

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Spartanburg County

J Mark Hayes, II, Circuit Court Judge

RECEIVED

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S.C SUPREME COURT

CHRISTOPHER LOVETT BURKE,

PETITIONER,

V

STATE OF SOUTH CAROLINA,

RESPONDENT

APPENDIX

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Appellate Defender

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
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STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA,)
)
PLAINTIFF,)
)
-VS-)
)
CHRISTOPHER L BURKE,)
)
DEFENDANT)
_____)

2005-GS-42-3166

TRANSCRIPT OF RECORD

NOVEMBER 2 - 3, 2005
SPARTANBURG, SOUTH CAROLINA

B E F O R E

THE HONORABLE JOHN C FEW

A P P E A R A N C E S

ATTORNEY FOR PLAINTIFF

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JESSICA THILL, ASSISTANT SOLICITOR

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TIMOTHY RAY, ESQUIRE

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CIRCUIT COURT REPORTER

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Voir Dire

Case No 2005-GS-42-3116
 Date 11/2/05 - 11/3/05
 Plaintiff/State State

Judge John Jew
 Court/County Spartanburg
 Attorney McMillan / Hill

Defendant Christopher Burke

Attorney Jim Ray

Court Reporter Susan Hudgins

Juror #	Name	Race	Sex	Strikes			Accept
				Court	Plaintiff	Defendant	
18	Brittany Carter	W	F				✓
157	Jimmy Biggerstaff	W	M				✓
29	Miller Yoo	B	F				✓
49	Malinda Souler	W	F				✓
123	Richard Stone	W	M		X		
165	Dana Davis	W	F				✓
43	Betty Romero	W	F				✓
167	Shauna Fox	W	M		X		
65	Janita Johnson	W	F		X		
119	Walter Snow	W	M				✓
140	Charles Wharton	W	M			X	
137	Jeffrey Wade	W	M			X	
187	Viola Miller	B	F		X		
106	Sammy Richburg	W	F				✓
70	C J Jones	W	M			X	
169	Cheryl Haman	W	F				✓

*For the Court column please indicate who made the motion to strike the juror for cause with a C for Court P for Plaintiff or D for Defense

EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EVIDENCE</u>
S-1	SEARCH WARRANT	26	X
S-2	CRACK COCAINE 12 83 GRAMS	85	115
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Voir Dire

Case No 05-GS-42 31164
Date 11/2/05 - 11/3/05
Plaintiff/State State

Judge John Linc
Court/County Santa Barbara
Attorney McMillan / Shoop

Defendant Burke

Attorney Sam Ranz

Court Reporter Susan Hudgins

[illegible]

*For the Court column please indicate who made the motion to strike the juror for cause with a "C" for Court P for Plaintiff or D for Defense

1 THE COURT YOU GOT THE INDICTMENT PLEASE? DO YOU HAVE
2 ANY POTENTIAL WITNESSES?

3 MR RAY YES, SIR, YOUR HONOR MAY I APPROACH, YOUR
4 HONOR?

5 THE COURT YES THANK YOU LADIES AND GENTLEMEN, WE
6 ARE READY TO BEGIN THE TRIAL IN THE CASE OF THE STATE OF
7 SOUTH CAROLINA VERSUS CHRISTOPHER LOVETT BURKE MR BURKE
8 HAS BEEN INDICTED IN INDICTMENT NUMBER 2005-GS-42-3166 FOR
9 TRAFFICKING IN CRACK COCAINE

10 AND IN THAT INDICTMENT IT IS ALLEGED THAT CHRISTOPHER
11 LOVETT BURKE DID IN SPARTANBURG COUNTY ON OR ABOUT MARCH
12 17TH, 2005 KNOWINGLY SELL, MANUFACTURE, DELIVER, PURCHASE,
13 OR BRING INTO THIS STATE OR DID PROVIDE FINANCIAL ASSISTANCE
14 OR DID OTHERWISE AID, ABET, ATTEMPT, OR CONSPIRE TO SELL,
15 MANUFACTURE, DELIVER, PURCHASE, OR BRING INTO THIS STATE OR
16 DID KNOWINGLY, ACTUALLY, OR CONSTRUCTIVELY POSSESS OR DID
17 KNOWINGLY ATTEMPT TO ACTUALLY OR CONSTRUCTIVELY POSSESS MORE
18 THAN TEN GRAMS OF CRACK COCAINE, A SCHEDULE II CONTROLLED
19 SUBSTANCE IN VIOLATION OF SECTION 44-53-375 OF THE CODE OF
20 LAWS OF SOUTH CAROLINA

21 NOW, LADIES AND GENTLEMEN, YOU'VE HEARD ME SAY THIS --
22 I THINK EACH OF YOU HAVE HEARD ME SAY THIS SEVERAL TIMES
23 THIS WEEK FOR THOSE OF YOU WHO ARE SELECTED TO SERVE ON
24 THE JURY IN THIS CASE, I WILL GIVE YOU MORE DETAILED
25 INSTRUCTIONS SHORTLY AS TO WHAT YOUR RESPONSIBILITIES ARE

1 AND ABOUT SOME OF THE OTHER THINGS THAT CONTROL YOUR WORK AS
2 JURORS IN THIS CASE BUT I WANT TO MAKE SURE YOU UNDERSTAND
3 NOW THAT THE ALLEGATIONS THAT I JUST READ TO YOU FROM THIS
4 INDICTMENT ARE NOT IN ANY SENSE EVIDENCE OF THOSE
5 ALLEGATIONS THE INDICTMENT IS SIMPLY THE FORMAL DOCUMENT
6 THAT CONTAINS THE ALLEGATIONS THAT HAVE BEEN MADE AGAINST
7 THE DEFENDANT AND IT SERVES TO PROCESS THIS CASE AND BRING
8 IT INTO COURT FOR TRIAL

9 THE DEFENDANT HAS PLED NOT GUILTY TO THAT INDICTMENT
10 AND THE PLEA OF NOT GUILTY CASTS THE BURDEN ON THE STATE TO
11 PROVE THE DEFENDANT GUILTY BEYOND A REASONABLE DOUBT AND
12 FOR THOSE OF YOU WHO ARE SELECTED TO SERVE ON THE JURY IN
13 THIS CASE, THAT WILL BE YOUR JOB, TO DETERMINE WHETHER OR
14 NOT THE STATE HAS PROVEN THE DEFENDANT GUILTY BEYOND A
15 REASONABLE DOUBT

16 NOW WE'RE ABOUT TO GO THROUGH THE PROCESS THAT WE CALL
17 VOIR DIRE IN WHICH I'M GOING TO ASK YOU ALL SOME QUESTIONS
18 THAT RELATE TO THIS CASE AND TO THE PEOPLE AND THE ISSUES
19 THAT WE WILL BE DEALING WITH IN THIS CASE PLEASE LISTEN
20 VERY CAREFULLY TO THOSE QUESTIONS

21 IF YOU HAVE ANY INFORMATION THAT IS RESPONSIVE TO A
22 QUESTION THAT I ASK, THEN I WOULD LIKE FOR YOU TO STAND, AND
23 TELL ME YOUR NAME, AND THEN TELL ME YOUR INFORMATION IF
24 YOU DON'T WANT TO GIVE YOUR INFORMATION OUT LOUD IN FRONT OF
25 THE OTHER MEMBERS OF THE JURY PANEL, THEN YOU CAN JUST TELL

1 ME THAT YOU WOULD LIKE TO SPEAK TO ME PRIVATELY AND I WILL
2 BE GLAD TO GET YOU DOWN FRONT AND ALLOW YOU TO ANSWER THE
3 QUESTION WITH ME AND WITH THE LAWYERS

4 IF YOU KNOW SOMETHING ABOUT THIS CASE OR IF YOU KNOW
5 SOME OF THE PEOPLE WHO ARE GOING TO BE INVOLVED IN THIS
6 CASE, AND IF YOU THINK THAT GIVING YOUR INFORMATION OUT LOUD
7 IN FRONT OF THE OTHER MEMBERS OF THE JURY PANEL MIGHT EXPOSE
8 THOSE OTHER POTENTIAL JURORS TO INFORMATION THAT THEY SHOULD
9 NOT BE EXPOSED TO, THEN IN THAT EVENT YOU MUST COME DOWN
10 FRONT AND ANSWER THE QUESTION PRIVATELY WITH ME AND WITH THE
11 LAWYERS MS MILLICAN, WOULD YOU PLEASE INTRODUCE YOURSELF
12 AND YOUR CO-COUNSEL TO THE JURY?

13 MS MILLICAN THANK YOU, YOUR HONOR MY NAME IS
14 MELISSA MILLICAN I'M AN ASSISTANT SOLICITOR WITH
15 SPARTANBURG COUNTY

16 MS THILL MY NAME IS JESSICA THILL I'M A PROSECUTOR
17 WITH THE SPARTANBURG SOLICITOR'S OFFICE

18 THE COURT IS THERE ANY MEMBER OF THE JURY PANEL WHO
19 IS RELATED BY BLOOD OR BY MARRIAGE TO MS MILLICAN OR TO MS
20 THILL OR DO YOU KNOW EITHER ONE OF THEM IN ANY WAY? IF SO,
21 PLEASE STAND

22 (NO RESPONSE)

23 THE COURT NOW BOTH OF THEM WORK FOR TREY GOWDY, WHO
24 IS THE ELECTED SOLICITOR OF THIS CIRCUIT AND IT IS HIS JOB
25 TO PROSECUTE CRIMINAL CASES BOTH HERE IN SPARTANBURG COUNTY

1 AND ALSO IN CHEROKEE COUNTY HE HAS A STAFF OF LAWYERS AND
2 ALSO NON-LAWYERS WHO ASSIST HIM IN DOING THAT IS THERE ANY
3 MEMBER OF THE JURY PANEL WHO IS RELATED BY BLOOD OR MARRIAGE
4 TO MR GOWDY OR TO ANYONE WHO WORKS FOR HIM OR DO YOU KNOW
5 MR GOWDY OR ANYONE WHO WORKS FOR HIM IN ANY WAY? IF SO,
6 PLEASE STAND YES, MA'AM

7 MS WOODCOCK 146, JULIE WOODCOCK I KNOW MR GOWDY
8 WHEN I WAS BEFORE WITH THE HERALD JOURNAL

9 THE COURT ALL RIGHT THANK YOU MR DAVENPORT

10 MR DAVENPORT 173, JUST PROFESSIONALLY AS I STATED
11 YESTERDAY

12 THE COURT ALL RIGHT THANK YOU WOULD THE FACT THAT
13 YOU FOLKS KNOW MEMBERS OF THE SOLICITOR'S OFFICE INTERFERE
14 IN ANY WAY WITH EITHER YOUR WILLINGNESS OR YOUR ABILITY TO
15 GIVE BOTH THE STATE AND THE DEFENDANT A FAIR AND IMPARTIAL
16 TRIAL? MS WOODCOCK?

17 MS WOODCOCK NO, IT WOULD NOT

18 THE COURT MR DAVENPORT?

19 MR DAVENPORT NO, SIR

20 THE COURT MR RAY, WOULD YOU PLEASE INTRODUCE
21 YOURSELF AND YOUR CLIENT TO THE JURY?

22 MR RAY YES MY NAME IS TIM RAY AND THIS IS
23 CHRISTOPHER BURKE

24 THE COURT IS THERE ANY MEMBER OF THE JURY PANEL --
25 Y'ALL CAN SIT DOWN IS THERE ANY MEMBER OF THE JURY PANEL

1 WHO IS RELATED BY BLOOD OR MARRIAGE TO MR RAY OR TO MR
2 BURKE OR DO YOU KNOW EITHER OF THESE GENTLEMEN IN ANY WAY?
3 IF SO, PLEASE STAND ALL RIGHT, MA'AM, TELL ME YOUR NAME

4 MS THOMASON CHRISTINA THOMASON

5 THE COURT AND WHO DO YOU KNOW?

6 MS THOMASON I USED TO WORK WITH MR RAY'S SISTER

7 THE COURT YOU USED TO WORK WITH HIS SISTER?

8 MS THOMASON UM-HUM (AFFIRMATIVE)

9 THE COURT AND WHERE WAS THAT?

10 MS THOMASON FOR DR JOHN SUBER

11 THE COURT OKAY AND THROUGH HIS SISTER YOU MET MR
12 RAY?

13 MS THOMASON ONCE, I BELIEVE

14 THE COURT ONCE? OKAY MS THOMASON?

15 MS THOMASON UM-HUM (AFFIRMATIVE)

16 THE COURT OKAY THANK YOU MS HODGES?

17 MS HODGES NUMBER 63 I KNOW MR RAY HE WAS
18 REPRESENTING A CLIENT THAT WE WERE ALSO WORKING WITH THROUGH
19 OUR OFFICE

20 THE COURT OKAY THANK YOU, MA'AM WOULD THE FACT
21 THAT YOU BOTH -- YES

22 MS THILL CAN WE HAVE THE FIRST JUROR'S NUMBER, YOUR
23 HONOR, PLEASE?

24 THE COURT MS THOMASON, DO YOU MIND GIVING ME YOUR
25 NUMBER?

1 MS THOMASON 131

2 THE COURT THANK YOU

3 MS THILL THANK YOU

4 THE COURT WOULD THE FACT THAT YOU BOTH KNOW MR RAY,
5 WOULD THAT INTERFERE IN ANY WAY WITH EITHER YOUR WILLINGNESS
6 OR YOUR ABILITY TO GIVE BOTH THE STATE AND THE DEFENDANT A
7 FAIR AND IMPARTIAL TRIAL? MS THOMASON?

8 MS THOMASON NO

9 THE COURT MS HODGES?

10 MS HODGES NO

11 THE COURT I'M GOING TO READ YOU NOW A LIST OF
12 POTENTIAL WITNESSES AND AFTER I'VE DONE THAT I'M GOING TO
13 ASK WHETHER OR NOT YOU KNOW OR ARE RELATED TO ANY OF THESE
14 POTENTIAL WITNESSES IF THE WITNESS IS IN THE COURTROOM
15 WHEN I CALL THEIR NAME, PLEASE STAND AND FACE THE JURY
16 MATT HUTCHINS WITH THE SPARTANBURG COUNTY SHERIFF'S OFFICE
17 JOSH KELLY, SPARTANBURG COUNTY SHERIFF'S OFFICE BETH
18 VAUGHN WITH THE SPARTANBURG COUNTY SHERIFF'S OFFICE DEPUTY
19 LACHICA WHAT'S HER FIRST NAME OR HIS?

20 MS THILL ANTHONY, YOUR HONOR

21 THE COURT ANTHONY LACHICA, SPARTANBURG COUNTY
22 SHERIFF'S OFFICE OFFICER RAINES WHAT'S THE FIRST NAME?

23 MR RAY I BELIEVE IT'S TONY, YOUR HONOR

24 THE COURT TONY RAINES WITH CHESNEE POLICE DEPARTMENT
25 BRIAN DUNCAN, SPARTANBURG COUNTY SHERIFF'S OFFICE RITCHIE

1 MCSWAIN, SPARTANBURG COUNTY SHERIFF'S OFFICE MARGARET
2 GREER, SPARTANBURG COUNTY SHERIFF'S OFFICE IS THERE ANY
3 MEMBER OF THE JURY PANEL WHO IS RELATED BY BLOOD OR MARRIAGE
4 TO ANY OF THOSE POTENTIAL WITNESSES OR DO YOU KNOW ANY OF
5 THEM IN ANY WAY? IF SO, PLEASE STAND MS WOODCOCK?

6 MS WOODCOCK YES, YOUR HONOR, 146 MY HUSBAND IS A
7 SHERIFF'S DEPUTY AND SO I KNOW MS VAUGHN

8 THE COURT ALL RIGHT AND ALSO TELL US AGAIN YOUR
9 HUSBAND'S NAME PLEASE

10 MS WOODCOCK MICHAEL WOODCOCK

11 THE COURT ALL RIGHT THANK YOU, MS WOODCOCK WOULD
12 THE FACT THAT YOUR HUSBAND IS A SHERIFF'S DEPUTY AND ALSO
13 THAT YOU KNOW SOME OF THESE OFFICERS, WOULD THAT INTERFERE
14 IN ANY WAY WITH EITHER YOUR WILLINGNESS OR YOUR ABILITY TO
15 GIVE BOTH THE STATE AND THE DEFENDANT A FAIR AND IMPARTIAL
16 TRIAL?

