

1 listening to testimony?

2 MR. BYRHOLDT: No. I think we have to have some
3 questions of Investigator Baskin, Your Honor.

4 THE COURT: Officer Baskin, come around and be
5 sworn.

6 Before we get started, I'm going to excuse the other
7 jury for the evening.

8 Madam clerk, if you'd swear him, I'll be back in
9 five minutes.

10 (Pause.)

11 THE COURT: Solicitor, do you know what area he's
12 talking about?

13 MR. BRADLEY: Not at all.

14 THE COURT: Do you want to let him ask questions,
15 you ask questions? Let you follow up?

16 MR. BRADLEY: This is the first I heard of it, Your
17 Honor.

18 THE COURT: I want to cut through to the facts, get
19 to the meat real quick. I'll let you follow up with any
20 questions after he finishes. Okay? Mr. Byrholdt.

21 MIKE BASKIN, being first duly sworn,
22 testified as follows:

23 DIRECT EXAMINATION

24 BY MR. BYRHOLDT:

25 Q In discovery I was provided a SLED report says

1 2.4 grams of crack cocaine and a best kit number and
2 then on your -- in the investigator notes the best
3 kit sent down two packs of drugs and some pills?
4 A No. No, sir. What was the ---
5 Q It's in the report listed as -- let me show you the
6 case jacket. It's got you securing this evidence in
7 best kit number B, as in boy, 177531. Would you
8 agree that's what's in the evidence list?
9 A That's what's on the evidence list, but that's not
10 the correct thing. I don't ---
11 Q And then there's a second best kit with the same
12 number on it?
13 A These drugs were never sent to SLED.
14 Q How did these drugs get out of the best evidence kit?
15 The best evidence kit, don't you seal the drugs?
16 A They are in a best evidence kit.
17 Q They're supposed to be in the best evidence kit with
18 that number on it?
19 A It's a different number altogether.
20 Q No, the number --
21 A I understand what this says, that's a typographical
22 error. That's not the number that they're under.
23 Q But that's what the state provided, saying there's
24 two sets of drugs sent to SLED under the same number.
25 That was my concern.

1 A The number that this other best kit is under is best
2 evidence, I believe 13017.

3 Q That's not what the report says --

4 A I understand, sir.

5 Q -- that was provided by Anderson Police Department?

6 A I understand that.

7 Q Can you look at the photographs that's been marked
8 for identification purposes. Did you take those
9 photographs, Officer Baskin?

10 A Yes, I did.

11 Q Who is the evidence custodian --

12 THE COURT: You need him --

13 BY MR. BYRHOLDT:

14 Q -- that's represented what's in your best evidence
15 kit in front of you.

16 A Yes.

17 Q And you're saying that that's the same materials?

18 A Yes, sir. They were put in this evidence bag and
19 then put in a best kit later.

20 Q What is this bag?

21 A This is the SLED lab number that was done by the SLED
22 analyst.

23 Q But what's the bag -- is that the bag that was
24 actually seized? Or do you know?

25 A I don't really know, that's what I would assume it

1 would be.

2 Q Was that material field tested at the scene?

3 A Yes, sir.

4 Q You tell me where in this report it says it was field
5 tested. The second page deals with that seizure.

6 A It doesn't say.

7 Q Okay. Is that just something that was left out?

8 Now, this is a typographical -- there's not any drugs
9 mixed together?

10 A No, sir. There's only one.

11 Q Was there another -- you saying there was a second
12 best evidence kit?

13 A Yes, sir, from the buy that was never sent to SLED.

14 Q Why wasn't it sent to SLED?

15 A Because he's not charged with it.

16 Q But it was listed in this report. You're saying
17 erroneous -- you didn't do this report, did you?

18 A That's the drug track report.

19 Q Who did that?

20 A The -- I guess whoever's case it is.

21 Q You did not do this?

22 A I may have transferred the evidence over to it, I'm
23 not sure.

24 Q That's my concern. You would agree it appears
25 there's two sets of drugs with the same evidence kit

1 number?

2 A Yes, sir. As I said, there's a typographical error
3 there. These drugs were collected at 1600 hours by
4 someone else and given to me. And they were in a
5 separate bag.

6 Q That's my problem. But the number says it's the same
7 bag?

8 A Yes, sir. I understand that. The best kit bag says
9 it is not the same bag. There's an evidence bag in
10 the best kit.

11 Q Right. But it's put in one bag. That's my concern.
12 From the report, it seems like there were two sets of
13 drugs put in the best evidence kit, number B, as in
14 boy, 177531.

15 A But as you can see, there are only one set of drugs
16 in this thing.

17 Q Unless somebody combined them, put them in that bag?

18 A No, sir. The other bag has got the drugs in them.

19 Q We don't know that because no best evidence kit in
20 this number report, other than the one.

21 MR. BYRHOLDT: That's my concern, Your Honor.

22 There's two sets of reports. One from an earlier seizure
23 he's not charged with. Here's one, one with best
24 evidence numbers. That's why they have the best evidence
25 kit so they're kept separately.

