUTE MARIJUANA

The defendant, Harold Gene White III, did on or about April 17, 2017, in York County, South Carolina, manufacture, distribute, dispense, deliver, purchase, aid, abet, attempt, or conspire to manufacture, distribute, dispense, deliver, or purchase, or possess with the intent to manufacture, distribute, dispense, deliver, or purchase marijuana, a schedule I controlled substance, all in violation of Section 44-53-370, Code of Laws of South Carolina (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



ERIN M. JOYNER
ASSISTANT SOLICITOR

WITNESSES

DOCKET NO. 2018-GS-46-03876

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

3 SLED
00

Witnessing Officer: *Baird*

The State of South Carolina
County of York

Defendant

ARREST WARRANT NUMBER

COURT OF GENERAL SESSIONS

OCTOBER 11, TERM 2018

2018A4620300522

I _____
hereby appear in my own proper
person and plead guilty to the within
indictment or to

ACTION OF GRAND JURY

THE STATE

TRUE BILL

Defendant

ML Baird
Foreperson of Grand Jury
Date: *10-11-18*

HAROLD GENE WHITE, III

Witness:

VERDICT

INDICTMENT FOR

**POSSESSION WITH INTENT TO
DISTRIBUTE MARIJUANA**

C.C.C. PLS. AND G.S.

Baird
Scott H. Miller
Foreperson of Petit Jury
Date: *4/29/22*

SC Code: § 44-53-370
CDR Code: 0186

STATE OF SOUTH CAROLINA
COUNTY OF YORK

INDICTMENT

At a Court of General Sessions, convened on October 11, 2018, the Grand Jurors of York County present upon their oath:

POSSESSION WITH INTENT TO DISTRIBUTE OXYCODONE

The defendant, Harold Gene White III, did on or about April 17, 2017, in York County, South Carolina, manufacture, distribute, dispense, deliver, purchase, aid, abet, attempt, or conspire to manufacture, distribute, dispense, deliver, or purchase, or possess with the intent to manufacture, distribute, dispense, deliver, or purchase Oxycodone, a schedule II controlled substance narcotic, all in violation of Section 44-53-370, *Code of Laws of South Carolina* (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



ERIN M. JOYNER
ASSISTANT SOLICITOR

WITNESSES

15 SLED

15 Witnessing Officer: Baird

Direct Indictment
DOCKET NO. 2018-GS-46-07327

The State of South Carolina

County of York

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

ARREST WARRANT NUMBER

COURT OF GENERAL SESSIONS

OCTOBER 11, TERM 2018

Direct Indictment

I
hereby appear in my own proper person and plead guilty to the within indictment or to

ACTION OF GRAND JURY

THE STATE

TRUE BILL

Defendant

mg Barnett

Foreperson of Grand Jury

Date: 10-11-18

HAROLD GENE WHITE, III

Witness:

VERDICT

INDICTMENT FOR

POSSESSION WITH INTENT TO
DISTRIBUTE OXYCODONE

C.C.C. PLS. AND G.S.

State of South Carolina
Possession

Foreperson of Petit Jury

Date:

SC Code: § 44-53-370
CDR Code: 0184

4/28/22

STATE OF SOUTH CAROLINA

COUNTY OF YORK

STATE

VS.

HAROLD GENE WHITE, III

AKA:

Race: B Sex: M Age: 31DOB: 90 SS# [REDACTED]Address: Amanda LaneCity, State, Zip: Rock Hill, SC 29730DL#* [REDACTED]*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the above indictment comes now the Defendant who was

☒ CONVICTED OF or ☐ PLEADSTO: Possession with Intent to Distribute Hydrocodone 2nd Offense (5-30 YEARS &/OR \$30,000)In violation of § 44-53-370 of the S.C. Code of Laws, bearing CDR Code # 0184
☒ NON-VIOLENT ☐ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ § 17-25-45
 (CSC w/minor 1st or CSC w/minor 3rd)

 The charge is: ☒ As indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (def.'s initials)

 The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State. (10 years)

ATTEST:

/s Erin M. Joyner 	69419	/s Harold Gene White, III	/s Christopher A. Wellborn	11914
Solicitor	SC Bar #	Defendant	Attorney for Defendant	SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Correction ☐ County Detention Center,for a determinate term of 7 days/months/years/Time Served ☐ Youthful Offender Act not to exceed ____ years

and/or to pay a fine of \$____; provided that upon the service of ____ days/months/years/Time Served and or payment

of \$____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

The sentence shall run

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by SCDOC.393 days/months☐ To include time spent on monitored house arrest prior to trial and sentencing.☐ The Defendant Shall be Released from County Detention Center.