17 MS WOODCOCK YES, SIR, I'M AFRAID IT WOULD I'VE
18 BEEN THINKING ABOUT IT

19 THE COURT ALL RIGHT MA'AM, I'LL SPEAK TO YOU DOWN
20 FRONT IN JUST A SECOND PLEASE IS THERE ANY MEMBER OF THE
21 JURY PANEL WHO -- OR ANY MEMBER OF YOUR IMMEDIATE FAMILY WHO
22 HAS EVER BEEN INVOLVED IN ANY TYPE OF CRIMINAL CASE EITHER
23 AS A VICTIM, OR AS A WITNESS, OR AS A DEFENDANT? THAT WOULD
24 INCLUDE YOU, OR A CLOSE FRIEND, OR ANY MEMBER OF YOUR
25 IMMEDIATE FAMILY HAVE YOU EVER BEEN INVOLVED IN ANY TYPE

1 OF CRIMINAL CASE AS EITHER A VICTIM, A WITNESS, OR A
2 DEFENDANT? IF SO, PLEASE STAND

3 ALL RIGHT NOW I REALIZE THAT SOME OF YOU HAVE ALREADY
4 GIVEN ME THIS INFORMATION IN OTHER CASES AND IT MAY SEEM
5 TO YOU AS IF I DON'T NEED TO HEAR IT AGAIN, AND THAT'S TRUE
6 BUT BECAUSE THIS IS A DIFFERENT CASE, WE HAVE DIFFERENT
7 LAWYERS, AND A DIFFERENT DEFENDANT, AND DIFFERENT
8 PROSECUTORS, WE DO NEED TO GO THROUGH THIS AGAIN SO IF
9 YOU'LL TELL ME YOUR NAME AND THEN TELL ME YOUR INFORMATION
10 AND IF YOU WOULD LIKE TO COME DOWN FRONT AND SPEAK TO ME
11 PRIVATELY ABOUT THIS JUST TELL ME THAT YOU WOULD LIKE TO DO
12 THAT AND I WILL ALLOW YOU TO YES, MA'AM?

13 MS CARTEE BRITTANY CARTEE, NUMBER 18 MY COUSIN WAS
14 INVOLVED IN A DRUG DEAL

15 THE COURT OKAY WHO WAS -- YOU SAY YOUR COUSIN?

16 MS CARTEE UH-HUH (AFFIRMATIVE)

17 THE COURT AND WHERE WAS THAT?

18 MS CARTEE SPARTANBURG COUNTY

19 THE COURT HOW LONG AGO?

20 MS CARTEE '95

21 THE COURT AND WHAT'S YOUR COUSIN'S NAME?

22 MS CARTEE JOHN JUDSON BROWN

23 THE COURT JOHN BROWN?

24 MS CARTEE UH-HUH (AFFIRMATIVE)

25 THE COURT THANK YOU, MS CARTEE MS THOMASON?

1 MS THOMASON MY FATHER WAS MURDERED IN '87

2 THE COURT ALL RIGHT AND WHERE WAS THAT, MA'AM?

3 MS THOMASON SPARTANBURG COUNTY

4 THE COURT OKAY WAS THE CASE PROSECUTED?

5 MS THOMASON YES

6 THE COURT AND WAS THE DEFENDANT CONVICTED?

7 MS THOMASON NO

8 THE COURT WAS IT TRIED?

9 MS THOMASON YES

10 THE COURT AND THE DEFENDANT WAS FOUND NOT GUILTY?

11 MS THOMASON YES

12 THE COURT OKAY THANK YOU, MS THOMASON YES,

13 MA'AM

14 MS MILLER NUMBER 187 MY SISTER WAS IN A MURDER

15 CASE SHE WAS THE DEFENDANT

16 THE COURT ALL RIGHT AND SHE WAS FOUND GUILTY OF A

17 LESSER CHARGE?

18 MS MILLER SHE WAS CHARGED FOR IT SHE WENT TO JAIL

19 FOR IT

20 THE COURT ALL RIGHT THANK YOU, MS MILLER MS

21 HODGES?

22 MS HODGES NUMBER 63 I USED TO INVESTIGATE CHILD

23 ABUSE AND NEGLECT AND, THEREFORE, I'VE TESTIFIED MANY TIMES

24 THE COURT OKAY THANK YOU, MS HODGES MS HARDY?

25 MS HARDY MAY I PLEASE APPROACH THE BENCH?

1 THE COURT YES, MA'AM JUST HOLD ON ONE SECOND AND
2 THEN I'LL GET YOU TO COME DOWN IN JUST A SECOND, MA'AM
3 YES, MA'AM

4 MS HAMAN 169, CHERYL HAMAN I HAVE SONS THAT HAVE
5 BEEN INVOLVED WITH A POSSESSION DRUG CASE

6 THE COURT THANK YOU, MA'AM

7 MS HALL NUMBER 57, ELAINE HALL AND I'D LIKE TO
8 APPROACH THE BENCH

9 THE COURT OKAY YES, SIR

10 MR FOX 167, SHAWN FOX I'D LIKE TO APPROACH THE
11 BENCH ALSO

12 THE COURT YES, SIR

13 MR ATKINS NUMBER 2, BRAD ATKINS MY WIFE WAS A
14 VICTIM OF BREAKING AND ENTERING AND ATTEMPTED RAPE BACK IN
15 '98 HERE IN SPARTANBURG COUNTY

16 THE COURT WAS THE CASE PROSECUTED?

17 MR ATKINS YES, SIR

18 THE COURT AND WAS THE DEFENDANT CONVICTED?

19 MR ATKINS YES, SIR

20 THE COURT ALL RIGHT THANK YOU, MR ATKINS ALL
21 RIGHT LET ME SEE MS WOODCOCK, MS HARDY, MS HALL, AND
22 MR FOX ONE AT A TIME

23 (WHEREUPON THE JURORS APPROACHED THE BENCH)

24 THE BAILIFF JUROR NUMBER 170

25 THE COURT MS HARDY

1 MS HARDY YESTERDAY, AS YOU KNOW, MY COUSIN WAS ON
2 TRIAL FOR TRAFFICKING AND MY STEP-SON IS SERVING FORTY-
3 FIVE YEARS FOR TRAFFICKING COCAINE

4 THE COURT OKAY AND IS THAT OUT OF SPARTANBURG ALSO?

5 MS HARDY YES, SIR

6 THE COURT AND WHAT IS HIS NAME?

7 MS HARDY DONICA (PHONETICS) HARDY

8 THE COURT ALL RIGHT THANK YOU, MS HARDY WELL,
9 LET ME ASK YOU THIS WOULD THE FACT THAT YOU HAVE THESE
10 FAMILY MEMBERS ---

11 MS HARDY NO, SIR

12 THE COURT YOU DON'T EVEN KNOW WHAT QUESTION I'M GOING
13 TO ASK

14 MS HARDY I DO

15 THE COURT LET ME FINISH MY QUESTION THE FACT THAT
16 YOU HAVE THOSE FAMILY MEMBERS WHO HAVE BEEN INVOLVED IN
17 THOSE CASES, WOULD THAT INTERFERE IN ANY WAY WITH EITHER
18 YOUR WILLINGNESS OR YOUR ABILITY TO GIVE BOTH THE STATE AND
19 THE DEFENDANT A FAIR AND IMPARTIAL TRIAL?

20 MS HARDY NO, SIR

21 THE COURT OKAY THANK YOU

22 MS HARDY YOU'RE WELCOME

23 THE COURT IF ANYBODY HAS A MOTION REGARDING A
24 PARTICULAR WITNESS OR IF YOU WOULD LIKE FOR ME TO ASK ANY
25 FOLLOW-UP QUESTIONS LET ME KNOW RIGHT THEN SO I CAN GO AHEAD

1 AND DO IT MS HALL?

2 MS HALL YES MY SON WAS INVOLVED AS A WITNESS IN A
3 CRIMINAL CASE ABOUT FIFTEEN YEARS AGO

4 THE COURT WHAT KIND OF CASE?

5 MS HALL IT WAS A MURDER CASE

6 THE COURT MURDER CASE OKAY DID HE TESTIFY AT
7 TRIAL?

8 MS HALL YES

9 THE COURT OKAY WOULD THE FACT THAT YOUR SON WAS --
10 WOULD THAT INTERFERE IN ANY WAY WITH YOUR WILLINGNESS OR
11 YOUR ABILITY TO GIVE BOTH THE STATE AND THE DEFENDANT A FAIR
12 AND IMPARTIAL TRIAL?

13 MS HALL NO

14 THE COURT OKAY THANK YOU MR FOX

15 MR FOX ABOUT TEN YEARS AGO I WAS -- I SERVED JAIL
16 TIME IN NEBRASKA I SERVED MY TIME

17 THE COURT FOR POSSESSION OF METHAMPHETAMINE?

18 MR FOX YES, SIR

19 THE COURT OKAY RIGHT NOW WOULD THE FACT THAT YOU
20 WERE INVOLVED IN THAT SITUATION INTERFERE IN ANY WAY WITH
21 EITHER YOUR WILLINGNESS OR YOUR ABILITY TO GIVE BOTH THE
22 STATE AND THE DEFENDANT A FAIR AND IMPARTIAL TRIAL?

23 MR FOX NO, SIR

24 THE COURT THANK YOU

25 MS WOODCOCK YES

1 THE COURT ALL RIGHT NOW WE'VE BEEN THROUGH THIS
2 SEVERAL TIMES WITH YOU ALREADY WHERE WE'VE ASKED YOU IF IT
3 WOULD INTERFERE AND YOU HAVE BEEN TELLING US, NO AND NOW
4 THAT YOU'VE THOUGHT ABOUT ---

5 MS WOODCOCK I'VE THOUGHT ABOUT IT AND I REALLY --
6 I'M AFRAID THAT I HAVE A CONFLICT THAT I CAN'T RESOLVE

7 THE COURT WHAT IS THAT? SPEAKING QUIETLY, IF YOU
8 DON'T MIND

9 MS WOODCOCK WELL, ON THE ASSUMPTION THAT I WERE TO
10 BE SEATED ON THE JURY I FELT LIKE THAT IT WOULD JUST BE VERY
11 DIFFICULT FOR ME TO FIND SOMEONE NOT GUILTY IN THESE
12 CIRCUMSTANCES

13 THE COURT BECAUSE OF THE FACT THAT YOUR HUSBAND WORKS
14 WITH THE SHERIFF'S OFFICE?

15 MS WOODCOCK YES

16 THE COURT THAT SHERIFF'S OFFICE INVESTIGATED THIS
17 CASE?

18 MS WOODCOCK YES

19 THE COURT ALL RIGHT THANK YOU

20 MR RAY WE'D JUST MOVE THAT SHE BE EXCUSED FOR CAUSE

21 MS MILLICAN NO OBJECTION

22 THE COURT I'M GOING TO GRANT THAT MOTION TAKE HER
23 OUT

24 (WHEREUPON THE BENCH CONFERENCE WAS ENDED)

25 THE COURT IS THERE ANY MEMBER OF THE JURY PANEL WHO

1 HAS ANY PARTICULAR INTEREST IN THE OUTCOME OF THIS CASE? IF
2 SO, PLEASE STAND

3 (NO RESPONSE)

4 THE COURT IS THERE ANY MEMBER OF THE JURY PANEL WHO
5 HAS FORMED OR EXPRESSED ANY OPINION AS TO THE GUILT OR
6 INNOCENCE OF THIS DEFENDANT? IF SO, PLEASE STAND

7 (NO RESPONSE)

8 THE COURT IS THERE ANY MEMBER OF THE JURY PANEL WHO
9 HAS ANY BIAS OR PREJUDICE EITHER TOWARDS OR AGAINST THE
10 STATE OR THE DEFENDANT IN CONNECTION WITH THIS CASE? IF SO,
11 PLEASE STAND

12 (NO RESPONSE)

13 THE COURT IS THERE ANY MEMBER OF THE JURY PANEL WHO
14 KNOWS OF ANY REASON WHY YOU COULD NOT GIVE BOTH THE STATE
15 AND THE DEFENDANT A FAIR AND IMPARTIAL TRIAL IN THIS CASE?
16 IF SO, PLEASE STAND

17 (NO RESPONSE)

18 THE COURT ANY ADDITIONAL VOIR DIRE FROM THE STATE?

19 MS MILLICAN NOTHING FURTHER, YOUR HONOR

20 THE COURT FROM THE DEFENSE?

21 MR RAY NO, YOUR HONOR

22 THE COURT ARE Y'ALL READY TO STRIKE?

23 MS MILLICAN YES, YOUR HONOR

24 MR RAY YES, SIR

25 THE COURT OKAY LADIES AND GENTLEMEN, THIS IS YOUR

1 LAST CHANCE TO GO THROUGH THIS PROCESS THIS WEEK, I THINK
2 I DON'T BELIEVE THAT WE'LL BE PICKING ANYMORE JURIES AFTER
3 THIS WHEN YOUR NAME IS CALLED COME DOWN FRONT, AND WE'LL
4 PICK US A JURY

5 MADAME CLERK NUMBER 18, BRITTANY CARTEE WHAT SAYS
6 THE STATE?

7 MS MILLICAN PLEASE PRESENT THE JUROR

8 MADAME CLERK WHAT SAYS THE DEFENSE?

9 MR RAY PLEASE SEAT THE JUROR

10 MADAME CLERK NUMBER 157, JIMMY BIGGERSTAFF WHAT
11 SAYS THE STATE?

12 MS MILLICAN PLEASE PRESENT THE JUROR

13 MR RAY I'M SORRY WHAT NUMBER WAS THAT?

14 MADAME CLERK 157

15 MR RAY PLEASE SWEAR THE JUROR

16 MADAME CLERK NUMBER 29, MILLER YVO

17 THE COURT 29?

18 MADAME CLERK 29, YES, SIR WHAT SAYS THE STATE?

19 MS MILLICAN PLEASE PRESENT THE JUROR

20 MADAME CLERK WHAT SAYS THE DEFENSE?

21 MR RAY PLEASE SWEAR THE JUROR

22 MADAME CLERK NUMBER 49, MALINDA FOWLER WHAT SAYS
23 THE STATE?

24 MS MILLICAN PLEASE PRESENT THE JUROR

25 MADAME CLERK WHAT SAYS THE DEFENSE?

1 MR RAY PLEASE SWEAR MS FOWLER

2 MADAME CLERK 123, RICHARD STONE WHAT SAYS THE
3 STATE?

4 MS MILLICAN PLEASE EXCUSE THE JUROR

5 MADAME CLERK 165, DANA DAVIS WHAT SAYS THE STATE?

6 MS MILLICAN PLEASE PRESENT THE JUROR

7 MADAME CLERK WHAT SAYS THE DEFENSE?

8 MR RAY PLEASE SWEAR THE JUROR

9 MADAME CLERK NUMBER 43, BERRY ROMERO WHAT SAYS THE
10 STATE?

11 THE COURT 43?

12 MADAME CLERK 43, YES, SIR

13 MS MILLICAN PLEASE PRESENT THE JUROR

14 MADAME CLERK WHAT SAYS THE DEFENSE?

15 MR RAY PLEASE SWEAR THE JUROR

16 MADAME CLERK 167, SHAWN FOX WHAT SAYS THE STATE?

17 MS MILLICAN PLEASE EXCUSE THE JUROR

18 MADAME CLERK 65, JUANITA JOHNSON WHAT SAYS THE
19 STATE?

20 MS MILLICAN PLEASE EXCUSE THE JUROR

21 MADAME CLERK 119, WALTER SNOW WHAT SAYS THE STATE?

22 MS MILLICAN PLEASE PRESENT THE JUROR

23 MADAME CLERK WHAT SAYS THE DEFENSE?

24 MR RAY PLEASE SEAT THE JUROR

25 MADAME CLERK NUMBER 140, CHARLES WHARTON

1 MR RAY I'M SORRY WHICH NUMBER?
2 MADAME CLERK 140 WHAT SAYS THE STATE?
3 MS MILLICAN PLEASE PRESENT THE JUROR
4 MADAME CLERK WHAT SAYS THE DEFENSE?
5 MR RAY PLEASE EXCUSE THIS JUROR
6 MADAME CLERK 137, JEFFREY WADE WHAT SAYS THE STATE?
7 MS MILLICAN PLEASE PRESENT THE JUROR
8 MADAME CLERK WHAT SAYS THE DEFENSE?
9 MR RAY DID YOU SAY 147?
10 MADAME CLERK 137
11 MR RAY PLEASE EXCUSE THIS JUROR
12 MADAME CLERK 187, VIOLA MILLER WHAT SAYS THE STATE?
13 MS MILLICAN PLEASE EXCUSE THE JUROR
14 MADAME CLERK 106, TAMMY RICHBURG WHAT SAYS THE
15 STATE?
16 MS MILLICAN PLEASE PRESENT THE JUROR
17 MADAME CLERK WHAT SAYS THE DEFENSE?
18 MR RAY PLEASE SWEAR MS RICHBURG
19 MADAME CLERK NUMBER 70, C J JONES WHAT SAYS THE
20 STATE?
21 MS MILLICAN PLEASE PRESENT THE JUROR
22 MADAME CLERK WHAT SAYS THE DEFENSE?
23 MR RAY PLEASE EXCUSE THE JUROR
24 MADAME CLERK 169, CHERYL HAMAN WHAT SAYS THE STATE?
25 MS MILLICAN PLEASE PRESENT THE JUROR

1 MADAME CLERK WHAT SAYS THE DEFENSE?
2 MR RAY PLEASE SWEAR THE JUROR
3 MADAME CLERK 176, NEIL TURNER WHAT SAYS THE STATE?
4 MS MILLICAN PLEASE PRESENT THE JUROR
5 MADAME CLERK WHAT SAYS THE DEFENSE?
6 MR RAY PLEASE SWEAR THE JUROR
7 THE COURT WHAT WAS THAT JUROR'S NUMBER PLEASE?
8 MADAME CLERK 176 NUMBER 40, RONNIE EPTON WHAT
9 SAYS THE STATE?
10 MS MILLICAN PLEASE EXCUSE THE JUROR
11 MADAME CLERK 57, ELAINE HALL WHAT SAYS THE STATE?
12 MS MILLICAN PLEASE PRESENT THE JUROR
13 MADAME CLERK WHAT SAYS THE DEFENSE?
14 MR RAY PLEASE SWEAR MS HALL
15 MADAME CLERK 186, DARREN ARMSTRONG WHAT SAYS THE
16 STATE?
17 MS MILLICAN PLEASE PRESENT THE JUROR
18 MADAME CLERK WHAT SAYS THE DEFENSE?
19 MR RAY PLEASE SWEAR THE JUROR
20 THE COURT WE'LL GET ONE ALTERNATE STRIKES ARE ONE
21 AND TWO
22 MADAME CLERK 161, JOANN DRUMMOND WHAT SAYS THE
23 STATE?
24 MS MILLICAN PLEASE PRESENT THE JUROR
25 MADAME CLERK WHAT SAYS THE DEFENSE?