1 THE COURT: You have any more questions?

2 MR. BYRHOLDT: Not of Investigator Baskin. No, sir.

3 THE COURT: All right. Solicitor, you have any
4 questions? Do you want these reports for your questions?

5 MR. BRADLEY: We have the reports, Your Honor.

6 THE COURT: Do you have any questions?

7 MR. BRADLEY: Just a few, Your Honor.

8 CROSS EXAMINATION

9 BY MR. BRADLEY:

10 Q Investigator, the best kit that was collected the
11 night of January 15, 2007, it has a best kit, has a
12 number of B-177531; is that correct?

13 A Yes.

14 Q And does that match the best kit number on the SLED
15 report that was tested down at SLED?

16 A Investigation 177531.

17 Q Prior to that night, before the search warrant was
18 executed, were there any other drugs that were
19 collected by you in regard to the defendant?

20 A I did not collect them from the defendant. I checked
21 some drugs from another officer.

22 Q Okay. And that, where did those drugs come from?

23 A They came from a drug buy according to the -- to the
24 evidence bag.

25 Q And so they were not sent to SLED --

1 A No, sir, they were not.

2 Q -- to be tested?

3 A The only thing sent to SLED is in that bag right
4 there, that's correct. This right here.

5 Q Okay. So that I believe what Mr. Byrholdt is
6 referring to is another part of the narrative and
7 case summary, the same number is listed on the
8 controlled buy drugs; is that right?

9 A That's correct.

10 Q Okay. And your position for that, it was a
11 typographical error; is that correct?

12 A That's correct.

13 Q But the only thing that was sent, you were in
14 possession of both bags the entire time? They were
15 constantly under your custody, care, and control; is
16 that right?

17 A The -- once I received it, the first bag I received
18 from your office, then it was under my control. This
19 was all under my control from the time I collected
20 it.

21 Q And at any time did they get combined together?

22 A No.

23 Q Okay.

24 THE COURT: After all this confusion, tell me what
25 was sent to SLED. Under what best number and SLED

1 number.

2 THE WITNESS: The container number was 177531.

3 THE COURT: Wait a minute, 177531.

4 THE WITNESS: And had a number -- has number
5 L-07-1365.

6 THE COURT: All right. How do you know that's the
7 drugs that was removed from the floor of the house
8 where --

9 THE WITNESS: Because I put it in an evidence bag
10 with a date and time. And with the item number on it.

11 THE COURT: And then put it in a best kit? All
12 right. So your markings show that?

13 THE WITNESS: That is correct. That is correct.

14 THE COURT: You said you keep the best evidence kit?

15 THE WITNESS: Yes.

16 THE COURT: And that was sent to SLED?

17 THE WITNESS: Correct.

18 THE COURT: Now, how do you know that other number
19 wasn't sent?

20 THE WITNESS: Because I still have it.

21 THE COURT: So you still have the other number?

22 THE WITNESS: Yes.

23 THE COURT: All right. Do you have any questions
24 based on the questions the Court just asked?

25 MR. BYRHOLDT: Yes.

1 BY MR. BYRHOLDT:

2 Q But both of them are marked going into the best
3 evidence kit, correct?

4 A Both marked with the same number.

5 Q Right. One bag was sent to SLED. Like I said, the
6 problem is it appeared that they were combined. I
7 don't know if they were or not.

8 THE COURT: I understand. But he says the other one
9 is still in his possession, but the second bag was sent.
10 One bag had been sent, one bag hasn't been and it's still
11 in his possession.

12 MR. BYRHOLDT: The only thing that's been produced
13 to me, one under that evidence kit number, which showed
14 two things went.

15 THE COURT: I understand what you're saying, but I
16 think his testimony has clarified it. I'll be glad to
17 hear your argument.

18 MR. BYRHOLDT: I just think it appears there could
19 be contamination because it appears from the report that
20 two separate sets of drugs were placed in the same best
21 evidence kit based on the report.

22 THE COURT: I understand. But that's not his
23 testimony.

24 MR. BYRHOLDT: I agree, it's not his testimony.
25 It's what the report said.

1 THE COURT: We're not admitting it under his report.
 2 We're admitting it under his testimony. Tell me where
 3 this confusion under his testimony the, basis of your
 4 motion to suppress, I assume that's your motion, right?
 5 What's your motion? Let's back up. What's your motion?

6 MR. BYRHOLDT: To suppress. I'll renew that at this
 7 time. They still have to put the chemist up.

8 THE COURT: I understand what your motion, to
 9 suppress, right?

10 MR. BYRHOLDT: That the chain of custody is
 11 incomplete because the report said two sets of reports
 12 were sent in the same evidence bag, now saying it's a
 13 clerical error. We don't know that. I've seen no other
 14 drugs.