Pursuant to 18 U.S.C. § 922 and § 16-25-30 it is unlawful for a person convicted of a violation of § 16-25-20 or § 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2022-GS-46-00076A/W#: 2022-GS-46-00076Date of Offense: 04/17/2017S.C. Code §: 44-53-370CDR Code #: 0184

SENTENCE SHEET

STATE VS. Harold Gene White, III

INDICTMENT/CASE#:

2022-GS-46-00076

SPECIAL CONDITIONS:☐ **PTUP** after _____ months/years**And Other Terms Listed Below:**

- ☐ Substance Abuse Counseling ☐ Completion of GED ☐ Random Drug/Alcohol Testing
☐ Attend Voc. Rehab. Or Job Corp ☐ No Contact with Victim ☐ Domestic Violence Intervention Program
☐ Mental Health Counseling ☐ May serve W/E beginning: _____
☐ Sex Offender Registry pursuant to S.C. Code § 23-3-430 ☐ Public Service Employment _____ days/hours
☐ Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.
☐ Other: _____

☐ **RESTITUTION** ☐ **Deferred** ☐ **Def. Waives Hearing** ☐ **Ordered**

Total \$ _____ plus 20% fee: _____ \$ _____

Payment Terms: _____ ☐ Set by SCDPPPS

Recipient: _____

***Fine:**

Fine may be pd. in equal consecutive weekly/monthly pmts. of	\$ _____	Beginning	\$ _____
§14-1-206 (Assessments 107.5%)			\$ _____
§14-1-211 (A)(1)(Conv. Surcharge)	\$100		\$ 100.00
§14-1-211 (A)(2)(DUI Surcharge)	\$100		\$ _____
§56-5-2995 (DUI Assessment)	\$12		\$ _____
§56-1-286 (DUI Breath Test)	\$25		\$ _____
§14-1-212 (Law Enforce. Funding)	\$25		\$ 25.00
§14-1-213 (Drug Court Surcharge)	\$150		\$ 150.00
§34-11-70(b)and(c), and 34-11-90(c)and(d) (Admin Fraud Check Court Costs)	\$41		\$ _____
§50-21-114 (BUI Breath Test Fee)	\$50		\$ _____
§56-5-2942(J) (Vehicle Assessment)	\$40/ea		\$ _____
3% to County (if paid in installments)	TBD		\$ _____

☐ Appointed PD or appointed other counsel, Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees

☐ § 17-3-30(B) Unpaid Application Fee to be paid to the Public Defender Fund

TOTAL \$ 275.00

 Clerk of Court/Deputy Clerk:
 Court Reporter:

David Hamilton
DCRP

 Presiding Judge:
 Judge Code:
 Sentence Date:

21168 Gibbons
4/28/22

STATE OF SOUTH CAROLINA

COUNTY OF YORK

STATE

VS.

HAROLD GENE WHITE, III

AKA:

Race: B Sex: M Age: 31DOB: 00 SS# Address: Amanda LaneCity, State, Zip: Rock Hill, SC 29730DL#*

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2018-GS-46-03874A/W#: 2018A4620300519Date of Offense: 04/17/2017S.C. Code §: 44-53-370CDR Code #: 3012**SENTENCE SHEET***CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the above indictment comes now the Defendant who was

☒ CONVICTED OF or ☐ PLEADSTO: Possession of Cocaine 2nd Offense (NMT 5 YEARS &/OR \$7,500)In violation of § 44-53-370 of the S.C. Code of Laws, bearing CDR Code # 3012
☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ § 17-25-45
 (CSC w/minor 1st or CSC w/minor 3rd)

 The charge is: ☒ As indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (def.'s initials)
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

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and/or to pay a fine of \$____; provided that upon the service of ___ days/months/years/Time Served and or payment

of \$____; plus costs and assessments as applicable*; the balance is suspended with **probation** for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

The sentence shall run

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by SCDOC.393 days months
☐ To include time spent on monitored house arrest prior to trial and sentencing.☐ The Defendant Shall be Released from County Detention Center.