1 MR RAY PLEASE SWEAR THE JUROR

2 THE COURT ANY EXCEPTION TO THE COMPOSITION OR MANNER
3 OF SELECTION OF THE JURY?

4 MS MILLICAN NONE FROM THE STATE, YOUR HONOR

5 MR RAY NO, YOUR HONOR

6 THE COURT LADIES AND GENTLEMEN, I UNDERSTAND THAT I
7 HAVE A FEW NON-JURY MATTERS THAT I NEED TO TAKE UP IN THIS
8 CASE BEFORE WE ACTUALLY BEGIN WORKING WITH YOU I'M NOT
9 SURE AT THIS TIME HOW LONG THOSE ARE GOING TO TAKE SO I'M
10 GOING TO ASK YOU TO GO BACK IN -- LET ME SEE Y'ALL UP HERE
11 FOR JUST ONE SECOND PLEASE

12 (WHEREUPON A BENCH CONFERENCE WAS HELD OFF THE RECORD
13 IN THE PRESENCE OF THE JURY, BUT OUT OF THEIR HEARING)

14 THE COURT WELL, WE HAVE TWO OTHER JURIES
15 DELIBERATING I HAVE ONE JURY DELIBERATING BACK HERE THEY
16 HAVE ASKED A QUESTION THAT I'M GOING TO HAVE TO ANSWER I
17 HAVE SOME NON-JURY ISSUES TO DEAL WITH IN THIS CASE I'M
18 GOING TO DO MY BEST TO PREDICT FOR YOU WHEN I NEED YOU BACK
19 I'M GOING TO SEND YOU TO LUNCH NOW AND I'M GOING TO ASK
20 YOU TO COME BACK BEFORE 1 00 AND I'M GOING TO DO MY BEST
21 TO BE READY TO BEGIN AT 1 00 BUT IF Y'ALL END UP SITTING
22 BACK THERE IN THE JURY ROOM FOR A LITTLE WHILE DON'T BE
23 SURPRISED BECAUSE IT'S VERY LIKELY

24 IF WE GET A VERDICT IN THE OTHER CASE, FOR EXAMPLE,
25 THEN IT COULD TAKE ME A HALF HOUR TO FORTY-FIVE MINUTES JUST

1 TO DEAL WITH THAT SO IT'S VERY LIKELY THAT YOU WILL END UP
2 SPENDING SOME TIME WAITING BACK THERE BUT I'M GOING TO GO
3 AHEAD AND GET YOU TO COME BACK AT ONE BECAUSE I WANT TO GET
4 STARTED THEN IF WE CAN

5 SO I'M GOING TO TELL YOU NOW THAT YOU ARE NOT ALLOWED
6 TO DISCUSS THIS CASE IN ANY WAY UNTIL I HAVE GIVEN YOU
7 PERMISSION TO BEGIN YOUR DELIBERATIONS AND SO THAT WILL
8 CERTAINLY NOT BE BEFORE LUNCH BUT OTHER THAN THAT, JUST GO
9 AND HAVE A NICE LUNCH AND BE BACK IN THE JURY ROOM THAT
10 THESE FOLKS ARE GOING TO SHOW YOU NOW BEFORE YOU LEAVE
11 BEFORE 1 00 Y'ALL HAVE A NICE LUNCH

12 (WHEREUPON THE JURY EXITED THE COURTROOM AT 11 45 AM)

13 THE COURT OKAY THOSE OF YOU WHO WERE NOT SELECTED
14 TO SERVE ON THIS JURY -- WELL, JUST SO I CAN MAKE SURE, LET
15 ME SEND YOU ALL BACK TO THE JURY ASSEMBLY ROOM FOR JUST A
16 MINUTE AND THEN AT A MINIMUM, SHORTLY AFTER THAT YOU WILL
17 BE ALLOWED TO GO TO LUNCH, BUT YOU'RE PROBABLY DONE FOR THE
18 WEEK SO Y'ALL GO BACK TO THE JURY ASSEMBLY ROOM FOR A
19 SECOND

20 (WHEREUPON THE JURY PANEL EXITED THE COURTROOM)

21 MS THILL YOUR HONOR, ARE WE GOING TO TAKE A MINUTE?

22 THE COURT YEAH, WE'RE GOING TO TAKE A MINUTE ALL
23 RIGHT LET ME HEAR YOUR MOTIONS THAT DON'T RELATE TO
24 SUPPRESSION OR AT LEAST TELL ME WHAT THEY ARE

25 MR RAY YOUR HONOR, THE FIRST MOTION WOULD BE JUST TO

1 ENSURE THE STATE HAS FULLY COMPLIED WITH BRADY AND RULE 5

2 THE COURT THAT'S NOT A MOTION I MEAN, IF YOU -- YOU
3 CAN HAVE A DISCUSSION WITH THEM AND IF YOU THINK THERE'S
4 SOME REASON TO BELIEVE THAT THERE'S BEEN A VIOLATION, THEN
5 YOU CAN MAKE A MOTION BUT I'M NOT HERE TO PUT ON THE
6 RECORD THE FACT THAT YOU'VE MADE A RULE 5 REQUEST, WHICH IS
7 ALL YOU JUST DID SO ANY ACTUAL MOTION THAT I CAN HEAR I'LL
8 HEAR IT

9 MR RAY YOUR HONOR, I'VE BEEN ADVISED THAT THERE'S A
10 POSSIBILITY THERE WERE FINGERPRINTS TAKEN IN THE CASE I
11 BELIEVE THE OFFICER WAS CHECKING ON THAT AND I DON'T KNOW
12 IF THAT'S BEEN DETERMINED YET

13 MS MILLICAN THE OFFICER, I MEAN, YOUR HONOR, I SPOKE
14 WITH THE OFFICER ABOUT THE POSSIBILITY OF FINGERPRINTS
15 THERE WAS MENTION IN THE PRELIM NOTES THAT HE WAS ASKED BY A
16 DIFFERENT DEFENSE ATTORNEY AT THAT TIME WHETHER FINGERPRINTS
17 WERE TAKEN AND HIS RESPONSE AT THAT TIME WAS THAT HE WAS
18 NOT AWARE OF ANY FINGERPRINTS TAKEN, IF THERE WERE THERE
19 WERE NO RESULTS

20 THE COURT OKAY

21 MS MILLICAN I HAVE NOTHING IN MY FILE OR THE
22 OFFICER'S CASE FILE SHOWING THERE WERE ANY FORENSIC
23 FINGERPRINTS TAKEN ON ANYTHING

24 THE COURT OKAY ANYTHING ELSE?

25 MR RAY YOUR HONOR, MY SECOND MOTION WOULD BE TO

1 DETERMINE IF THERE'S ANY STATEMENTS ALLEGED TO HAVE BEEN
2 MADE BY MR BURKE THAT THE STATE INTENDS TO INTRODUCE

3 THE COURT NOW SEE, THAT IS NOT A MOTION YOU CAN ASK
4 HER OFF THE RECORD OUTSIDE OF THE COURT HEARING, DO YOU HAVE
5 ANY EVIDENCE THAT YOU INTEND TO OFFER CONCERNING STATEMENTS
6 MADE BY MY CLIENT? AND IF SHE SAYS, YES, THEN YOU CAN ASK
7 -- THEN YOU CAN ADDRESS WHETHER OR NOT THOSE HAVE BEEN
8 PRODUCED IF SHE SAYS, NO, IT'S NOT AN ISSUE THAT IS NOT
9 SOMETHING THAT YOU NEED TO BE BRINGING IN FRONT OF THE COURT
10 AND MAKING A MOTION ABOUT

11 MR RAY VERY WELL I'LL HAVE NOTHING ELSE AT THIS
12 TIME

13 THE COURT ALL RIGHT

14 (WHEREUPON COURT WAS IN RECESS AT 11 50 AM)

15 THE COURT ALL RIGHT MS MILLICAN, YOU CAN PROCEED
16 WITH PUTTING UP YOUR EVIDENCE

17 MS THILL YOUR HONOR, ACTUALLY THE STATE WOULD LIKE
18 TO ADDRESS ONE ISSUE PRIOR TO BEGINNING THE SUPPRESSION
19 MOTION THE STATE WOULD REQUEST THAT YOUR HONOR MAKE A
20 DETERMINATION ABOUT WHETHER THE INDIVIDUAL OR DEFENDANT IN
21 THIS CASE ACTUALLY HAS STANDING TO CHALLENGE THE VALIDITY OF
22 THE SEARCH WARRANT FOR THE BASIS OF THE SUPPRESSION HEARING
23 IF YOUR HONOR SEES FIT TO ARGUE THAT I'D BE MORE THAN HAPPY
24 TO ARGUE ON BEHALF OF THE STATE

25 THE COURT OKAY DO YOU HAVE ANY OBJECTION TO US

1 ADDRESSING THAT BEFORE WE GET INTO THE EVIDENCE?

2 MR RAY NO, YOUR HONOR WE CAN ADDRESS THAT MATTER

3 THE COURT OKAY GO AHEAD THEN

4 MS THILL YOUR HONOR, THE FOURTH AMENDMENT GUARANTEES
5 THAT OBVIOUSLY INDIVIDUALS HAVE THE RIGHT TO BE FREE FROM
6 UNREASONABLE SEARCHES AND SEIZURES GENERALLY THE FOURTH
7 AMENDMENT HAS BEEN HELD TO APPLY TO A LEGITIMATE EXPECTATION
8 OF PRIVACY IN CONNECTION WITH THE PREMISES THAT IS TO BE
9 SEARCHED THE INDIVIDUAL CONTESTING THE SEARCH HAS TO HAVE
10 THAT EXPECTATION OF PRIVACY IN ORDER TO CHALLENGE OR HAVE
11 STANDING TO CHALLENGE THE VALIDITY OF THE SEARCH AND TO HAVE
12 THE EVIDENCE AS A RESULT OF THAT SEARCH SUPPRESSED

13 IT WOULD BE THE STATE'S POSITION THAT IN THIS CASE
14 SINCE THE DEFENDANT DID NOT RESIDE AT THE HOME WHERE THE
15 SEARCH WARRANT WAS EXECUTED, AND THAT THE SEARCH WARRANT WAS
16 BASED ON THE PARTICIPATION AND EVIDENCE RELATING TO ANOTHER
17 INDIVIDUAL IDENTIFIED AS A MR BRAD LOGAN, AND THAT THE
18 SEARCH WARRANT WAS ACTUALLY ISSUED FOR HIS HOME OR WHAT IS
19 BELIEVED TO BE HIS HOME, AND THE STATE HAS INFORMATION TO
20 BELIEVE THAT THE DEFENDANT WAS NOT RESIDING AT THE HOUSE IN
21 QUESTION

22 THEREFORE, THE STATE'S POSITION WOULD BE THAT THE
23 DEFENDANT DOES NOT HAVE THE RIGHT TO RAISE MR LOGAN'S
24 FOURTH AMENDMENT CHALLENGE AND DOES NOT HAVE STANDING TO
25 ARGUE THAT THE SEARCH WARRANT IS INVALID OR INSUFFICIENT

1 MR RAY YOUR HONOR, THE DEFENDANT MAKES HIS MOTION
 2 BASED ON SOUTH CAROLINA STATUTE 17 13 140, WHICH I CAN
 3 PROVIDE A COPY TO THE COURT IF YOUR HONOR WOULD LIKE
 4 THE COURT YEAH WELL NOW, -- WELL, YOU'RE SAYING
 5 THAT THIS SECTION WAS VIOLATED?

6 MR RAY YOUR HONOR, THAT SECTION ADDRESSES THE FACT
 7 THAT THERE MUST BE PROBABLE CAUSE FOR THE MAGISTRATE TO
 8 ISSUE THE SEARCH WARRANT AND OUR MOTION TO SUPPRESS WOULD
 9 TOUCH ON THE PROBABLE CAUSE

10 THE COURT WAIT A MINUTE NOW A MOTION TO SUPPRESS
 11 COMES UP ONLY IF YOU ALLEGE A CONSTITUTIONAL VIOLATION IF
 12 YOU ALLEGE A STATUTORY VIOLATION, THEN THERE MAY BE SOME
 13 ~~REMEDY, BUT IT IS NOT A MOTION TO SUPPRESS. WHAT IS THE~~
 14 ~~CONSTITUTIONAL VIOLATION THAT YOU ALLEGE?~~

15 MR RAY YOUR HONOR, THE CASE OF STATE V MCKNIGHT ---
 16 THE COURT FORGET CASES JUST TELL ME WHAT'S THE
 17 CONSTITUTIONAL VIOLATION THAT YOU ALLEGE

18 MR RAY YOUR HONOR, CONSTITUTIONALLY THE WARRANT IS
 19 IMPROPER DUE TO A LACK OF PROBABLE CAUSE

20 THE COURT ALL RIGHT NOW, WHAT SHE SAYS IS THAT THAT
 21 MAY BE TRUE, BUT YOUR CLIENT DOES NOT HAVE A REASONABLE
 22 EXPECTATION OF PRIVACY ON THOSE PREMISES AND THEREFORE
 23 CANNOT MAKE THE CHALLENGE HOW DO YOU RESPOND TO THAT?