15 THE COURT: The way I understand his testimony, he
 16 put a number on the bag that was collected at -- what's
 17 the house number, 305-A E Street -- at that house, been
 18 in his possession that was sent to SLED. He got that
 19 back. The other bag never been sent, under his
 20 possession. However, it does have the same number
 21 177531. That's his testimony the way I understand it.
 22 Do you understand it that way?

23 MR. BYRHOLDT: I do.

24 THE COURT: Do you understand it that way,
 25 Solicitor?

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

2 THE COURT: As far as the motion concerning here,
3 we'll hear from SLED, My tendency is to rule against you.
4 But I will keep it under advisement until I hear from
5 SLED.

6 MR. BYRHOLDT: I understand.

7 THE COURT: SLED may come in and say they tested
8 two, I don't know.

9 MR. BYRHOLDT: Thank you.

10 THE COURT: Do you understand what I'm saying? It's
11 under advisement until I hear from SLED. He's explained
12 the conflict from his end. Now I guess SLED is going to,
13 have to see what they say. I'll take it under advisement
14 until we hear from SLED. Okay?

15 MR. BRADLEY: Yes, sir.

16 THE COURT: Anything else we need to deal with this
17 afternoon?

18 MR. BYRHOLDT: No, sir.

19 MR. BRADLEY: Just matter of bond for the defendant.

20 THE COURT: His bond is over. He appeared for
21 court. He goes to jail until tomorrow.

22 MR. BRADLEY: Just wanted to address it on the
23 record.

24 THE COURT: I don't know there's anything to
25 address. They're going to take him to jail.

1 MR. BYRHOLDT: I'd request ---

2 THE COURT: Denied.

3 MR. BYRHOLDT: Okay.

4 THE COURT: Goes to jail. Thank you so very much.
5 We'll start back tomorrow.

6 MR. BYRHOLDT: Can the state not discuss prior
7 testimony with their witnesses, about what people have
8 testified to? I think they can interview their
9 witnesses.

10 THE COURT: Yeah. Don't go out there and tell them
11 what everybody testified to. I don't have any problem
12 you prepping the witness.

13 (Whereupon, the proceedings are adjourned for the
14 evening recess.)

15 January 8, 2009

16 (Whereupon, court reconvened with all parties
17 present, when the following proceedings were had:)

18 THE COURT: Anything from the state before we bring
19 the jury?

20 MR. BRADLEY: No, Your Honor.

21 THE COURT: From the defendant?

22 MR. BYRHOLDT: No, Your Honor.

23 THE COURT: Talking yesterday about suppression,
24 refresh my memory.

25 MR. BYRHOLDT: I had investigator Baskin on the

1 KEVIN WARREN, being first duly sworn,
2 testified as follows:

3 BY MR. BRADLEY:

4 THE CLERK: State your full name, as well as you
5 last name for the record, please, sir.

6 THE WITNESS: William Kevin Warren, W-A-R-R-E-N.

7 Q Good afternoon. Tell us what your occupation is.

8 A Police officer with Anderson City Police Department.

9 Q How long you been there?

10 A Fifteen years.

11 Q What title do you hold there?

12 A Corporal as evidence custodian.

13 Q Evidence custodian. When did you take over that
14 title?

15 A August of 2008.

16 Q And who had that title prior to you taking it over?

17 A Mike Baskin.

18 Q So when he left work there, you took over his duties
19 and all the evidence?

20 A That's correct. Correct, that year. It was August
21 of '07 that I took over, not '08.

22 Q And if you'd take a look at Exhibit No. 3. It's
23 right there. Tell me if you recognize that.

24 A Yes, sir, I do.

25 Q How do you recognize that?

1 A It has a label on it marked with the case number,
 2 item number, and also the location where it was
 3 stored in the evidence room.

4 Q And where did you receive this. Did you receive this
 5 item?

6 A When I took over evidence as the evidence custodian,
 7 this was already in the evidence room of the police
 8 department.

9 Q Who had possession of it prior to you?

10 A Officer Mike Baskin.

11 Q Okay. Is it -- today is it the same condition as it
 12 was when you took over that day from Mr. Baskin?

13 A Yes, sir. It's still in the sealed envelope that it
 14 came from SLED in, the hot-sealed packet.

15 Q Those packets, are they tamper proof? Can somebody
 16 tamper with it without it being recognized?

17 A I don't see how. It's hot sealed in their custody
 18 and this is the way it's brought back from their
 19 office to be put back in the evidence room. This one
 20 doesn't appear to be tampered with from what can I
 21 tell.