Pursuant to 18 U.S.C. § 922 and § 16-25-30 it is unlawful for a person convicted of a violation of § 16-25-20 or § 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:☐ **PTUP** after _____ months/years**And Other Terms Listed Below:**

- ☐ Substance Abuse Counseling ☐ Completion of GED ☐ Random Drug/Alcohol Testing
- ☐ Attend Voc. Rehab. Or Job Corp ☐ No Contact with Victim ☐ Domestic Violence Intervention Program
- ☐ Mental Health Counseling ☐ May serve W/E beginning: _____
- ☐ Sex Offender Registry pursuant to S.C. Code § 23-3-430 ☐ Public Service Employment _____ days/hours
- ☐ Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.
- ☐ Other: _____

☐ **RESTITUTION** ☐ **Deferred** ☐ **Def. Waives Hearing** ☐ **Ordered**

:

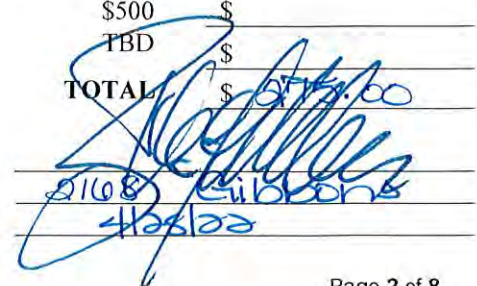
Total \$ _____ plus 20% fee: _____ \$ _____

Payment Terms: _____ ☐ Set by SCDPPPS

Recipient: _____

***Fine:**

Fine may be pd. in equal consecutive weekly/monthly pmts. of	\$ _____	Beginning	\$ _____
§14-1-206 (Assessments 107.5%)			\$ _____
§14-1-211 (A)(1)(Conv. Surcharge)		\$100	\$ 100.00
§14-1-211 (A)(2)(DUI Surcharge)		\$100	\$ _____
§56-5-2995 (DUI Assessment)		\$12	\$ _____
§56-1-286 (DUI Breath Test)		\$25	\$ _____
§14-1-212 (Law Enforce. Funding)		\$25	\$ 25.00
§14-1-213 (Drug Court Surcharge)		\$150	\$ 150.00
§34-11-70(b)and(c), and 34-11-90(c)and(d) (Admin Fraud Check Court Costs)		\$41	\$ _____
§50-21-114 (BUI Breath Test Fee)		\$50	\$ _____
§56-5-2942(J) (Vehicle Assessment)		\$40/ea	\$ _____
3% to County (if paid in installments)		TBD	\$ _____
☐ Appointed PD or appointed other counsel, Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees		\$500	\$ _____
☐ § 17-3-30(B) Unpaid Application Fee to be paid to the Public Defender Fund		TBD	\$ _____

TOTAL \$ 675.00Clerk of Court/Deputy Clerk:
Court Reporter:David Hamilton
DCRPPresiding Judge:
Judge Code:
Sentence Date:


2168 Gibbons
4/25/22

STATE OF SOUTH CAROLINA

COUNTY OF YORK

STATE

VS.

HAROLD GENE WHITE, III

AKA:

Race: B Sex: M Age: 31DOB: 90 SS# [REDACTED]Address: Amanda LaneCity, State, Zip: Rock Hill, SC 29730DL#* [REDACTED] SID# [REDACTED]

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2018-GS-46-03876A/W#: 2018A4620300522Date of Offense: 04/17/2017S.C. Code §: 44-53-370CDR Code #: 0186

SENTENCE SHEET

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the above indictment comes now the Defendant who was

☒ CONVICTED OF or ☐ PLEADSTO: Possession with Intent to Distribute Marijuana 1st Offense (NMT 5 YEARS &/OR \$5,000)In violation of § 44-53-370 of the S.C. Code of Laws, bearing CDR Code # 0186
☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ § 17-25-45
 (CSC w/minor 1st or CSC w/minor 3rd)

 The charge is: ☒ As indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (def.'s initials)
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

/s/ Erin M. Joyner	69419	/s/ Harold Gene White, III	/s/ Christopher A. Wellborn	11914
Solicitor	SC Bar #	Defendant	Attorney for Defendant	SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Correction ☐ County Detention Center,for a determinate term of 2 days/months/years/Time Served ☐ Youthful Offender Act not to exceed ____ years

and/or to pay a fine of \$____; provided that upon the service of ____ days/months/years/Time Served and or payment

of \$____; plus costs and assessments as applicable*; the balance is suspended with **probation** for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

The sentence shall run

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by SCDOC.☐ 393 days/months
To include time spent on monitored house arrest prior to trial and sentencing.☐ The Defendant Shall be Released from County Detention Center.