24 MR RAY YOUR HONOR, THE ONLY WAY I CAN RESPOND TO
 25 THAT IS IF I ADDRESS THIS CASE, WHICH IS STATE V MCKNIGHT,

1 WHICH STATES THAT THE RIGHTS AFFORDED BY SECTION 17 13 140
2 ARE NOT DEPENDENT UPON A SHOWING OF AN EXPECTATION OF
3 PRIVACY IN THE SEARCHED PREMISES THE PRIMARY PURPOSE OF
4 THE STATUTE IS TO ENSURE THE TIMELY RECORDING OF THE
5 TESTIMONY UPON WHICH THE -- THE MATTER IN THIS WAS THE
6 TIMELY RECORDING OF THE WARRANT THAT STATUTE ALSO
7 ADDRESSES PROBABLE CAUSE

8 THIS CASE GOES ON TO SAY, HOWEVER, THE PRIMARY BENEFIT
9 OF THE STATUTE IS TO THE PERSON ARRESTED OR SEARCHED
10 THEREFORE, ONE CONTESTING THE LEGALITY OF A SEARCH BECAUSE
11 OF THE DEFECT UNDER SECTION 17 13 140, WE'D ONLY SHOW THAT
12 THE STATE IS ATTEMPTING TO INTRODUCE THE EVIDENCE AGAINST
13 HIM AND SINCE THAT STATUTE DOES ADDRESS PROBABLE CAUSE,
14 THAT'S WHERE OUR MOTION ARISES

15 THE COURT YOU'VE LOST ME I DON'T HAVE ANY IDEA WHAT
16 YOU'RE TALKING ABOUT

17 MR RAY YOUR HONOR, I CAN PASS THIS CASE UP IF YOUR
18 HONOR'S INTERESTED IN IT

19 THE COURT I'M INTERESTED IN HEARING IN TWO OR THREE
20 SENTENCES WHAT YOUR ARGUMENT IS

21 MR RAY YOUR HONOR, OUR ARGUMENT, AS I STATED, IS THE
22 SEARCH WARRANT LACKS PROBABLE CAUSE PROBABLE CAUSE IS
23 ADDRESSED IN 17 13 140 THE CASE OF MCKNIGHT STATES THAT IF
24 DEFICIENCIES ARE RAISED UNDER THE STATUTE, THEN THE
25 EXPECTATION OF PRIVACY IS NOT AN ISSUE IT IS SIMPLY THAT

1 THE DEFENDANT NEED ONLY SHOW THE STATE IS ATTEMPTING TO
2 INTRODUCE EVIDENCE AGAINST HIM IT'S KIND OF AN AUTOMATIC
3 STANDING STATUTE

4 MS THILL YOUR HONOR, IF I'M NOT MISTAKEN, I THINK
5 WHAT MR RAY IS SAYING IS THAT THE COURTS HAVE FOUND THAT
6 UNDER THE STATUTORY PROVISION, EVEN THOUGH IT'S NOT BASED ON
7 A CONSTITUTIONAL VIOLATION, IT'S BASED ON A STATUTORY
8 VIOLATION IS THAT WHAT YOU'RE SAYING?

9 MR RAY SOMEWHAT

10 MS THILL SO IT'S NOT UNDER THE FOURTH AMENDMENT,
11 IT'S SUPPRESSED UNDER 17 13 140

12 MR RAY RIGHT

~~13 MS THILL OKAY WE WITHDRAW OUR ARGUMENT~~

14 THE COURT ALL RIGHT -- YOU READY TO PUT UP EVIDENCE?

15 MS THILL WE ARE, YOUR HONOR THE STATE WOULD FIRST
16 CALL FORWARD MATT HUTCHINS

17 THE COURT WELL, BEFORE HE COMES AROUND TO BE SWORN I
18 HAVE JUST BEEN HANDED TWO NOTES FROM THE JURY

19 (WHEREUPON THE COURT IS TALKING TO ATTORNEYS ABOUT A
20 PREVIOUS TRIAL)

21 (WHEREUPON COURT WAS IN RECESS REGARDING THIS TRIAL AT
22 1 38 PM)

23 (WHEREUPON THE JURY ENTERED THE COURTROOM AT 2 00 PM)

24 THE COURT LADIES AND GENTLEMEN, WE HAVE RUN INTO SOME
25 ISSUES THAT WE HAVE HAD TO DEAL WITH IN THIS OTHER CASE

1 WHERE THE JURY IS DELIBERATING RIGHT NOW AND IT IS GOING
2 TO TAKE ME AT LEAST AN HOUR FROM NOW TO RESOLVE THOSE
3 ISSUES WE'RE GOING TO HAVE TO REPLAY SOME TESTIMONY FOR
4 THEM AND ADDRESS SOME OTHER QUESTIONS

5 SO I'M GOING TO ALLOW YOU ALL TO BE FREE FOR ONE HOUR
6 AND ASK YOU TO RETURN TO THAT SAME JURY ROOM THAT YOU HAVE
7 BEEN IN FOR THE LAST HOUR AT 3 00 AND WE WILL SEE HOW WE
8 STAND AT THAT TIME I'M DOING THE BEST I CAN TO GET TO YOU
9 AS QUICKLY AS I CAN I APPRECIATE Y'ALL'S UNDERSTANDING

10 SO Y'ALL ENJOY A NICE BREAK THE WEATHER'S BEAUTIFUL
11 AND I'M SURE THERE'S SOME LOCAL MERCHANTS WHO WOULD LOVE TO
12 HAVE YOU COME THROUGH THEIR BUSINESSES BUT Y'ALL CAN HAVE
13 A BREAK OF ABOUT AN HOUR IF YOU'RE IN THE COURTHOUSE, THEN
14 I NEED YOU TO BE IN THAT JURY ROOM AND NOT WANDERING AROUND
15 THANK YOU

16 (WHEREUPON THE JURY EXITED THE COURTROOM AT 2 02 PM)

17 (WHEREUPON COURT WAS IN RECESS)

18 THE COURT WE'LL JUST GO AHEAD SO, PROCEED

19 MS THILL YES, SIR, YOUR HONOR SUSAN, ARE YOU
20 READY?

21 MADAME COURT REPORTER YES, MA'AM

22 MS THILL OKAY

23 THE COURT THANKS FOR LOOKING OUT FOR MY COURT
24 REPORTER I FORGET TO DO THAT FROM TIME TO TIME

25 MS THILL YOUR HONOR, THE STATE WOULD FIRST CALL

1 FORWARD MATT HUTCHINS TO THE STAND

2 MATT HUTCHINS, BEING DULY

3 SWORN TESTIFIED AS FOLLOWS

4 THE COURT I'VE BEEN DOING THIS ALL WEEK, OFFICER,
5 BECAUSE OF THE WAY THIS WITNESS BOX IS LAID OUT I CAN'T SEE
6 YOUR FACE WHEN YOU'RE TESTIFYING WITHOUT YOU HAVING TO LEAN
7 WAY BACK SO I'M GOING TO LET YOU AND OTHER WITNESSES
8 DURING THIS HEARING SIT OVER THERE IN THE JURY BOX SO I CAN
9 GET A GOOD LOOK AT YOU WHILE YOU'RE TESTIFYING PLEASE

10 MR HUTCHINS OKAY

11 DIRECT EXAMINATION BY MS THILL

12 Q INVESTIGATOR HUTCHINS, COULD YOU STATE YOUR NAME AND
13 OCCUPATION FOR THE RECORD?

14 A INVESTIGATOR MATT HUTCHINS I'M A NARCOTIC
15 INVESTIGATOR WITH THE SPARTANBURG COUNTY SHERIFF'S OFFICE

16 Q AND HOW LONG HAVE YOU BEEN EMPLOYED BY THE SHERIFF'S
17 OFFICE?

18 A APPROXIMATELY FOUR YEARS

19 Q OKAY AND AS A NARCOTICS OFFICER CAN YOU TELL THE
20 COURT WHAT YOUR DUTIES AND RESPONSIBILITIES ARE?

21 A TO INVESTIGATE DRUG COMPLAINTS AND ENFORCE DRUG LAWS IN
22 SPARTANBURG COUNTY

23 Q AND WHAT EDUCATION AND TRAINING HAVE YOU RECEIVED AS A
24 SHERIFF'S OFFICE NARCOTICS INVESTIGATOR?

25 A ATTENDED THE REGIONAL COUNTER DRUG TRAINING ACADEMY IN

1 MISSISSIPPI, BASIC NARCOTICS, WHICH IS A TWO WEEK CLASS
2 ALSO ATTENDED METH CLASSES GIVEN BY THE REGIONAL COUNTER
3 DRUG TRAINING ACADEMY AND VARIOUS OTHER CLASSES

4 Q AND YOU WERE EMPLOYED AS A NARCOTICS INVESTIGATOR ON
5 MARCH 17TH OF 2005, CORRECT?

6 A THAT'S CORRECT

7 Q AND AS A NARCOTICS OFFICER HAD YOU EVER HAD THE DUTY OF
8 EXECUTING A SEARCH WARRANT?

9 A I HAVE

10 Q AND CAN YOU STATE APPROXIMATELY HOW MANY TIMES?

11 A EXECUTED A SEARCH WARRANT FIFTY TO A HUNDRED TIMES

12 Q AND CAN YOU BRIEFLY EXPLAIN THE PROTOCOL THAT YOU GO
13 THROUGH TO OBTAIN A SEARCH WARRANT?

14 A BASICALLY WE RECEIVE A COMPLAINT, IT WOULD BE
15 INVESTIGATED, GATHER EVIDENCE TO OBTAIN PROBABLE CAUSE TO
16 OBTAIN THE SEARCH WARRANT

17 Q AND DID YOU OBTAIN A SEARCH WARRANT FOR 108 RAYMOND
18 DRIVE IN CHESNEE?

19 A I DID

20 Q AND THAT'S HERE IN SPARTANBURG COUNTY, CORRECT?

21 A THAT IS CORRECT

22 Q AND WHAT DID YOU BELIEVE THAT YOU WERE GOING TO FIND AT
23 108 RAYMOND DRIVE IF YOU WERE GIVEN A SEARCH WARRANT BY A
24 MAGISTRATE?

25 A I BELIEVE WE WOULD HAVE FOUND ILLEGAL NARCOTICS BEING

1 SOLD AND STORED AT THE RESIDENCE

2 Q WAS THERE ANY TYPE OF NARCOTIC IN PARTICULAR?

3 A CRACK COCAINE

4 Q AND WHY DID YOU BELIEVE THAT YOU WERE GOING TO FIND
5 CRACK COCAINE AT THAT LOCATION?

6 A DUE TO AN INVESTIGATION THAT HAD BEEN GOING ON FOR AT
7 LEAST A MONTH ON THAT LOCATION

8 Q AND WHAT INFORMATION -- HOW DID THAT INVESTIGATION
9 START?

10 A ORIGINALLY WE HAD RECEIVED COMPLAINTS TO OUR OFFICE IN
11 REFERENCE TO POSSIBLE DRUG ACTIVITY AT THAT LOCATION

12 Q AND WHAT DID THE COMPLAINANT STATE WAS GOING ON THAT
13 MADE THEM SUSPICIOUS REGARDING DRUG ACTIVITY?

14 A I RECEIVED A COMPLAINT IN FEBRUARY OF 2005 FROM
15 LIEUTENANT RAINES WITH THE CHESNEE CITY POLICE DEPARTMENT IN
16 REFERENCE TO A COMPLAINT HE RECEIVED THAT CONCERNED A
17 NEIGHBOR IN THE AREA THAT STATED BETWEEN THE HOURS OF TWO PM
18 AND FOUR PM THERE WERE APPROXIMATELY SIXTEEN VEHICLES
19 PULLING UP TO THE RESIDENCE WITH PEOPLE ONLY STAYING A SHORT
20 PERIOD OF TIME THE COMPLAINANT ALSO STATED THAT THERE WAS
21 MULTIPLE SURVEILLANCE CAMERAS ON THE ROOF OF THE MOBILE
22 HOME

23 Q AND ONCE THAT COMPLAINT WAS REPORTED TO Y'ALL WHAT DID
24 Y'ALL DO NEXT?

25 A OPENED UP A CASE ON THE RESIDENCE AND AROUND THE

1 FIRST OF MARCH A CONFIDENTIAL RELIABLE INFORMANT WORKING
2 WITH THE SHERIFF'S OFFICE GAVE ME INFORMATION THAT BRAD
3 LOGAN WAS LIVING AT THE MOBILE HOME, WHICH IS LOCATED BEHIND
4 SUMMER CHASE MOBILE HOME PARK AND WAS SELLING CRACK COCAINE
5 FROM THE RESIDENCE

6 Q AND THAT WAS BELIEVED TO BE THE SAME ADDRESS FOR -- AS
7 108 RAYMOND DRIVE?

8 A RAYMOND DRIVE, THAT IS CORRECT

9 Q AND AFTER THE CONFIDENTIAL INFORMANT -- WELL, FIRST OF
10 ALL, WHAT MADE THAT INFORMANT RELIABLE?

11 A DUE TO INFORMATION THAT HAD BEEN GIVEN IN THE PAST THAT
12 HAD BEEN DEEMED TRUTHFUL ALONG WITH OTHER BUYS THAT HAD
13 RESULTED IN CONFISCATION OF CONTRABAND

14 Q AND AFTER HE STATED TO YOU THAT HE HAD SEEN NARCOTICS
15 IN THAT HOME WHAT WAS THE NEXT OCCURRENCE IN YOUR
16 INVESTIGATION?

17 A MARCH 11TH, 2005 A CONFIDENTIAL RELIABLE INFORMANT
18 WORKING FOR THE SHERIFF'S OFFICE PURCHASED A QUANTITY OF
19 CRACK COCAINE FROM BRAD LOGAN AT 108 RAYMOND DRIVE, WHICH IS
20 IN THE WHISPERING WINDS MOBILE HOME PARK THE CRI EXCHANGED
21 SPARTANBURG COUNTY SHERIFF'S OFFICE FUNDS FOR THE CRACK AND
22 STATED THAT SUBJECT -- HIDE THE DRUGS THROUGHOUT THE
23 RESIDENCE AND ON THEIR PERSON TO AVOID POLICE DETECTION
24 AND HE HAD PROVIDED INFORMATION IN THE PAST

25 Q AND THE CONFIDENTIAL INFORMANT, WHAT MADE HIM RELIABLE,

1 THE ONE THAT YOU USED ON MARCH 11TH OF '05?

2 A CRI HAD PROVIDED INFORMATION IN THE PAST TO THE
3 SHERIFF'S OFFICE THAT HAD LED TO THE CONFISCATION OF
4 NARCOTICS

5 Q AND THE INCIDENT THAT TOOK PLACE ON MARCH 11TH OF 2005,
6 WAS ANY SORT OF ADDITIONAL SURVEILLANCE DEVICE USED DURING
7 THAT ENTRY INTO THE HOME?

8 A THE CRI WAS EQUIPPED WITH COVERT VIDEO CAMERA AND A
9 VIDEO OF THE BUY WAS OBTAINED

10 MS THILL YOUR HONOR, AT THIS TIME THE STATE WOULD
11 LIKE TO PUT INTO EVIDENCE -- WELL, I'M SORRY I RECENT
12 THAT

13 Q AT THE TIME THAT YOU ASKED FOR THE SEARCH WARRANT DID
14 YOU PUBLISH THE COPY OF THE CD TO THE MAGISTRATE THAT YOU
15 APPLIED FOR THE SEARCH WARRANT BEFORE?

16 A NO

17 Q WAS HE AWARE THAT THERE WAS AUDIO OR VIDEO SURVEILLANCE
18 OF THAT BUY?

19 A I'M NOT AWARE WHETHER HE WAS OR NOT

20 Q AFTER YOU SENT THE CONFIDENTIAL INFORMANT IN ON MARCH
21 11TH HOW DID YOUR INVESTIGATION UNFOLD AFTER THAT TIME?

22 A WE CONTINUED TO RECEIVE NUMEROUS COMPLAINTS ON THE
23 RESIDENCE IN REFERENCE TO DRUG ACTIVITY, THE AREA OF OLD
24 ISLAND FORD ROAD AND HENDERSON ROAD, WHICH IS THE CLOSEST
25 CROSS STREET, THE MAIN CROSS STREET OF THIS LOCATION ALSO

1 DOING DRIVE-BYS AND MONITORING THE LOCATION, WE OBSERVED
2 CARS AT THE LOCATION FOR SHORT PERIODS OF TIME

3 Q SO YOU DID CONTINUE SURVEILLANCE AFTER THAT INCIDENT?

4 A THAT'S CORRECT

5 Q AND YOU HAVE -- DO YOU HAVE A COPY OF THE SEARCH
6 WARRANT?

7 A I DO

8 THE COURT IF THE QUESTION IS WHETHER OR NOT THERE WAS
9 PROBABLE CAUSE FOR THE MAGISTRATE WOULDN'T I HAVE TO LOOK
10 SOLELY AT THE EVIDENCE THAT WAS PRESENTED TO THE MAGISTRATE?