22 Q From the time you took it over from Mike Baskin when
 23 he had that same job you had, evidence custodian, it
 24 looks exactly the same from that time; is that
 25 correct?

1 A That's correct.

2 Q And have you done anything with it except for

3 bringing it to court?

4 A No, sir.

5 Q And is that part of your duties, to transport the

6 evidence to trial when we have trials like this?

7 A That's correct.

8 Q Okay. Mr. Baskin --

9 MR. BRADLEY: May we approach, Your Honor?

10 THE COURT: Yes, sir.

11 (WHEREUPON, a bench conference was held in the

12 presence of the jury but outside the hearing of the

13 jury.)

14 MR. BRADLEY: Your Honor, the state has no further

15 questions of this witness at this time.

16 THE COURT: Cross examination?

17 MR. BYRHOLDT: May it please the Court?

18 CROSS EXAMINATION

19 BY MR. BYRHOLDT:

20 Q Officer Warren, when you're -- you're the evidence

21 custodian now?

22 A That's correct.

23 Q Is it proper procedure to use the same best evidence

24 kit number for two separate amounts of drugs?

25 A Clarify that. I don't understand the question.

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1 Q Well, if you seize drugs, put them in a best kit,
2 it's got a number on it?

3 A Yes, sir.

4 Q Control number to preserve the integrity of the item
5 within?

6 A That's correct.

7 Q Would there be any reason to have the same best
8 evidence kit number for two distinct seizures of
9 drugs?

10 A Not to my knowledge.

11 Q Shouldn't happen, should it?

12 A No, sir.

13 Q Are you familiar with form B --

14 A Yes, sir.

15 Q -- chain of custody?

16 A Yes, sir.

17 Q Do you fill it out and have it notarized before it's
18 completed or do you complete it?

19 A Form B, whoever collects the evidence, fills out form
20 B, has it notarized, drops it in the evidence box or
21 wherever, or gives it to another officer. When I
22 receive it, I fill out form C and have it notarized.

23 Q But shouldn't form B be completed before it's
24 notarized?

25 A Anything going to SLED has to be notarized and

1 everything. If the form's not complete, to my
2 knowledge, they will not accept it there.

3 Q There's no way it should be notarized with a date
4 before it's sent off?

5 A You can notarize the form -- if you fill out form B
6 on the day you collect it, it should be notarized
7 that day. They notarize your signature when you sign
8 that form B.

9 Q And it should be done on the day it's seized?

10 A The day you sign it, they need to notarize that
11 signature is what I'm saying.

12 Q But why would you notarize something if you haven't
13 completed the project? Where the space is, I made
14 delivery such and such a date, and you're swearing
15 that that's what happened. How can you notarize
16 before it happens? What if it's never sent to SLED,
17 you've got a notarized form that would be empty or
18 you got a notarized form that said it was sent on the
19 29th or 7th whatever it is, and sworn to eleven days
20 earlier. How can you swear to something that hasn't
21 happened yet?

22 A Amy Sexton is saying that he signed this form on this
23 date validating his signature on this form.

24 Q That's not what the form says. The form says, "I
25 certify that I have done these things." That's what

1 the form says. That's not a good way to do it, is
2 it?

3 A This is the only form I've ever seen.

4 Q That doesn't make it right, though, does it?

5 A I'm just saying it could be errors. Yes, sir.

6 Q Definitely could be errors. When you took over the
7 evidence room, was there a chain of custody form
8 signed that you're now the custodian of all the
9 evidence?

10 A We signed over the keys, or Officer Baskin turned his
11 keys in to captain or lieutenant over the division.
12 Then they were reassigned. I had to sign for those
13 saying all this is in my custody at this date and
14 time I received the key.

15 Q How can you -- can you tell this jury how you knew
16 what was in there when you took over.

17 A Other than the evidence log, the computer -- in the
18 computer, all the evidence, I mean I didn't go
19 through each piece and verify.

20 Q Nobody has, have they?

21 A There are 18,000 pieces in the computer, roughly.

22 Q Thank you, Officer Warren.

23 THE COURT: Any redirect?

24 MR. BRADLEY: Nothing further, Your Honor.

25 THE COURT: Officer Warren, you may step down.

Opening statement by Mr. Byrholdt

1 MR. BYRHOLDT: The only possible witness is my
2 client.

3 THE COURT: All right. Who do you want to keep in
4 with you, solicitor.

5 MR. BRADLEY: Marsee is the leading officer. He's
6 fine.

7 THE COURT: All right. Everybody else step out in
8 the hall, please.

9 (Witnesses comply.)