Pursuant to 18 U.S.C. § 922 and § 16-25-30 it is unlawful for a person convicted of a violation of § 16-25-20 or § 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:☐ **PTUP** after _____ months/years**And Other Terms Listed Below:**

- ☐ Substance Abuse Counseling ☐ Completion of GED ☐ Random Drug/Alcohol Testing
- ☐ Attend Voc. Rehab. Or Job Corp ☐ No Contact with Victim ☐ Domestic Violence Intervention Program
- ☐ Mental Health Counseling ☐ May serve W/E beginning: _____
- ☐ Sex Offender Registry pursuant to S.C. Code § 23-3-430 ☐ Public Service Employment _____ days/hours
- ☐ Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.
- ☐ Other: _____

☐ **RESTITUTION** ☐ **Deferred** ☐ **Def. Waives Hearing** ☐ **Ordered**

:

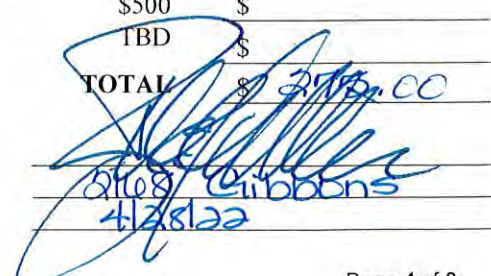
Total \$ _____ plus 20% fee: _____ \$ _____

Payment Terms: _____ ☐ Set by SCDPPPS

Recipient: _____

***Fine:**

Fine may be pd. in equal consecutive weekly/monthly pmts. of	\$ _____	Beginning	\$ _____
§14-1-206 (Assessments 107.5%)			\$ _____
§14-1-211 (A)(1)(Conv. Surcharge)	\$100		\$ <u>100.00</u>
§14-1-211 (A)(2)(DUI Surcharge)	\$100		\$ _____
§56-5-2995 (DUI Assessment)	\$12		\$ _____
§56-1-286 (DUI Breath Test)	\$25		\$ _____
§14-1-212 (Law Enforce. Funding)	\$25		\$ <u>25.00</u>
§14-1-213 (Drug Court Surcharge)	\$150		\$ <u>150.00</u>
§34-11-70(b)and(c), and 34-11-90(c)and(d) (Admin Fraud Check Court Costs)	\$41		\$ _____
§50-21-114 (BUI Breath Test Fee)	\$50		\$ _____
§56-5-2942(J) (Vehicle Assessment)	\$40/ea		\$ _____
3% to County (if paid in installments)	TBD		\$ _____
☐ Appointed PD or appointed other counsel, Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees	\$500		\$ _____
☐ § 17-3-30(B) Unpaid Application Fee to be paid to the Public Defender Fund	TBD		\$ _____

TOTAL \$ 375.00Clerk of Court/Deputy Clerk:
Court Reporter:David Hamilton
DCRPPresiding Judge:
Judge Code:
Sentence Date:


2108 Gibbons
4/28/22

STATE OF SOUTH CAROLINA

COUNTY OF YORK

STATE

VS.

HAROLD GENE WHITE, III

AKA:

Race: B Sex: M Age: 31DOB: 090 SS# [REDACTED]Address: Amanda LaneCity, State, Zip: Rock Hill, SC 29730DL#* [REDACTED] SID# [REDACTED]

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2018-GS-46-07327A/W#: 2018-GS-46-07327Date of Offense: 04/17/2017S.C. Code §: 44-53-370CDR Code #: 0184

SENTENCE SHEET

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the above indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADSTO: Dist/PWID I-II Narc/Heroin 2nd Offense (5-30 YEARS &/OR \$30,000) Possession of Oxycodone (6-51 2/10/52)In violation of § 44-53-370 of the S.C. Code of Laws, bearing CDR Code # 0184 0177☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ § 17-25-45
(CSC w/minor 1st or CSC w/minor 3rd)The charge is: ☐ As indicted, ☒ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (def.'s initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

/s Erin M. Joyner	69419	/s Harold Gene White, III	/s Christopher A. Wellborn	11914
Solicitor	SC Bar #	Defendant	Attorney for Defendant	SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Correction ☐ County Detention Center,for a determinate term of 2 days/months/years/Time Served ☐ Youthful Offender Act not to exceed ___ years

and/or to pay a fine of \$____; provided that upon the service of ___ days/months/years/Time Served and or payment

of \$____; plus costs and assessments as applicable*; the balance is suspended with **probation** for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

The sentence shall run

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by SCDOC.393 days/months☐ To include time spent on monitored house arrest prior to trial and sentencing.☐ The Defendant Shall be Released from County Detention Center.