11 MS THILL CORRECT, YOUR HONOR THAT'S WHY I RECANTED
12 MY ---

13 THE COURT BUT WOULDN'T IT BE -- WOULDN'T I THEN JUST
14 HAVE TO -- WOULDN'T IT HAVE BEEN SUBMITTED IN WRITTEN FORM?

15 MS THILL YES, SIR, YOUR HONOR

16 THE COURT WELL, WOULDN'T IT SUFFICE FOR ME TO JUST
17 READ THE AFFIDAVIT?

18 MS THILL IF YOUR HONOR SEES FIT

19 THE COURT WELL, ANYTHING ELSE WOULDN'T BE HELPFUL TO
20 ME, WOULD IT? I'M ASKING

21 MS THILL WELL, IT WOULD BE THE INFORMATION THAT
22 INVESTIGATOR HUTCHINS TESTIFIED TO BEFORE THE MAGISTRATE

23 THE COURT OH, HE TESTIFIED IN ADDITION TO AN
24 AFFIDAVIT?

25 MS THILL DID YOU ---

1 A HE WAS PRESENTED WITH THIS AFFIDAVIT THAT'S WHAT HE
2 WENT BY

3 THE COURT WELL, THEN WOULDN'T I HAVE TO RESTRICT MY
4 ANALYSIS TO READING THE AFFIDAVIT?

5 MS THILL IF YOUR HONOR SEES FIT HE'S TESTIFIED TO
6 THE BASIS OF THE AFFIDAVIT UP TO THIS POINT COULD I
7 APPROACH?

8 MR RAY I BELIEVE YOUR HONOR'S CORRECT

9 THE COURT I'M NOT TELLING YOU THAT'S THE ANSWER I'M
10 ASKING 'CAUSE IT SEEMS TO ME THAT IT WOULD BE, BUT I DON'T
11 KNOW THAT FOR SURE

12 (PAUSE)

13 THE COURT WHAT'S THE SIGNIFICANCE OF THE PARAGRAPH
14 ABOUT BRAD LOGAN? HOW DOES IT -- OH, TO SEARCH THE PERSON
15 OF BRAD LOGAN WAS ANYTHING SEIZED FROM BRAD LOGAN DURING
16 THIS PARTICULAR SEARCH? WAS HE THERE?

17 A YES, HE WAS

18 THE COURT THAT DOESN'T HAVE ANYTHING TO DO WITH THIS
19 THOUGH, DOES IT? YOU'RE NOT CHALLENGING THAT, ARE YOU?

20 MR RAY THE FACT THAT ITEMS WERE SEIZED FROM BRAD
21 LOGAN?

22 THE COURT YEAH

23 MR RAY NO, YOUR HONOR

24 THE COURT THE DATE OF THE AFFIDAVIT?

25 MS THILL YOUR HONOR, THE DATE OF THE AFFIDAVIT

1 SHOULD BE ON THE FRONT ---

2 THE COURT MARCH 16TH

3 MS THILL YES, SIR, YOUR HONOR I BELIEVE IT WAS
4 EXECUTED ON THE 17TH AND RETURNED ON THE 18TH

5 THE COURT ALL RIGHT YOU GOT ANYTHING YOU WANT TO
6 SAY?

7 MR RAY YES, YOUR HONOR YOUR HONOR, THE DEFENSE'S
8 CONCERNS WITH THE SEARCH WARRANT, FIRST TO ADDRESS THE
9 COMPLAINTS RECEIVED STATES THAT THEY RECEIVED COMPLAINTS
10 FROM A NEIGHBOR WHO TOLD THEM SEVERAL THINGS INCLUDING
11 VEHICLES WERE THERE, AND THERE WERE SURVEILLANCE CAMERAS ON
12 THE ROOF AND FROM WHAT WAS PRESENTED TO THE MAGISTRATE,
13 THAT WAS NEVER CONFIRMED, THAT THEY -- WHAT THE MAGISTRATE
14 SAW, THERE WAS NO ADDITIONAL SURVEILLANCE AND
15 ADDITIONALLY, UNDER THE AFFIDAVIT THE OFFICER STATED THAT
16 HIS REASON TO BELIEVE DRUG ACTIVITY IS CURRENTLY TAKING
17 PLACE AT THE RESIDENCE WAS DUE TO THE CONTINUED COMPLAINTS,
18 WHICH WERE NEVER VERIFIED

19 SECONDLY, YOUR HONOR, THEY STATE THAT A BUY OCCURRED ON
20 MARCH 11TH OF '05 THAT WAS ONE SINGLE BUY AND A WARRANT
21 WASN'T SOUGHT UNTIL FIVE DAYS LATER AND NOT SERVED UNTIL THE
22 SIXTH DAY SO WE BELIEVE THAT IF THE WARRANT HAD BEEN
23 SOUGHT MORE RECENTLY THERE MAY NOT BE A PROBLEM OTHER THAN
24 WHAT I'VE STATED ABOUT THE COMPLAINTS THE OFFICE RECEIVED
25 BUT THIS WARRANT MAY HAVE BEEN STALE DUE TO THE FACT THAT

1 THERE WAS NO EVIDENCE OR NOTHING PRESENTED TO THE MAGISTRATE
2 THAT THERE WAS A CONTINUING, ONGOING PROCESS OF SELLING
3 DRUGS OUT OF THE RESIDENCE SO FOR THOSE TWO REASONS WE
4 BELIEVE THE WARRANT WOULD LACK PROBABLE CAUSE

5 THE COURT I THINK THERE'S VERY ADEQUATE PROBABLE
6 CAUSE IN THIS -- AS DEMONSTRATED BY THIS WARRANT SO TO THE
7 EXTENT THAT'S THE BASIS OF THE MOTION TO SUPPRESS, THE
8 MOTION IS DENIED ANYTHING FURTHER?

9 MR. RAY NO, YOUR HONOR

10 THE COURT WE'LL TAKE A SHORT BREAK, AND WE'LL BRING
11 THE JURY BACK TO BEGIN WITH OPENING STATEMENTS

12 MS. THILL THANK YOU, YOUR HONOR

~~13 THE COURT YES, THAT WAS ALL RIGHT. DID YOU DIDN'T HAVE ANY~~

~~14 OTHER EVIDENCE YOU WANTED TO PUT UP OR ANYTHING?~~

15 MR. RAY NO, SIR, YOUR HONOR

16 THE COURT OKAY

17 (WHEREUPON COURT WAS IN RECESS)

18 THE COURT ARE Y'ALL READY FOR THE JURY? HOLD THEM
19 RIGHT THERE JUST ONE SECOND ARE Y'ALL READY? YOU READY,
20 SUSAN?

21 MADAME COURT REPORTER YES, SIR

22 THE COURT EVERYBODY ELSE READY?

23 MS. THILL STATE'S READY, YOUR HONOR

24 MR. RAY YES, SIR

25 THE COURT AND WE'RE GOING TO GO RIGHT INTO OPENING

1 STATEMENTS BRING THEM IN

2 (WHEREUPON THE JURY ENTERED THE COURTROOM AT 3 19 PM)

3 THE COURT SWEAR THEM IN PLEASE

4 (WHEREUPON THE JURY WAS DULY SWORN)

5 THE COURT WELL, YOU ALL HAVE BEEN BORED, I SUPPOSE,
6 FOR THE LAST COUPLE OF HOURS AND WE HAVE BEEN WORKING OUR
7 REAR-ENDS OFF AND I'M GOING TO HAVE TO ANSWER TO ALL OF
8 THESE OTHER PEOPLE IN HERE FOR -- ESPECIALLY THE POOR COURT
9 REPORTER BECAUSE SHE'S HAD TO JUMP ALL OVER THE PLACE BUT
10 I DID WANT -- I DO WANT TO REASSURE YOU THAT EVEN THOUGH YOU
11 HAVE PROBABLY WONDERED WHAT IN THE WORLD WE COULD POSSIBLY
12 BE DOING IN HERE, WE HAVE BEEN WORKING TO TRY TO GET TO YOU
13 ALL AS QUICKLY AS WE CAN

14 NOW I'M GOING TO SPEND A FEW MINUTES TALKING TO YOU
15 ABOUT THE STRUCTURE OF THE CASE AND ALSO WHAT YOU CAN EXPECT
16 AND WHAT WE EXPECT OF YOU IN TERMS OF WHAT YOUR
17 RESPONSIBILITIES ARE AND THEN I'M GOING TO TURN IT OVER TO
18 THE LAWYERS TO BEGIN WITH THEIR OPENING STATEMENTS

19 THE TRIAL OF THIS CASE -- WELL, LET ME BACK UP JUST A
20 MINUTE THIS IS THE STATE OF SOUTH CAROLINA VERSUS
21 CHRISTOPHER LOVETT BURKE AND MR BURKE HAS BEEN INDICTED
22 IN INDICTMENT NUMBER 2005-GS-42-3166 FOR TRAFFICKING IN
23 CRACK COCAINE AND IN THAT INDICTMENT IT IS ALLEGED THAT
24 CHRISTOPHER LOVETT BURKE DID IN SPARTANBURG COUNTY ON OR
25 ABOUT MARCH THE 17TH, 2005 KNOWINGLY SELL, MANUFACTURE,

1 DELIVER, PURCHASE, OR BRING INTO THIS STATE OR DID PROVIDE
2 FINANCIAL ASSISTANCE OR DID OTHERWISE AID, ABET, ATTEMPT, OR
3 CONSPIRE TO SELL, MANUFACTURE, DELIVER, PURCHASE, OR BRING
4 INTO THIS STATE OR DID KNOWINGLY, ACTUALLY, OR
5 CONSTRUCTIVELY POSSESS OR DID KNOWINGLY ATTEMPT TO ACTUALLY
6 OR CONSTRUCTIVELY POSSESS MORE THAN TEN GRAMS OF CRACK
7 COCAINE, A SCHEDULE II CONTROLLED SUBSTANCE IN VIOLATION OF
8 SECTION 44-53-375 OF THE SOUTH CAROLINA CODE OF LAWS

9 AS I TOLD YOU DURING JURY SELECTION, THE INDICTMENT
10 THAT I JUST READ TO YOU IS IN NO SENSE EVIDENCE OF THE
11 ALLEGATIONS THAT ARE CONTAINED WITHIN THIS INDICTMENT THE
12 INDICTMENT IS SIMPLY THE FORMAL DOCUMENT THAT CONTAINS THE
13 ALLEGATIONS THAT HAVE BEEN MADE AGAINST THE DEFENDANT AND
14 IT SERVES TO PROCESS THIS CASE AND BRING IT INTO THIS COURT
15 FOR TRIAL

16 THE DEFENDANT HAS PLED NOT GUILTY TO THIS INDICTMENT
17 AND THE PLEA OF NOT GUILTY CASTS THE BURDEN ON THE STATE TO
18 PROVE THE DEFENDANT GUILTY BEYOND A REASONABLE DOUBT AND
19 THAT WILL BE YOUR JOB, LADIES AND GENTLEMEN, TO DETERMINE
20 WHETHER OR NOT THE STATE HAS PROVEN THE DEFENDANT GUILTY
21 BEYOND A REASONABLE DOUBT

22 NOW THE TRIAL OF THIS CASE, LIKE THE TRIAL OF ANY CASE,
23 CAN BE DIVIDED UP INTO FIVE BASIC PHASES THE FIRST OF
24 THOSE IS THE OPENING STATEMENTS AND THOSE WILL BEGIN IN
25 JUST A SECOND AND THE LAWYERS WILL STAND BEFORE YOU AND

1 THEY WILL EXPLAIN TO YOU WHAT THIS CASE IS ABOUT THEY'LL
2 TELL YOU THE ISSUES THAT WE WILL SEE IN THIS CASE, HOW EACH
3 SIDE STANDS ON THOSE ISSUES AND THEY'LL ALSO DISCUSS FOR
4 YOU SOME OF THE EVIDENCE THAT YOU CAN EXPECT TO SEE THAT
5 WILL RELATE TO THOSE ISSUES

6 THE SECOND PHASE IS THE EVIDENTIARY PHASE AND
7 WITNESSES WILL COME HERE TO THIS WITNESS STAND YOU WILL
8 HEAR THEIR TESTIMONY AND THERE WILL BE OTHER PHYSICAL OR
9 DOCUMENTARY EVIDENCE THAT YOU WILL ALSO HAVE AS PART OF THE
10 BASIS ON WHICH YOU WILL MAKE YOUR DECISION CONCERNING THE
11 FACTS IN THIS CASE

12 THE THIRD PHASE IS WHAT WE CALL CLOSING ARGUMENTS WHEN
13 THE LAWYERS WILL STAND BEFORE YOU AGAIN AND THIS TIME THEY
14 WILL ARGUE TO YOU AS TO WHETHER OR NOT THE STATE HAS MET ITS
15 BURDEN OF PROOF

16 THEN THE FOURTH PHASE IS THE JURY CHARGE WHERE I WILL
17 EXPLAIN TO YOU THE LAW THAT IS APPLICABLE TO THIS CASE AND
18 THEN THE FIFTH PHASE IS WHEN YOU WILL GO BACK INTO THE JURY
19 ROOM AND YOU WILL DELIBERATE

20 NOW IT'S VERY IMPORTANT THAT YOU NOT BEGIN TO MAKE UP
21 YOUR MIND UNTIL YOU'VE BEEN THROUGH ALL FIVE OF THOSE PHASES
22 THAT I JUST OUTLINED FOR YOU INCLUDING THAT FIFTH PHASE WHEN
23 YOU'LL HAVE A CHANCE TO LISTEN TO THE OTHER MEMBERS OF THE
24 JURY DISCUSS THEIR VIEW OF THE FACTS AND THEIR VIEW OF
25 WHETHER OR NOT THE STATE HAS MET ITS BURDEN OF PROOF ONLY

1 THEN WILL YOU BE IN THE RIGHT POSITION TO MAKE -- TO BEGIN
2 TO MAKE UP YOUR MIND CONCERNING THE FACTS NOW I'VE ALREADY
3 MENTIONED TO YOU THAT YOU MAY NOT DISCUSS THIS CASE IN ANY
4 WAY UNTIL I HAVE GIVEN YOU PERMISSION TO BEGIN YOUR
5 DELIBERATIONS DURING THAT FIFTH PHASE OF THE TRIAL

6 NOW AS MEMBERS OF THE JURY, LADIES AND GENTLEMEN, YOU
7 ARE THE EXCLUSIVE JUDGES OF THE FACTS IN THIS CASE AND I
8 AM NOT PERMITTED TO INDICATE TO YOU HOW I MIGHT FEEL ABOUT
9 THE FACTS SO IF I SAY ANYTHING OR IF I DO ANYTHING DURING
10 THE COURSE OF THIS TRIAL THAT MIGHT LEAD YOU TO BELIEVE THAT
11 I HAVE AN OPINION ABOUT THE FACTS, THEN YOU SHOULD DISREGARD
12 THAT BECAUSE YOU ARE THE EXCLUSIVE JUDGES OF THE FACTS

13 BUT ON THE OTHER HAND, I AM THE EXCLUSIVE JUDGE OF THE
14 LAW AND SO IF YOU HAVE SOME IDEA AS TO WHAT THE LAW IS OR
15 WHAT THE LAW SHOULD BE, AND IF THAT DIFFERS FROM WHAT I WILL
16 TELL YOU THE LAW IS, THEN YOU ARE OBLIGATED UNDER THE OATH
17 THAT YOU HAVE JUST TAKEN AS JURORS TO SET YOUR NOTION OF THE
18 LAW ASIDE AND TO ACCEPT AND APPLY THE LAW PRECISELY AS I
19 WILL EXPLAIN IT TO YOU

20 NOW ONE OTHER ROLE THAT I PLAY IS TO DECIDE ON THE
21 ADMISSIBILITY OF EVIDENCE AND FROM TIME TO TIME I EXPECT
22 THAT THERE WILL BE OBJECTIONS MADE BY THE LAWYERS WHEN ONE
23 SIDE OFFERS EVIDENCE THAT THE OTHER SIDE FEELS DOES NOT
24 COMPLY WITH OUR RULES OF EVIDENCE AND WHEN THAT HAPPENS
25 THAT'S NOT AN ATTEMPT ON THE PART OF THE LAWYER TO HIDE

1 ANYTHING FROM YOU, THAT'S JUST THE WAY OUR SYSTEM OF
2 EVIDENCE WORKS

3 WHEN AN OBJECTION IS MADE IT BECOMES MY RESPONSIBILITY
4 TO RULE ON THE OBJECTION IF I SUSTAIN THE OBJECTION, THAT
5 MEANS I BELIEVE THE EVIDENCE IS NOT ADMISSIBLE, AND I WILL
6 NOT ALLOW IT IN FOR YOU TO CONSIDER IF I OVERRULE THE
7 OBJECTION, THAT MEANS I BELIEVE THE EVIDENCE IS ADMISSIBLE,
8 AND I WILL ALLOW IT IN AND YOU CAN CONSIDER IT WHEN IT
9 COMES TIME FOR YOU TO DELIBERATE