10 THE COURT: Solicitor, does that cover all your
11 witnesses? I can't see who's sitting in the very back.

12 MR. BRADLEY: Yes, Your Honor.

13 THE COURT: All right. Please proceed.

14 MR. BRADLEY: Thank you, Your Honor. Call Kevin
15 Marsee.

16 KEVIN MARSEE, being first duly sworn,
17 testified as follows:

18 DIRECT EXAMINATION

19 BY MR. BRADLEY:

20 Q Officer -- Captain Marsee, what's your occupation?

21 A I'm a police captain with the City of Anderson police
22 department.

23 Q Were you working in that capacity on January 15,
24 2007?

25 A I was.

1 Q Did you come in contact with the defendant on that
2 day?

3 A Yes, I did.

4 Q What was the reason for that contact?

5 A I was conducting a narcotics investigation. This
6 investigation included a purchase of drugs and also
7 the execution of a search warrant.

8 Q And what was the basis for the search warrant?

9 A The basis for the search warrant was --

10 THE COURT: Solicitor, just get to the information
11 prior to January 15th you want to get into. I don't care
12 about all that.

13 MR. BRADLEY: The basis on the search warrant is
14 what he testifies --

15 THE COURT: Go ahead.

16 THE WITNESS: The basis for the search warrant was
17 the purchase of drugs from a residence at 305-A E Street
18 by a source of information. And also from information
19 that I received from this source who was reliable at the
20 time.

21 BY MR. BRADLEY:

22 Q And so based on that information that you received,
23 you obtained a search warrant and what did you learn
24 from the search warrant?

25 A I learned that there were individuals in the

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1 residence, including the defendant, Mr. Ware. And
 2 that Mr. Ware, upon the entry of those officers threw
 3 a bag which contained what was later determined to be
 4 crack cocaine at one officer.

5 MR. BYRHOLDT: Your Honor, that's the case we're
 6 here about. That's not Lyle information. That's what
 7 we're trying this case about.

8 THE COURT: Okay. Go ahead.

9 THE WITNESS: But he threw a bag of drugs at one of
 10 the officers which was recovered and tested and
 11 determined to be crack.

12 MR. BRADLEY: Your Honor, basically the search
 13 warrants were prior drug transactions, it was the only
 14 thing --

15 THE COURT: Let me see the affidavit on the search
 16 warrant. Let me look at that. On the basis the search
 17 warrant was issued by the magistrate. All you want to go
 18 into is testimony that previously drugs had been
 19 purchased at this residence?

20 MR. BRADLEY: From Mr. Ware.

21 THE COURT: From Mr. Ware. Okay.

22 MR. BYRHOLDT: That's not in the affidavit, Your
 23 Honor.

24 THE COURT: Well, I'm going to see the affidavit.
 25 Is that the extent what you're offering?

1 MR. BRADLEY: No, Your Honor. Ms. Richardson,
2 another witness, would also testify as to the prior
3 transactions.

4 THE COURT: Anything else you want to ask him?

5 MR. BRADLEY: That's all of this witness.

6 THE COURT: Officer Marsee, in your affidavit, it's
7 basically based upon a confidential informant, isn't it?
8 Is that correct?

9 THE WITNESS: Yes, sir.

10 MR. BYRHOLDT: Your Honor, the confidential
11 informant is not testifying in this trial. It would be
12 hearsay on hearsay.

13 THE COURT: I understand. Here is your affidavit.

14 MR. BRADLEY: Thank you, Your Honor.

15 THE COURT: Now, you got another witness that's
16 going to testify to what?

17 MR. BRADLEY: To the prior transactions that
18 occurred at her residence with Mr. Ware. She would call
19 Mr. Ware to come over to her residence to sell crack
20 cocaine to other individuals, Your Honor.

21 THE COURT: You have some cases you want me to look
22 at?

23 MR. BRADLEY: Yes, Your Honor.

24 THE COURT: I'm aware of one case where the purchase
25 was made the day before and the same purchase was made

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1 the day after. The Supreme Court said that was not --

2 MR. BYRHOLDT: They reversed and sent it back for a
3 new trial.

4 THE COURT: Pardon?

5 MR. BYRHOLDT: They reversed and sent it back for a
6 new trial. I think it's page 817 through 819, it
7 discusses that Lyle is an exclusion, not an inclusion and
8 the risks involved.

9 THE COURT: How can -- from what you heard so far
10 and what you tell me, how do you get around the Tufour
11 case? It's a 19 -- excuse me, 2005 case.

12 MR. BRADLEY: Your Honor, I believe it's
13 distinguishable based on the fact that in that case the
14 defendant was strictly charged with trafficking. And
15 this case the defendant has been charged with conspiracy
16 as well. Trying to show common scheme and plan between
17 the two, the two individuals, Mr. Ware and
18 Ms. Richardson. I do have cases that --

19 THE COURT: So you think it should come in under
20 conspiracy, not the possession with intent to distribute,
21 is that what you're telling me?

22 MR. BRADLEY: Your Honor, I believe the case law
23 that I pulled is trying to get underneath the intent to
24 distribute as well as conspiracy. But based on that case
25 the distinguishability is between the conspiracy charge,

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1 and he was only charged with trafficking in that case,
2 Your Honor, with intent.