Pursuant to 18 U.S.C. § 922 and § 16-25-30 it is unlawful for a person convicted of a violation of § 16-25-20 or § 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:☐ **PTUP** after _____ months/years**And Other Terms Listed Below:**☐ Substance Abuse Counseling☐ Completion of GED☐ Random Drug/Alcohol Testing☐ Attend Voc. Rehab. Or Job Corp☐ No Contact with Victim☐ Domestic Violence Intervention Program☐ Mental Health Counseling☐ May serve W/E
beginning: _____☐ Sex Offender Registry pursuant to S.C. Code § 23-3-430☐ Public Service Employment _____ days/hours☐ Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.☐ Other: _____☐ **RESTITUTION** ☐ **Deferred** ☐ **Def. Waives Hearing** ☐ **Ordered**

:

Total \$ _____ plus 20% fee: _____ \$ _____

Payment Terms: _____

☐ Set by SCDPPPS

Recipient: _____

*Fine:

Fine may be pd. in equal consecutive weekly/monthly pmts. of \$ _____ Beginning _____

§14-1-206 (Assessments 107.5%)

§14-1-211 (A)(1)(Conv. Surcharge)

§14-1-211 (A)(2)(DUI Surcharge)

§56-5-2995 (DUI Assessment)

§56-1-286 (DUI Breath Test)

§14-1-212 (Law Enforce. Funding)

§14-1-213 (Drug Court Surcharge)

§34-11-70(b)and(c), and 34-11-90(c)and(d) (Admin Fraud Check Court Costs)

§50-21-114 (BUI Breath Test Fee)

§56-5-2942(J) (Vehicle Assessment)

3% to County (if paid in installments)

☐ Appointed PD or appointed other counsel, Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees☐ § 17-3-30(B) Unpaid Application Fee to be paid to the Public Defender Fund

\$

\$

\$100

\$

\$100

\$

\$12

\$

\$25

\$

\$25

\$

\$150

\$

\$41

\$

\$50

\$

\$40/ea

\$

TBD

\$

\$500

\$

TBD

\$

TOTAL

\$

Clerk of Court/Deputy Clerk:
Court Reporter:David Hamilton
DCRPPresiding Judge:
Judge Code:
Sentence Date:2108 Gibbons
4/28/22

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,

RECEIVED

Mar 13 2024

SC Court of Appeals



Joanna K. Delany
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

ATTORNEY FOR APPELLANT

This 13th day of March, 2024.

RECEIVED

Mar 13 2024

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from York County

Honorable Brian M. Gibbons, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

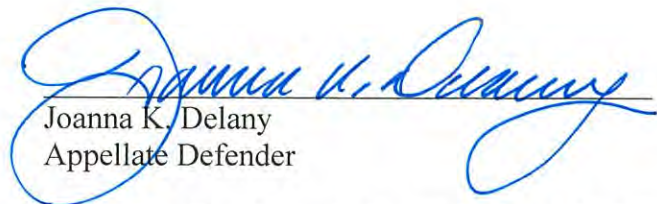
HAROLD GENE WHITE III,

APPELLANT

APPELLATE CASE NO. 2022-000579

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Record on Appeal in the above-referenced case has been served upon Deborah R.J. Shupe, Esquire, at the primary email address listed within the Attorney Information System (AIS), this 13th day of March, 2024.



Joanna K. Delany
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

RECEIVED

Mar 13 2024

SC Court of Appeals

From: [Warren, Kaylynn](#)
To: [Deborah Shupe](#)
Cc: [Delany, Joanna](#); [Grace Sommer](#)
Subject: 2022-000579 The State v. Harold Gene White III
Date: Wednesday, March 13, 2024 9:14:00 AM
Attachments: [2022-000579 The State v. Harold Gene White III Proposed Transportation Order.pdf](#)
[2022-000579 The State v. Harold Gene White III Record on Appeal.pdf](#)

Good Morning,

Attached for service in the above-referenced case are the Record on Appeal and Proposed Transportation Order which will be filed today, March 13, 2024, with the Court of Appeals via email filing.

Respectfully,
Kaylynn

Kaylynn Warren

Administrative Assistant
South Carolina Commission on Indigent Defense
Division of Appellate Defense
(803) 734-1330