10 NOW MOST OF THE TIME I CAN DO THAT AS I SIT HERE
11 YOU'LL HEAR ONE OF THE LAWYERS SAY, OBJECTION THEY MAY
12 BRIEFLY STATE THE GROUNDS FOR THEIR OBJECTION AND THEN
13 YOU'LL HEAR ME SAY EITHER SUSTAINED OR OVERRULED SOMETIMES
14 I HAVE TO BRING THE LAWYERS UP TO THE BENCH SO THAT I CAN
15 HAVE A VERY BRIEF CONVERSATION IN PRIVATE WITH THEM BEFORE I
16 RULE SOMETIMES I ACTUALLY HAVE TO SEND YOU ALL OUT INTO
17 THE JURY ROOM SO THAT I CAN OPENLY DISCUSS THE EVIDENCE
18 QUESTION SOMETIMES I EVEN HAVE TO LISTEN TO THE EVIDENCE
19 BEFORE I CAN DECIDE WHETHER OR NOT YOU CAN LISTEN TO IT
20 ALL RIGHT, MS MILLICAN

21 MS MILLICAN THANK YOU, YOUR HONOR ON MARCH 17TH OF
22 2005 IT WAS EARLY IN THE MORNING, 7 45, COLD, RAINY DAY IN
23 THE WINTER, SPARTANBURG COUNTY DEPUTIES EXECUTED A SEARCH
24 WARRANT AT 108 RAYMOND DRIVE IN CHESNEE HERE IN SPARTANBURG
25 COUNTY

1 THIS SEARCH WARRANT WAS AT A CRACK HOUSE THE OFFICERS
2 WENT IN THROUGH THE FRONT DOOR THERE WERE SEVERAL DEPUTIES
3 POSTED AT THE BACK DOOR OF THIS HOUSE IT WAS A TRAILER
4 AND AS THE OFFICERS WENT TO THE FRONT DOOR, THE DEFENDANT,
5 CHRISTOPHER BURKE, RAN OUT THE BACK DOOR THE OFFICERS THAT
6 WERE POSTED NEAR THE BACK DOOR SAW HIM COME OUT THE BACK
7 DOOR AND THEY CHASED HIM HE SAW THEM, HE RAN

8 THEY CAUGHT HIM APPROXIMATELY THIRTY TO FORTY-FIVE,
9 FIFTY YARDS AWAY FROM THE BACK DOOR OF THAT TRAILER AND
10 AFTER THEY CAUGHT HIM THEY DISCOVERED THAT ON THIS COLD
11 RAINY DAY THERE WAS A DRY BAG OF CRACK LAYING ON THE GROUND
12 NOT TOO FAR FROM WHERE THEY APPREHENDED HIM THIS CRACK WAS
13 TESTED, AND IT WAS POSITIVE FOR CRACK COCAINE AND IT
14 WEIGHED TWELVE POINT EIGHT THREE GRAMS

15 YOU'LL BE PRESENTED WITH EVIDENCE IN THIS CASE IN THE
16 FORM OF TESTIMONY FROM WITNESSES, THE DEPUTIES THAT WERE
17 PRESENT THAT DAY, AND THE CHEMIST AND YOU WILL ALSO BE
18 PRESENTED WITH PHYSICAL EVIDENCE, WHICH WILL INCLUDE THE
19 CRACK COCAINE THAT WAS RECOVERED FROM THE SCENE ON THAT DAY

20 I ASK YOU TO USE YOUR COMMON SENSE AND YOUR LIFETIME
21 EXPERIENCES THAT YOU BRING WITH YOU TO THIS COURTROOM TODAY
22 IN DETERMINING THE CREDIBILITY OF THE WITNESSES BEFORE YOU
23 AND THE EVIDENCE THAT YOU SEE AND I BELIEVE THAT WHEN YOU
24 APPLY YOUR COMMON SENSE AND YOUR LIFETIME EXPERIENCES TO THE
25 EVIDENCE THAT WE PRESENT TO YOU IN THE COURTROOM TODAY

1 YOU'LL FIND THE DEFENDANT GUILTY OF TRAFFICKING CRACK
2 COCAINE GREATER THAN TEN GRAMS THANK YOU

3 MR RAY MAY IT PLEASE THE COURT, YOUR HONOR?

4 THE COURT YES, SIR

5 MR RAY FIRST, LADIES AND GENTLEMEN, I'D LIKE TO
6 THANK YOU AS JUDGE FEW HAS SAID, I KNOW WE'VE KEPT YOU
7 WAITING FOR A WHILE AND I APPRECIATE YOU BEING PATIENT
8 I'M NOT GOING TO TRY TO TAKE UP A LOT OF TIME NOW

9 THE SOLICITOR HAS TOLD YOU WHAT THEY INTEND TO PRESENT
10 AS EVIDENCE IN THIS CASE WHAT I ASK YOU TO DO IS THE SAME
11 THING SHE SAID, USE YOUR OWN COMMON SENSE, YOUR EXPERIENCES,
12 ALONG WITH THE OATH YOU'VE TAKEN THE STATE HAS THE BURDEN
13 OF PROOF HERE THEY HAVE TO PROVE TO YOU BEYOND A
14 REASONABLE DOUBT THAT CHRIS BURKE IS GUILTY OF THESE
15 CHARGES THEY'RE GOING TO PRESENT SOME EVIDENCE TRYING TO
16 PROVE THAT TO YOU

17 AND I'D JUST ASK YOU TO LOOK AT NOT JUST WHAT YOU SEE,
18 BUT WHAT YOU DON'T SEE AND WE'LL TOUCH ON THAT LATER AT
19 THE END OF THE TRIAL I'LL COME BACK AND BE ABLE TO DISCUSS
20 THINGS WITH YOU BUT LIKE I SAID, LOOK AT WHAT YOU SEE AND
21 WHAT YOU DON'T SEE AND I BELIEVE WHEN YOU GET ALL THE
22 FACTS AND YOU DETERMINE THEM ACCORDING TO YOUR OWN
23 EXPERIENCES AND THE LAW, I BELIEVE YOU'LL FIND CHRIS BURKE
24 NOT GUILTY OF THESE CHARGES THANK YOU

25 MS MILLICAN THE STATE CALLS MATT HUTCHINS

1 MATT HUTCHINS, BEING DULY

2 SWORN TESTIFIED AS FOLLOWS

3 DIRECT EXAMINATION BY MS MILLICAN

4 Q PLEASE STATE YOUR NAME FOR THE RECORD

5 A IT'S INVESTIGATOR MATT HUTCHINS

6 Q AND, INVESTIGATOR HUTCHINS, WHERE DO YOU WORK?

7 A THE SPARTANBURG COUNTY SHERIFF'S OFFICE

8 Q HOW LONG HAVE YOU BEEN EMPLOYED BY THE SPARTANBURG
9 COUNTY SHERIFF'S OFFICE?

10 A APPROXIMATELY FOUR YEARS

11 Q WHAT ARE YOUR DUTIES OR ASSIGNMENTS THERE?

12 A I'M ASSIGNED TO THE NARCOTIC AND VICE UNIT

13 Q WHAT EDUCATION OR TRAINING DID YOU RECEIVE WHILE
14 WORKING FOR THE SHERIFF'S OFFICE?

15 A I'VE ATTENDED THE BASIC NARCOTICS CLASS AT THE REGIONAL
16 COUNTER DRUG TRAINING ACADEMY IN MERIDIAN, MISSISSIPPI IT
17 WAS A TWO WEEK CLASS I'VE BEEN CERTIFIED IN FIELD TESTING,
18 CERTIFIED IN THE SMELL OF BURNING MARIJUANA, ALSO HAVE
19 ATTENDED TECHNICAL CLASSES DEALING WITH COVERT EQUIPMENT,
20 METHAMPHETAMINE CLASSES AT THE SAME TRAINING ACADEMY

21 Q HOW LONG HAVE YOU BEEN EMPLOYED THERE AS AN
22 INVESTIGATOR IN NARCOTICS?

23 A APPROXIMATELY TWO YEARS

24 Q IS ONE OF YOUR DUTIES TO INVESTIGATE ILLEGAL NARCOTICS
25 ACTIVITIES?

1 A YES, MA'AM, IT IS

2 Q HAVE YOU TAKEN PART IN THE EXECUTION OF SEARCH
3 WARRANTS?

4 A YES, I HAVE

5 Q APPROXIMATELY HOW MANY TIMES?

6 A FIFTY TO A HUNDRED

7 Q DID YOU OBTAIN A SEARCH WARRANT FOR 108 RAYMOND DRIVE
8 IN CHESNEE?

9 A I DID

10 Q IS THAT IN SPARTANBURG COUNTY?

11 A YES, IT IS

12 Q WHEN THAT SEARCH WARRANT IS EXECUTED WHO DID YOU COME
13 INTO CONTACT WITH?

14 A BEFORE EXECUTION OF SEARCH WARRANT I CAME IN CONTACT
15 WITH SEVERAL SUBJECTS AT THE LOCATION ONE BEING BRADLEY
16 LOGAN, CHRISTOPHER BURKE, ANTONIO MOORE, DONALD JOHNSON, AND
17 COREY LOVETT

18 Q WHERE WAS CHRISTOPHER BURKE LOCATED WHEN YOU CAME INTO
19 THE HOUSE?

20 A WHEN I ENTERED THE RESIDENCE OR THE HOUSE I OBSERVED
21 THE BACK DOOR OPEN LATER I LEARNED THAT DEPUTIES AT THE
22 BACK DOOR HAD LOCATED MR BURKE RUNNING FROM THE BACK DOOR

23 Q WHAT DID YOU DO AFTER YOU ENTERED THE TRAILER?

24 A ON ENTERING THE TRAILER MY RESPONSIBILITIES THAT
25 MORNING WAS -- IT WAS WHAT WE CALLED RUNNING THE SHIELD,

1 FIRST IN THE LINE, FIRST IN THE DOOR AND IT WAS MAKING
2 SURE EVERYBODY WAS SECURE AND NO WEAPONS OF OPPORTUNITY WAS
3 THERE NUMBER ONE, INSIDE WAS SECURED AND THEN MR BURKE
4 WAS BROUGHT BACK IN AND EVERYONE WAS MIRANDIZED BY
5 INVESTIGATOR MCSWAIN

6 Q WHAT DID YOU DO NEXT?

7 A AFTER THEY WERE ALL MIRANDIZED THEN WE INITIATED A
8 SEARCH OF THE RESIDENCE AND THE OUTSIDE

9 Q WHAT, IF ANYTHING, DID YOU FIND?

10 A INSIDE THE RESIDENCE -- LOOKED INSIDE AND OUTSIDE
11 LOCATED A PLASTIC BAG CONTAINING AN OFF-WHITE ROCK
12 SUBSTANCE, A PLASTIC BAG WITH WHITE SUBSTANCE, AND A PLASTIC
13 BAG WITH GREEN PLANT-LIKE MATERIAL WAS FOUND OUTSIDE THE
14 BEDROOM WINDOW ON THE GROUND ON THE RIGHT-SIDE OF THE MOBILE
15 HOME IT WAS LOCATED BY DEPUTY LACHICA A PLASTIC BAG
16 CONTAINING WHITE ROCK-LIKE SUBSTANCE WAS FOUND IN THE FRONT
17 RIGHT PANTS POCKET OF MR BRAD LOGAN A RUGER SP 101 357
18 MAGNUM WAS FOUND IN THE BEDROOM TO THE RIGHT AS YOU ENTERED
19 TWENTY-FOUR HUNDRED DOLLARS IN CASH WAS FOUND IN THE BEDROOM
20 ON THE RIGHT A PLASTIC BAG CONTAINING AN OFF-WHITE ROCK
21 SUBSTANCE WAS FOUND OUTSIDE ON THE GROUND UNDER A TREE ---
22 THE COURT CAN I STOP Y'ALL FOR JUST ONE SECOND AND
23 LET ME SEE COUNSEL RIGHT OVER HERE?
24 (WHEREUPON A BENCH-CONFERENCE WAS HELD OFF RECORD IN
25 THE PRESENCE OF THE JURY, BUT OUT OF THEIR HEARING)

1 Q YOU CAN CONTINUE WHERE YOU LEFT OFF IF YOU WOULD
2 PLEASE

3 A A PLASTIC BAG CONTAINING AN OFF-WHITE ROCK SUBSTANCE
4 WAS FOUND OUTSIDE ON THE GROUND UNDER A TREE BY LIEUTENANT
5 DUNCAN SIXTY DOLLARS IN CASH FOUND ON THE HEADBOARD OF A
6 BED ON THE FAR RIGHT BEDROOM A DIGITAL SCALE, A BOX OF
7 GLAD SANDWICH BAGGIES ON A SHELF ABOVE THE KITCHEN SINK A
8 PYREX MEASURING CUP, A SPOON, AND PIECE OF METAL WAS FOUND
9 IN THE CABINET ABOVE THE SINK BY INVESTIGATOR MCSWAIN
10 THREE TELEVISION MONITORS AND FOUR CAMERAS WAS FOUND --
11 MONITORS WAS FOUND IN THE LIVINGROOM, THE CAMERAS WERE
12 LOCATED ON THE RESIDENCE THERE WAS FIVE ONE HUNDRED DOLLAR
13 BILLS AND THREE ONE DOLLAR BILLS FOUND IN THE FRONT RIGHT
14 PANTS POCKET OF DONALD JOHNSON TWO HUNDRED AND TWENTY-NINE
15 DOLLARS FOUND IN THE FRONT RIGHT PANTS POCKET OF CHRISTOPHER
16 LOVETT BURKE FIFTY-ONE DOLLARS FOUND IN THE FRONT LEFT
17 POCKET OF CHRISTOPHER LOVETT BURKE

18 THIRTEEN ORANGE PILLS WAS LOCATED ON A HEADBOARD IN THE
19 LEFT BEDROOM A DOCUMENT IN THE NAME OF TRAVIS HALL WAS
20 LOCATED UNDER THE KITCHEN SINK AND FOUR CELL PHONES WAS
21 LOCATED IN THE LIVINGROOM

22 Q THE AMOUNT OF DRUGS FOUND BY LIEUTENANT DUNCAN OUT BY
23 THE TREE OUTSIDE, HOW MUCH WEIGHT WAS THAT PARTICULAR BAG?

24 A THAT BAG WAS WEIGHED, BAGGY WEIGHT AND ALL, ROUGH
25 ESTIMATE WAS APPROXIMATELY NINETEEN GRAMS

1 Q BASED ON YOUR EXPERIENCE AS A NARCOTICS AGENT, YOUR
2 TRAINING, WHAT IS THE STREET VALUE OF A CRACK ROCK? WHAT
3 SIZE IS A CRACK ROCK, FIRST OF ALL, GENERALLY?

4 A A CRACK ROCK'S ANYWHERE FROM POINT TWO TO POINT THREE
5 GRAMS GENERALLY

6 Q WHAT WOULD BE THE STREET VALUE OF A POINT TWO GRAM
7 CRACK ROCK?

8 A POINT TWO GRAM CRACK ROCK'S TWENTY TO FORTY DOLLARS

9 Q APPROXIMATELY HOW MUCH WAS THIS AMOUNT OF CRACK WORTH
10 BASED ON THOSE NUMBERS?

11 A IT WOULD BE TWELVE TO THIRTEEN HUNDRED DOLLARS

12 Q WHAT DID YOU DO WITH THE DRUGS THAT WERE LOCATED, AFTER

13 ~~THEY WERE RECOVERED, WHAT~~

14 A INVESTIGATOR KELLY RECOVERED ALL THE EVIDENCE IN THE
15 CASE AND THE DRUG EVIDENCE WAS SENT TO OUR FORENSICS LAB,
16 DRUG LAB FOR ANALYSIS THE OTHER EVIDENCE WAS ENTERED INTO
17 OUR EVIDENCE

18 Q CAN YOU STATE WHAT THE DENOMINATIONS OF CASH ON THE
19 DEFENDANT, CHRISTOPHER BURKE, WERE?

20 A IN HIS FRONT RIGHT PANT'S POCKET IT WAS TEN TWENTY
21 DOLLAR BILLS, ONE TEN DOLLAR BILL, THREE FIVE DOLLAR BILLS,
22 FOUR ONE DOLLAR BILLS IN HIS FRONT LEFT PANT'S POCKET WAS
23 TWO TEN DOLLAR BILLS, THREE FIVE DOLLAR BILLS, AND SIXTEEN
24 ONE DOLLAR BILLS

25 Q WHAT IS THE SIGNIFICANCE OF THAT?

1 A SMALL DENOMINATIONS, WHICH IS OFTEN FOUND SELLING SMALL
2 QUANTITIES OF ILLEGAL NARCOTICS

3 Q I'M SORRY, COULD YOU REPEAT THAT LAST PART?

4 A IT'S SMALL DENOMINATIONS, WHICH IS A LOT OF TIMES FOUND
5 CONSISTENT WITH SELLING SMALL QUANTITIES OF NARCOTICS

6 Q COULD YOU DESCRIBE JUST BRIEFLY THE SETUP OF THE
7 PROPERTY WHEN THE DEPUTIES ARRIVED ON MARCH 17TH, 2003 AS
8 FAR AS THE OUTSIDE OF THE PROPERTY WAS CONCERNED?