3 THE COURT: Okay. Well, how do you still get around
4 the common scheme or plan? Even if it's conspiracy. I
5 mean the case says a common scheme or plan exception
6 requires more than mere commission of two similar crimes
7 by the same person. We're not even talking about similar
8 crimes here. He says he purchased the drugs previously.
9 He was aware of drugs being purchased previously. I
10 mean, he wasn't even the purchaser. In Tufour he was the
11 purchaser.

12 MR. BRADLEY: Yes, sir, Your Honor. Your Honor,
13 based upon the case law of State versus Geer, it's quite
14 similar where the defendant sold drugs from out of his
15 residence on two prior occasions and witnesses were able
16 to testify to that fact. He purchased drugs on two
17 separate occasions from the defendant. The Court did
18 allow that to come in, as it establishes intent regarding
19 the cocaine and possession at the time in question.

20 And State versus Moultrie, a person familiar with
21 Moultrie's method of operation providing evidence in
22 prior drug transactions, evidence applied common scheme
23 or plan along with Lyle. The witness testified about
24 Moultrie's normal mode of selling drugs, extraordinary
25 similarity is evidence that Boykin discovered on the



1 night of Moultrie's arrest. So those two cases, Your
 2 Honor, I feel common scheme and plan and intent allow
 3 Ms. Richardson's testimony and officer Marsee's testimony
 4 of using a confidential informant to purchase drugs from
 5 Mr. Ware.

6 THE COURT: Captain Marsee, have you purchased drugs
 7 there?

8 THE WITNESS: Not personally, no, sir.

9 THE COURT: Have you purchased drugs from Mr. Ware?

10 THE WITNESS: No.

11 THE COURT: Then how do you know drugs had been
 12 purchased from Mr. Ware at that residence other than
 13 somebody telling you?

14 THE WITNESS: That's the only way.

15 THE COURT: Okay. All right. I'm not going to
 16 allow that testimony that he knows drugs had been
 17 purchased by Mr. Ware at that particular house. I'm
 18 going to exclude it. I don't think it qualifies under
 19 Tufour or Lyle exception, because conspiracy or intent to
 20 distribute, especially the fact all he knows is somebody
 21 told him that.

22 MR. BRADLEY: As I stated, Ms. Richardson also
 23 testified as how she personally --

24 THE COURT: Well, if you want to put Mr. Richardson
 25 up, I'll listen to Mr. Richardson. But you said this

1 man -- this is the witness that would go into prior bad
2 acts. If you want me to listen to Mr. Richardson, I'll
3 revisit the issue. Do you want to bring Mr. Richardson
4 in.

5 MR. BRADLEY: Yes.

6 MR. BYRHOLDT: Your Honor, can I ask a question of
7 Captain Marsee?

8 THE COURT: Yes, sir.

9 CROSS EXAMINATION

10 BY MR. BYRHOLDT:

11 Q In the affidavit you swore under oath to Judge
12 Mattison --

13 A Yes.

14 Q -- that you used a prior purchase to get the warrant,
15 correct?

16 A That is correct.

17 Q And you said the source -- "I was provided with
18 electronic device that recorded the transaction"?

19 A That is correct.

20 Q And you swore that under oath?

21 A Yes.

22 Q Wasn't the transmitter malfunctioning and it didn't
23 record anything?

24 A Once the buy was made it was later determined, either
25 through the download of the evidence or at the time

1 of the buy -- I don't know exactly when the
2 transmitter quit functioning, but it did quit
3 functioning. Yes.

4 Q So the affidavit to Judge Mattison that it was
5 recorded was not true, was it?

6 A No, it was not. I believed at that time that it did
7 in fact record.

8 Q But in fact it was not. So that's not true?

9 A No, it's not true. But that was my belief at the
10 time that it did record.

11 THE COURT: All right. Do you want to bring in Mr.
12 Richardson?

13 MR. BRADLEY: Yes, Your Honor.

14 THE COURT: You may step down. Thank you very much.
15 Ask Mr. Richardson to come in please.

16 MR. BYRHOLDT: It's Miss, Your Honor.

17 THE COURT: Miss?

18 MR. BYRHOLDT: Yes.

19 THE COURT: Okay, Miss Richardson.

20 VIRGINIA GAIL RICHARDSON, being first
21 duly sworn, testified as follows:

22 DIRECT EXAMINATION

23 BY MR. BRADLEY:

24 Q Ms. Richardson, where do you currently live?

25 A Now? Or when I was ---

X

1 Q Currently.

2 A Where I live at now, 961 Lewis Street.

3 Q Where did you live in January 2007?

4 A 305 E. Street.

5 Q And how long -- do you know the defendant?

6 A Yes, sir, I do.

7 Q How do you know the defendant?

8 A A friend brought him over to the house, Betty

9 Morrison. She's passed now. She had been down the

10 road and she come back up and another boy was in the

11 car that knowed her. And then he introduced him to

12 me.