9 A THIS WAS THE LAST MOBILE HOME IN THE MOBILE HOME PARK
10 UPON ARRIVING AND PRIOR TO THAT THERE WAS VIDEO CAMERAS ON
11 THE FRONT CORNERS OF THE RESIDENCE THERE WAS ALSO VIDEO
12 CAMERAS ON THE BACK OF THE RESIDENCE DEPUTY LACHICA AND
13 LIEUTENANT RAINES WITH THE -- LIEUTENANT WITH THE CHESNEE
14 POLICE DEPARTMENT WENT TO THE REAR OF THE RESIDENCE WHILE WE
15 ENTERED FROM THE FRONT WE PULLED UP PRETTY MUCH TO THE
16 SIDE, LEFT SIDE OF THE MOBILE HOME THEY WENT AROUND THE
17 BACK OF THE MOBILE HOME

18 UPON ENTERING AND SEARCHING THERE WAS CHAIRS LOCATED IN
19 THE, WHAT WAS CONSIDERED LIVINGROOM' AREA, THERE WAS A BANK
20 OF THREE TELEVISIONS THAT MONITORED THE CAMERAS LOCATED IN
21 THE LIVINGROOM THERE WAS A FEW PAIRS OF SHOES AND FEW
22 CLOTHES IN THE RESIDENCE, WHICH WAS KIND OF ODD IF SOMEONE
23 WAS LIVING THERE

24 Q WOULD YOU DESCRIBE THE CAMERAS AS SURVEILLANCE CAMERAS
25 OR JUST REGULAR VIDEO CAMERAS?

1 A THEY WERE SURVEILLANCE CAMERAS

2 Q AND WHERE WERE THE CAMERAS ON THE OUTSIDE OF THE HOUSE?

3 A THERE WAS TWO ON THE FRONT CORNERS AND ONE ON THE BACK

4 ALSO

5 MS MILLICAN NO FURTHER QUESTIONS FOR THIS WITNESS AT
6 THIS TIME, YOUR HONOR

7 MR RAY MAY IT PLEASE THE COURT, YOUR HONOR?

8 CROSS EXAMINATION BY MR RAY

9 Q INVESTIGATOR HUTCHINS, YOU SAID YOU SERVED A WARRANT ON
10 THIS DAY, CORRECT, ON MARCH 17TH?

11 A THE SEARCH WARRANT, YES, SIR

12 Q AND THAT WARRANT WAS TO SEARCH THE HOME OF 108 RAYMOND
13 DRIVE?

14 A THAT'S CORRECT

15 Q AND THIS WAS THE TRAILER THAT WAS 108 RAYMOND DRIVE?

16 A THAT IS CORRECT

17 Q IT WAS TO SEARCH ANY OUTBUILDINGS AS WELL, CORRECT?

18 A THAT IS CORRECT

19 Q TO SEARCH THE CURTILAGE OF THE HOUSE, THE AREA RIGHT
20 AROUND IT, CORRECT?

21 A THAT IS CORRECT

22 Q AND TO SEARCH BRAD LOGAN?

23 A THAT IS CORRECT ALSO

24 Q AND YOU WENT THROUGH THE FRONT DOOR, CORRECT?

25 A YES, SIR

1 Q AND WHEN YOU WENT THROUGH THE FRONT DOOR YOU COULD HEAR
2 A STRUGGLE SOMEWHERE ELSE IN THE HOUSE, IS THAT RIGHT?

3 A AFTER I ENTERED THE FRONT DOOR I CONTINUED THROUGH THE
4 MOBILE HOME TO THE LEFT AFTER REACHING THE BACK OF THE --
5 ENTERING THE KITCHEN AREA I OBSERVED THE BACK DOOR OPEN OF
6 THE MOBILE HOME AND COULD HEAR A STRUGGLE BEHIND ME

7 Q AND WHAT WAS THAT STRUGGLE?

8 A TO THE RIGHT BEDROOM WAS A SUBJECT COMING OUT OF IT,
9 AND OFFICERS WERE ATTEMPTING TO DETAIN HIM

10 Q WHICH SUBJECT WAS THAT?

11 A THAT WAS BRAD LOGAN

12 Q AND THAT WAS OUT OF THE BEDROOM, CORRECT?

13 A THAT WAS OUT OF THE FRONT RIGHT BEDROOM

14 Q HE CAME OUT OF THE FRONT RIGHT BEDROOM, AND HE WAS
15 SUBDUED, CORRECT?

16 A HE WAS DETAINED, YES

17 Q AND I BELIEVE YOU'VE ALREADY SAID THIS, LET ME BE SURE
18 IN BRAD LOGAN'S FRONT RIGHT PANT'S POCKET A ROCK-LIKE
19 SUBSTANCE, AN OFF-WHITE ROCK-LIKE SUBSTANCE WAS FOUND,
20 CORRECT?

21 A JUST A SECOND LET ME REFER TO THE SEARCH WARRANT
22 YES, SIR, IN THE FRONT RIGHT PANT'S POCKET

23 Q AND THAT WEIGHED APPROXIMATELY THIRTY-THREE AND A HALF
24 GRAMS, CORRECT?

25 A YES, THAT IS CORRECT

1 Q AND OUTSIDE FROM THAT BEDROOM WINDOW MORE DRUGS WERE
2 FOUND, WEREN'T THEY?

3 A THAT IS CORRECT

4 Q TWENTY-EIGHT AND A HALF GRAMS OF WHITE POWDER?

5 A THAT IS CORRECT

6 Q I'M SORRY THAT WAS AN OFF-WHITE ROCK-LIKE SUBSTANCE
7 THAT WAS TWENTY-EIGHT AND A HALF GRAMS, WASN'T IT?

8 A IT WAS A CLEAR BAG OF OFF-WHITE ROCK-LIKE SUBSTANCE
9 UNDER -- DIRECTLY UNDER THE WINDOW IT WAS APPROXIMATELY
10 TWENTY-EIGHT AND A HALF GRAMS THAT IS CORRECT

11 Q AND A CLEAR BAG OF WHITE POWDER LOCATED IN
12 APPROXIMATELY THE SAME GENERAL AREA WAS THIRTY-THREE POINT
13 FOUR GRAMS?

14 A THAT IS CORRECT

15 Q GREEN PLANT-LIKE MATERIAL WAS LOCATED IN THAT VICINITY
16 THAT WEIGHED SEVEN POINT TWO GRAMS, CORRECT?

17 A THAT IS CORRECT

18 Q DID THAT GREEN PLANT-LIKE MATERIAL APPEAR TO BE
19 MARIJUANA?

20 A YES, IT DID

21 Q LET'S STEP BACK JUST A LITTLE BIT YOU SAID AS YOU
22 WENT THROUGH THE FRONT DOOR YOU WENT ONTO THE LEFT THROUGH
23 THE KITCHEN, CORRECT?

24 A THAT'S CORRECT

25 Q WHEN YOU GOT THERE THE BACK DOOR WAS OPEN?

1 A THAT IS CORRECT

2 Q THERE WERE SEVERAL INDIVIDUALS THAT WERE IN THE HOME,
3 CORRECT?

4 A YES BRAD LOGAN WAS IN THE FRONT RIGHT BEDROOM
5 CHRISTOPHER BURKE WAS LOCATED OUTSIDE OF THE RESIDENCE
6 ANTONIO MOORE WAS IN THE LIVINGROOM AREA ALONG WITH DONALD
7 JOHNSON AND COREY LOVETT

8 Q SO IN ALL THERE WERE FIVE PEOPLE THERE, IS THAT RIGHT?

9 A YES, SIR

10 Q AND I BELIEVE THE SOLICITOR REFERRED TO THIS HOUSE IN
11 HER OPENING STATEMENT AS A CRACK HOUSE IS IT YOUR
12 INFORMATION THAT DRUGS WERE SOLD OUT OF THIS HOUSE?

13 A THAT IS THE INFORMATION I HAD, YES, SIR

14 Q SO PEOPLE WENT TO THIS HOUSE TO BUY DRUGS AS WELL?

15 A THAT'S THE INFORMATION I HAVE

16 Q HAD THERE BEEN ANY PRIOR SURVEILLANCE OF THAT HOUSE?

17 A PRIOR TO THE EXECUTION OF THE SEARCH WARRANT ---

18 Q YES

19 A --- THERE HAD BEEN SOME SURVEILLANCE DONE, YES, SIR

20 Q ON PREVIOUS DAYS?

21 A YES, PRIOR TO THE EXECUTION

22 Q WAS CHRIS BURKE EVER SEEN THERE ON THOSE PREVIOUS DAYS?

23 A I HAVE NEVER OBSERVED -- HAD NEVER OBSERVED HIM THERE
24 ON PREVIOUS DAYS

25 Q NOW YOU SAID CHRIS HAD SOME MONEY IN HIS POCKET, IS ---

1 A YES, SIR

2 Q --- THAT CORRECT? I THINK IT TOTALED TWO HUNDRED AND
3 EIGHTY DOLLARS?

4 A I BELIEVE THAT'S CORRECT

5 Q THAT MONEY WASN'T SEIZED, WAS IT?

6 A NO, SIR

7 Q IT WAS RETURNED TO HIM ---

8 A YES, SIR

9 Q --- AT THE JAIL, CORRECT? LET'S STEP BACK A LITTLE BIT
10 AND TALK ABOUT THE DRUGS THAT YOU'VE TOLD US WERE RECOVERED
11 ALL THE DRUGS WERE IN PLASTIC BAGS, IS THAT CORRECT?

12 A WITH THE EXCEPTION OF THE PILLS FOUND ON THE HEADBOARD
13 IN THE BACK LEFT BEDROOM ALL THE OTHER DRUG EVIDENCE WAS
14 WITH THE EXCEPTION OF SOME TESTS THAT WAS DONE ON PYREX AND
15 DISHES ---

16 Q AND THAT WAS RESIDUE?

17 A THAT WAS RESIDUE THAT WOULD BE CORRECT

18 Q DID ANYONE CHECK FOR FINGERPRINTS ON THOSE BAGS?

19 A TO MY KNOWLEDGE, NO IT WAS WET AND RAINY OUT THAT
20 DAY

21 Q WHAT ABOUT ON THE PYREX AND THE THINGS IN THE KITCHEN?

22 A DON'T HAVE IT HERE I CAN TELL YOU IF IT WAS NO
23 FINGERPRINTS WERE RECOVERED BECAUSE I WOULD HAVE A FORENSICS
24 REPORT ON THAT AS TO WHETHER THEY WERE DUSTED, I CANNOT
25 ANSWER AT THIS TIME I DO KNOW NO FINGERPRINTS WERE FOUND

1 IF THEY WERE

2 Q AND AS FAR AS THE DRUGS OUTSIDE IT WAS TOO WET AND
3 RAINY TO GET FINGERPRINTS?

4 A IT WAS THAT DAY WITH THE CONDITIONS, FINGERPRINTS WERE
5 NOT TAKEN ON THE BAGS

6 Q IT WAS RAINY AND THERE WAS FREEZING RAIN, IS THAT
7 CORRECT?

8 A THAT'S CORRECT

9 Q IT WAS A COLD DAY?

10 A THAT'S CORRECT IT WAS COLD

11 Q THE RUGER PISTOL, THAT WAS LOCATED IN THAT RIGHT
12 BEDROOM AS WELL?

13 A YES, SIR

14 Q ALONG WITH TWENTY-FOUR HUNDRED DOLLARS WAS LOCATED BACK
15 THERE, CORRECT?

16 A THAT'S CORRECT

17 Q AND THEN ANOTHER SIXTY DOLLARS ON THE HEADBOARD OF THE
18 BED?

19 A THAT'S CORRECT

20 Q DIGITAL SCALES, SANDWICH BAGS?

21 A NOW THE ---

22 Q OH, THOSE WERE FOUND IN THE KITCHEN

23 A THE DIGITAL SCALES AND SANDWICH BAGS WAS IN THE
24 KITCHEN, YES, SIR

25 Q DONALD JOHNSON WAS THERE AND FIVE HUNDRED AND THREE

1 DOLLARS WAS LOCATED IN HIS POCKET, CORRECT?

2 A THAT IS CORRECT

3 Q ALSO SOME DOCUMENT WITH THE NAME OF TRAVIS HALL WAS
4 LOCATED, WASN'T IT?

5 A THAT IS CORRECT

6 Q DO YOU KNOW WHAT SIGNIFICANCE THAT HAS?

7 A YES, SIR OTHER INVESTIGATIONS ON THE OPERATION THAT
8 WAS GOING ON, THAT HAD SIGNIFICANT MEANING TO THEM

9 Q THANK YOU, INVESTIGATOR HUTCHINS

10 THE COURT ANY REDIRECT?

11 MS MILLICAN VERY BRIEF, YOUR HONOR

12 THE COURT ALL RIGHT

13 REDIRECT EXAMINATION BY MS MILLICAN

14 Q THE WEATHER ON THAT DAY, DEPUTY HUTCHINS, YOU STATED IT
15 WAS FREEZING RAIN, BUT WAS IT WET OUTSIDE OR WAS EVERYTHING
16 FROZEN?

17 A IT WAS WET IT WAS A SLEET AGAIN, RAIN AGAIN, COLD AND
18 MISERABLE DAY

19 Q WHAT IS THE SHERIFF'S OFFICE POLICY ON -- WHAT'S THE
20 GENERAL POLICY ON THE SEIZURE OF MONEY FROM DEFENDANTS?

21 A GENERAL RULE WE GO BY TO SEIZE MONEY IS IT'S A FIVE
22 HUNDRED DOLLAR MINIMUM DUE TO IT COSTING TAXPAYERS MONEY AND
23 PRETTY MUCH IF YOU SEIZE LESS YOU END UP WITH NO MONEY BY
24 THE TIME YOU PAY COURT COSTS, AND TIME, AND THINGS LIKE
25 THAT SO GENERALLY WE GO BY FOUR TO FIVE HUNDRED DOLLAR

1 MINIMUM BEFORE WE SEIZE MONEY

2 Q AND HOW MUCH DID THE DEFENDANT HAVE ON HIM?

3 A I BELIEVE IT WAS A TOTAL OF -- I WANT TO SAY TWO
4 HUNDRED AND EIGHTY

5 Q DOES THE SHERIFF'S OFFICE HAVE A POLICY ON LIFTING
6 FINGERPRINTS OFF OF BAGGIES WITH DRUGS IN THEM?

7 A WE DON'T ON OCCASION WE WILL -- VERY RARELY DO WE GET
8 FINGERPRINTS OFF OF BAGGIES CONTAINING DRUG EVIDENCE

9 MS MILLICAN NO FURTHER QUESTIONS

10 THE COURT ANY RECROSS?

11 MR RAY NO, YOUR HONOR

12 THE COURT ALL RIGHT, SIR, YOU CAN STEP DOWN LADIES
13 AND GENTLEMEN, I'M GOING TO HAVE TO SEND YOU BACK TO THE
14 JURY ROOM FOR JUST A MINUTE SO I CAN TAKE UP A MATTER IN
15 THAT OTHER CASE BUT I CAN TELL YOU, THIS IS THE LAST TIME
16 THAT YOU FOLKS ARE GOING TO HAVE TO TAKE THE SECOND CHAIR TO
17 THE FOLKS IN THE OTHER CASE BECAUSE THEY'RE DONE BUT I
18 WILL SEE Y'ALL BACK IN HERE IN JUST A FEW MINUTES THIS
19 WILL BE FAIRLY SHORT

20 (WHEREUPON THE JURY EXITED THE COURTROOM AT 3 53 PM)

21 (WHEREUPON COURT WAS IN RECESS)