13 Q Okay. How long ago was that?

14 A That's -- that was done been two years now, I guess

15 it's been about two and a half years, yes.

16 Q Prior to January 2007, how long was it?

17 A On January -- on the 17th.

18 Q January 17, 2007, how long prior to that?

19 A Yes, sir.

20 Q How long prior to January 15, 2007, had you known

21 this defendant?

22 A I'd been knowing him from six to nine months.

23 Q During that time frame what was your relationship

24 with the defendant?

25 A Well, they'd make phonecalls and he'd bring over the

X2

1 drugs to a few people up and down that road, you
2 know. They'd come to the house and make phonecalls
3 and he'd bring drugs over to the house.

4 Q Who would make phonecalls? You would make
5 phonecalls?

6 A Yes, but they would make them too, use my phone to
7 call.

8 Q Did he ever call you?

9 A Yeah, he called me lots of times and asked me did we
10 need anything.

11 Q Need anything, what do you mean?

12 A Crack cocaine.

13 Q And what was -- what would your response be on those
14 cases?

15 A Lots of times I'd say "No." And then when Betty,
16 Shorty, or someone come down the road, would want to
17 get something, they'd make the phonecall and he'd
18 deliver it.

19 Q So you would have someone come to your house looking
20 for crack cocaine, what would be your practice,
21 relationship with the defendant?

22 A What now? I can't hear that.

23 Q I apologize. I'll rephrase the question. Whenever
24 someone would come to your house looking for crack
25 cocaine, who would you call?

4X

1 A Kevin.

2 Q And would Kevin, would the defendant respond, would

3 he come over? Would he come to your house?

4 A Yeah. He'd come to my house and bring it, yes.

5 Q How many times in that six to nine months that you

6 knew the defendant prior to January 2007?

7 A Sometimes it might have been two or three times a day

8 and sometimes it was every other day. Sometimes it

9 went on for a week that we didn't call.

10 Q Okay. And on January 15, 2007, how many times did

11 you see the defendant?

12 A Greg Kay, he had come in and was wired up and I told

13 him, said, "Well, Greg" -- you know, he's brought

14 drugs there himself, I been knowing him about 15

15 years, used to go with my niece. Anyway, he said --

16 I said, "Well, Greg, you can get it down the road.

17 You know dealers, you bring stuff here, why can't you

18 go get it?"

19 He said, "No, I like Kevin's stuff." he said he got

20 some before. He said, "I prefer to get his."

21 And so, he said, "Well, you call him."

22 I said, "Well, I'll let you call him." So he called

23 him. And so Kevin wouldn't come for no hundred. And

24 so, anyway, Greg said to tell him -- "You call him

25 back and tell him to bring 200."

1 So that's when Kevin said he'd come over and bring
2 \$200 worth of crack cocaine.

3 MR. BRADLEY: That's all at this time, Your Honor.

4 THE COURT: Mr. Byrholdt, do you have any cross?

5 CROSS EXAMINATION

6 BY MR. BYRHOLDT:

7 Q He came there one time that day, right?

8 A Yeah, one time that day.

9 Q Nothing further. Thank you.

10 THE COURT: Anything else, solicitor, in reply?

11 MR. BRADLEY: Nothing further.

12 THE COURT: Miss Richardson, you may step down. If
13 you'll step back out in the hall, please, ma'am.

14 THE WITNESS: Okay. Thank you, sir.

15 THE COURT: Thank you, very much.

16 (Witness exits courtroom.)

17 THE COURT: Let me see your cases on conspiracy. Do
18 you have copies of them I can look at?

19 MR. BRADLEY: Specifically conspiracy, Your Honor?

20 THE COURT: Mr. Bradley, my question is on
21 conspiracy, that's a little different than Lyle.

22 MR. BYRHOLDT: Under the indictment in this case,
23 they only charged him with conspiring on one day.

24 THE COURT: On that day, all right.

25 MR. BYRHOLDT: They could have hit him for six

1 months.

2 THE COURT: They didn't conspire him with selling
3 over several months, just that one day?

4 MR. BYRHOLDT: With one day. Had they indicted him
5 for a six-month period, I wouldn't be sitting here.

6 MR. BRADLEY: That is true, he is only indicted for
7 that one day.

8 THE COURT: Anything you want me to look at on
9 conspiracy? Because if it's admissible law, it's got to
10 be a conspiracy issue. And I think it would have to be
11 the particular day unless it was an ongoing enterprise to
12 buy and sell drugs over a period of time.

13 MR. BRADLEY: Yes, Your Honor.

14 THE COURT: Apparently, it was just sort of
15 happenstance, it wasn't an on-going business relationship
16 in other words.

17 MR. BRADLEY: Your Honor, I have to look back
18 through, see exactly which one was the conspiracy.

19 THE COURT: You what? I can't hear you. You're
20 slurring your words and looking down.

21 MR. BRADLEY: Yes, sir. I apologize. I was looking
22 back through the cases, see exactly which one was the
23 conspiracy. I read so many off a while ago.

24 THE COURT: Do you have a copy of the case?

25 MR. BRADLEY: I'm trying to figure out which one it

X

1 was. I apologize.

2 MR. BYRHOLDT: Your Honor, additionally I'd move to
3 exclude it under 403, the prejudicial value clearly
4 outweighs the probative value. Especially we have an
5 indictment one particular day and the alleged
6 coconspirator testified one time. I mean, she disputes
7 what Marsee said. A prior statement that day with
8 Kevin --

9 THE COURT: Let me ask you -- just ask you this
10 question. Okay?

11 MR. BRADLEY: Yes, sir.

12 THE COURT: Earlier I asked you about the State
13 versus Tufour.

14 MR. BRADLEY: Yes, sir.

15 THE COURT: Read to you part of it.

16 MR. BRADLEY: Yes, sir.

17 THE COURT: Based on the officer's testimony, how is
18 her testimony, even though it is conspiracy, change that?
19 Now, if it was an ongoing business conspiracy to buy and
20 sell drugs over a time period, maybe, yes. But how does
21 that change Tufour as far as qualifications as prior bad
22 acts? Because apparently it's indicted for conspiracy on
23 January 15, '07, so it's got to come under Lyle, not the
24 conspiracy.

25 MR. BRADLEY: Yes, Your Honor.

1 THE COURT: I thought you were arguing earlier that
 2 it should come in under conspiracy. And that sort of
 3 took it out of the Lyle. I don't understand your
 4 argument. I'm trying to understand your arguments before
 5 I rule. Now, as far as Miss Richardson is concerned --

6 MR. BRADLEY: Yes, sir, your Honor. I -- based on
 7 her testimony, Your Honor, I agree with the Court.

8 THE COURT: You what?

9 MR. BRADLEY: I agree with the Court. I'd withdraw
 10 our motion for the court to hear the prior bad acts.

11 THE COURT: Okay.

12 MR. BRADLEY: That specific testimony.

13 THE COURT: That's fine. I want you to instruct her
 14 before she gets on the witness stand in front of the
 15 jury, the only thing we're going to talk about is what
 16 occurred on January 15th.

17 MR. BRADLEY: Yes, sir.

18 THE COURT: Captain Marsee, don't go into your
 19 knowledge prior to January 15th. Okay?

20 THE WITNESS: Yes, sir.

21 THE COURT: I don't have any problem about your
 22 confidential informant verifying him, et cetera, et
 23 cetera, et cetera. Okay. But as far as testifying that
 24 you know drugs were bought at this house from Kevin Ware,
 25 I don't want you going into that. Okay?

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THE WITNESS: Yes, sir.

THE COURT: Do you understand?

THE WITNESS: Yes, sir.

THE COURT: Thank you, very much. All right.

Anything else before we bring the jury and call your first witness?

MR. BRADLEY: No, your Honor.

THE COURT: Anything from the defendant?

MR. BYRHOLDT: Not from the defense, Your Honor.

THE COURT: Bring us the jury.

(Whereupon, the following proceedings were had within the presence of the jury:)

KEVIN MARSEE, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. BRADLEY:

THE CLERK: State your full name, as well your last name for the record, please.

THE WITNESS: Kevin Marsee, last name spelled M-A-R-S-E-E.

Q Good afternoon, what's your occupation?

A I am a captain with the Anderson city police department.

Q How long you been there?

A I been with the department almost 25 years now.

1 Q What are your duties as an officer at the police
2 department?

3 A My duties are, at present I'm the captain of special
4 operations. That position encompasses a warrant
5 division, a vice and narcotics unit, and a gang unit.

6 Q And were you working in that capacity on January 15,
7 2007?

8 A I was.

9 Q Okay. And on that date did you come into contact
10 with the defendant?

11 A Yes. That was the date.

12 Q What was the reason for that contact?

13 A I had a search warrant to search a residence located
14 at 305-A E Street, which is located in the City of
15 Anderson. And based on the fact I had a search
16 warrant and was conducting an investigation, I
17 instructed officers to initiate surveillance on the
18 location.

19 Q And when was that search warrant executed?

20 A The search warrant was obtained around 6:30 that
21 evening. And we began the operation at around
22 7:55 p.m. After that time I guess it was around
23 8:40 p.m. or so we executed the search warrant at
24 that residence.

25 Q And during that time you were doing surveillance,

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