22 THE COURT BRING IN THE JURY

23 (WHEREUPON THE JURY ENTERED THE COURTROOM AT 4 14 PM)

24 THE COURT CALL YOUR NEXT WITNESS

25 MS MILLICAN THANK YOU, YOUR HONOR THE STATE CALLS

1 ANTHONY LACHICA

2 ANTHONY LACHICA, BEING

3 DULY SWORN TESTIFIED AS FOLLOWS

4 DIRECT EXAMINATION BY MS MILLICAN

5 Q PLEASE STATE YOUR NAME FOR THE RECORD

6 A ANTHONY LACHICA

7 Q AND WHERE DO YOU WORK?

8 A SPARTANBURG COUNTY SHERIFF'S OFFICE

9 Q HOW LONG HAVE YOU BEEN EMPLOYED BY THE SPARTANBURG
10 COUNTY SHERIFF'S OFFICE?

11 A I'VE BEEN WITH THE SHERIFF'S OFFICE FOR A LITTLE OVER
12 TWO YEARS I'VE BEEN IN LAW ENFORCEMENT FOR ABOUT SEVENTEEN
13 YEARS

14 Q WHAT ARE YOUR DUTIES AND ASSIGNMENTS WITH THE SHERIFF'S
15 OFFICE?

16 A I'M A DETECTIVE WITH THE MCU, THE MAJOR CRIMES UNIT

17 Q WHAT EDUCATION OR TRAINING HAVE YOU RECEIVED WORKING
18 WITH THE SHERIFF'S OFFICE?

19 A NUMEROUS WE'D BE HERE FOR A WHILE IF I WAS TO GO
20 THROUGH EVERYTHING IT'S BEEN PRETTY NUMEROUS INCLUDING THE
21 ACADEMY AND SPECIALTY COURSES

22 Q WERE YOU ON DUTY ON MARCH 17TH OF 2005?

23 A YES, MA'AM, I WAS

24 Q DID YOU TAKE PART IN THE EXECUTION OF A SEARCH WARRANT
25 AT 108 RAYMOND DRIVE IN CHESNEE?

1 A YES, MA'AM, I DID

2 Q IS THAT IN SPARTANBURG COUNTY?

3 A YES, MA'AM, IT IS

4 Q WHAT WAS THE WEATHER LIKE ON THAT DAY?

5 A IT WAS ICY I KNOW THAT THERE WAS ICE BECAUSE THE
6 GRASS WAS STILL BREAKING AS YOU WALKED ON IT AND MISTY RAIN

7 Q WHAT WAS YOUR ROLE IN THE EXECUTION OF A SEARCH WARRANT
8 AT 108 RAYMOND DRIVE ON THAT DATE?

9 A I WAS DRIVING AND WE HAVE LIEUTENANT RAINEY OF THE
10 CHESNEE PD AS A FRONT SEAT PASSENGER IN MY VEHICLE MY
11 ASSIGNMENT WAS THE BACK DOOR

12 MS MILLICAN YOUR HONOR, MAY THE WITNESS STEP DOWN TO
13 ILLUSTRATE THE NEXT LINE OF QUESTIONS?

14 THE COURT YES, MA'AM

15 Q COULD YOU PLEASE ILLUSTRATE FOR THE JURY THE SET-UP OF
16 THE PROPERTY WHEN YOU ARRIVED AND WHERE YOU WERE?

17 A YES, MA'AM

18 MR RAY YOUR HONOR, WOULD IT BE OKAY IF I MOVE OVER
19 SO ---

20 THE COURT CERTAINLY

21 MR RAY --- I CAN SEE THIS? THANK YOU

22 A YOUR HONOR, FORGIVE ME, I'M NOT AN ARTIST OKAY THIS
23 IS THE MOBILE HOME RIGHT HERE THIS IS THE FRONT DOOR UP
24 HERE THERE WERE CAMERAS AROUND THE BUILDING WE CAME
25 THROUGH A CUT RIGHT HERE AND WE WERE MOVING IN PRETTY

1 FAST, SO I CUT ACROSS THIS WAY AND AS SOON AS I LOOKED AND
2 -- I COULD SEE THE CAMERAS FROM -- AS I WAS APPROACHING
3 AND THIS WAS ALL GRASS RIGHT HERE AND I APPLIED BRAKES
4 RIGHT ABOUT HERE AND I STARTED SLIDING, AND I WENT INTO
5 THE WOODS

6 JUST BEFORE I APPLIED BRAKES I LOOKED OVER AND I SEEN
7 THE DEFENDANT WITH THE -- ON THE PORCH HE JUMPED DOWN OFF
8 THE PORCH AND RAN INTO THE WOODS RIGHT HERE RAINEY WAS THE
9 FRONT SEAT PASSENGER HE WAS ABLE TO GET OUT BEFORE I WAS
10 HE STARTED AFTER THE DEFENDANT I CAME AROUND THIS WAY AND
11 STARTED AFTER THE DEFENDANT

12 WE WERE IN REALLY THICK BRIARS BUT BY THE TIME WE
13 CAUGHT HIM, I WOULD SAY IT WOULD PROBABLY BE UP HERE
14 SOMEWHERE THERE WAS A METAL SHED RIGHT HERE THERE'S A
15 WINDOW RIGHT HERE WHEN HE WAS RUNNING HE FELL ABOUT HERE
16 AND CONTINUED RUNNING AND FELL AGAIN AND THAT'S WHEN WE
17 WERE ABLE TO DETAIN HIM

18 Q DID YOU SEE THE DEFENDANT DISCARD ANYTHING WHILE HE WAS
19 RUNNING?

20 A NO, MA'AM, I DID NOT THERE WAS BRIARS THAT I WAS
21 TRYING TO AVOID

22 Q SO DID YOU HAVE A FULL VIEW OF HIM THE ENTIRE TIME FROM
23 THE MOMENT YOU FIRST SPOTTED HIM UNTIL YOU APPREHENDED HIM?

24 A I KNEW WHERE HE WAS, BUT NO, I COULDN'T SEE HIM EVERY
25 STEP OF THE WAY

1 Q WERE YOU LATER INFORMED THAT AN ITEM WAS DISCARDED
2 LOCATED IN THE PROXIMITY OF WHERE YOU FOUND THE DEFENDANT?

3 A YES, MA'AM

4 Q AND WHERE WAS THAT ITEM LOCATED?

5 A IT WOULD PROBABLY BE ABOUT RIGHT HERE THIS IS
6 OBVIOUSLY NOT TO SCALE, BUT THAT'S ABOUT -- IT WAS RIGHT
7 ALONG ---

8 MR RAY YOUR HONOR, I'M GOING TO OBJECT I THINK
9 HE'S DRAWING A CONCLUSION HERE

10 THE COURT SIR, WHEN YOU ANSWER THE QUESTIONS, IF YOU
11 CAN ANSWER THE QUESTION BASED ON PERSONAL KNOWLEDGE, THEN
12 YOU CERTAINLY ARE FREE TO DO THAT WHAT I CANNOT ALLOW YOU
13 TO DO IS TO GUESS OR SPECULATE SO IF YOU CAN ANSWER THE
14 QUESTION BASED ON YOUR MEMORY THEN -- AND YOUR PERSONAL
15 KNOWLEDGE, YOU CAN ANSWER THE QUESTION BUT IF IT'S BASED
16 ON SPECULATION OR GUESSWORK, THEN YOU HAVE TO SAY THAT YOU
17 DON'T KNOW

18 A YES, YOUR HONOR

19 THE COURT THANK YOU

20 MS MILLICAN I'LL REPHRASE THE QUESTION, YOUR HONOR

21 Q DID YOU SEE AN ITEM ON THE GROUND IN THE AREA?

22 A YES, I DID

23 Q WHERE DID YOU SEE IT?

24 A IT WAS IN THIS AREA OF THE WOOD-LINE

25 Q WHAT WAS IT?

1 A IT WAS A BAGGY OF EITHER COCAINE OR CRACK COCAINE

2 Q WHAT DID IT LOOK LIKE? CAN YOU DESCRIBE ITS CONDITION?

3 A IT WAS -- LOOKED LIKE IT WAS IN A BALL I KNOW I WAS

4 SOAKING WET FROM HEAD TO TOE FROM CHASING THE DEFENDANT

5 AND THE GROUND WAS ALL WET, BUT THE BAG APPEARED TO BE DRY

6 STILL I'D SEEN NOBODY ELSE IN THE AREA IT WAS REAL EARLY

7 IN THE MORNING, COLD, MISERABLE I DON'T EVEN -- I COULDN'T

8 EVEN TELL YOU WHERE THE OTHER RESIDENCES WOULD BE IN

9 RELATION TO THIS I KNOW THERE WAS NONE RIGHT AROUND HERE

10 Q YOU DREW A SQUIGGLY LINE DOWN THE PAGE WHAT DOES THAT

11 REPRESENT?

12 A THAT'S WOOD-LINE

13 Q WHEN YOU SAY WOOD-LINE, CAN YOU DESCRIBE THE NATURE OF

14 THE ---

15 A THAT'S WHERE THE GRASS STOPS AND WOODS, AND BRIARS, AND

16 OVERGROWTH BEGINS

17 Q WAS IT RELATIVELY BIG?

18 A YES, MA'AM, IT WAS

19 Q WAS IT DIFFICULT TO MOVE THROUGH?

20 A YES, MA'AM, IT WAS, SOME PLACES

21 Q ABOUT HOW FAR WAS THE DEFENDANT WHEN YOU APPREHENDED

22 HIM FROM THE BACK DOOR OF THAT TRAILER?

23 A FIFTY YARDS

24 Q AND APPROXIMATELY HOW FAR WAS THAT BAGGY THAT LOOKED

25 LIKE CRACK COCAINE ON THE GROUND? HOW FAR WAS IT FROM THE

1 BACK DOOR OF THE TRAILER?

2 A FORTY-FIVE

3 Q HOW FAR WAS IT FROM THE PATH THE DEFENDANT HAD BEEN
4 RUNNING IN?

5 A FIFTEEN TO TWENTY

6 Q FEET OR YARDS?

7 A FEET

8 Q WHO COLLECTED THE ITEM?

9 A LIEUTENANT DUNCAN

10 Q IS THE SUBJECT THAT YOU CHASED DOWN AND APPREHENDED
11 PRESENT IN THE COURTROOM TODAY?

12 A YES, MA'AM

13 Q COULD YOU PLEASE POINT HIM OUT TO THE JURY?

14 A SITTING IN THE DEFENDANT'S CHAIR

15 (WHEREUPON THE WITNESS POINTED TO THE DEFENDANT)

16 MS MILLICAN YOUR HONOR, PLEASE LET THE RECORD

17 REFLECT THAT THE WITNESS ALSO POINTED TO THE DEFENDANT

18 Q IF YOU COULD PLEASE -- COULD YOU PLEASE LOOK AT THIS
19 PICTURE? DO YOU RECOGNIZE IT?

20 A YES, MA'AM, I DO

21 Q WHAT IS IT?

22 A IT'S ME STANDING WHERE THE DEFENDANT WAS ACTUALLY
23 CAUGHT AND LIEUTENANT DUNCAN STANDING WHERE THE DOPE WAS
24 FOUND

25 Q CAN YOU PLEASE ILLUSTRATE ON YOUR DIAGRAM THAT YOU'VE

1 DRAWN HERE FOR THE JURY EXACTLY WHAT IS IN THAT PICTURE?

2 A YES, MA'AM IT SHOWS ME STANDING HERE AND LIEUTENANT
3 DUNCAN STANDING HERE WHERE THE DOPE WAS FOUND

4 MS MILLICAN THE STATE WOULD MOVE AT THIS TIME TO
5 ADMIT THIS PHOTO INTO EVIDENCE AS STATE'S EXHIBIT NUMBER 1

6 MR RAY NO OBJECTION, YOUR HONOR

7 THE COURT IT'S ADMITTED

8 MS MILLICAN I APOLOGIZE, YOUR HONOR, IT'LL BE
9 STATE'S EXHIBIT NUMBER 8

10 (WHEREUPON STATE'S EXHIBIT 8 WAS ADMITTED INTO
11 EVIDENCE)

12 MS MILLICAN THE STATE HAS NO FURTHER QUESTIONS FOR
13 THIS WITNESS AT THIS TIME, YOUR HONOR

14 MR RAY THANK YOU, YOUR HONOR

15 THE COURT CERTAINLY

16 CROSS EXAMINATION BY MR RAY

17 Q OFFICER LACHICA, MAYBE I'M A LITTLE CONFUSED YOU SAID
18 AS YOU APPROACHED YOU CAME FROM THIS DIRECTION, CORRECT?

19 A THAT IS CORRECT

20 Q AND YOU WERE IN YOUR CAR AT THAT TIME?

21 A YES, I WAS

22 Q AND WHAT IS THIS RIGHT HERE?

23 A IT'S IN BETWEEN TWO TRAILERS

24 Q SO THERE'S ANOTHER TRAILER DOWN HERE?

25 A I BELIEVE SO

1 Q BEHIND ---

2 A YES IT'S A ---

3 Q --- THIS?

4 A IT LOOKS LIKE -- IT'S LIKE A CUT-THROUGH

5 Q SO IT'S A WOODED AREA?

6 A NO IT'S JUST GRASS

7 Q IT'S JUST GRASS OKAY AND YOU CONTINUED IN YOUR CAR?

8 A YES

9 Q IS THAT CORRECT?

10 A UM-HUM (AFFIRMATIVE)

11 Q AND YOU SAID ABOUT HERE YOU SAW CHRIS ON THE BACK

12 PORCH?

13 A JUMPING OFF THE BACK PORCH

14 Q JUMPING OFF THE BACK PORCH YOU CONTINUED IN YOUR CAR?

15 A THAT'S CORRECT

16 Q AND DROVE YOUR CAR INTO THE WOODS HERE?

17 A I WAS ACTUALLY TRYING TO STOP BACK THERE WHERE THE

18 BRAKE IS, BUT SINCE THE GROUND WAS FROZEN I JUST KEPT GOING

19 Q WHO WAS WITH YOU?

20 A LIEUTENANT RAINES

21 Q WHO WAS DRIVING?

22 A I WAS

23 Q YOU WERE DID YOU BOTH JUMP OUT OF THE CAR?

24 A YES, WE DID

25 Q AND YOU WERE ABOUT THIRTY YARDS BEHIND CHRIS, ---

1 A YES

2 Q --- CORRECT?

3 A THAT'S ABOUT RIGHT

4 Q NOW WHEN YOU CAUGHT UP WITH CHRIS YOU DETAINED HIM,
5 CORRECT?

6 A THAT IS CORRECT

7 Q AND THEN YOU TOOK HIM INSIDE, DIDN'T YOU? INSIDE THE
8 TRAILER?

9 A I BELIEVE HE WAS TAKEN INSIDE I DON'T KNOW IF I TOOK
10 HIM I DON'T THINK I TOOK HIM IN

11 Q AND IT WAS AFTER A LITTLE WHILE, IF I'VE LOOKED THROUGH
12 THIS CORRECTLY, THAT OFFICER DUNCAN LOCATED THE DRUGS THAT
13 YOU SAID WERE NEAR THE OUTBUILDING?

14 A YES, SIR IT WASN'T IMMEDIATELY

15 Q AND THEY WERE STILL DRY?

16 A YES, SIR

17 Q AND THEY WEREN'T FINGERPRINTED?

18 A NO, SIR, NOT TO MY KNOWLEDGE

19 Q WHEN YOU WERE IN THE TRAILER, LET ME SEE IF I
20 UNDERSTAND THIS RIGHT, SPEAKING OF INSIDE THE TRAILER, IF
21 YOU COME IN THE FRONT DOOR TO THE LEFT IS GOING TO BE A
22 KITCHEN?

23 A THAT'S CORRECT

24 Q CORRECT? TO THE RIGHT IS A BACK BEDROOM?

25 A THAT'S CORRECT

1 Q CORRECT? AND IT WAS RAINY AND ICY THAT DAY AND YOU
2 STATED THAT, I BELIEVE, THAT'S WHY YOU SLID WHEN YOU TRIED
3 TO BRAKE?

4 A THAT IS CORRECT

5 Q BUT YOU NEVER SAW CHRIS ACTUALLY HOLDING ANY DRUGS, OR
6 THROWING THEM, OR ---

7 A NO, SIR, I DID NOT

8 MR RAY I BEG THE COURT'S INDULGENCE FOR ONE MINUTE

9 Q WHEN YOU AND OFFICER RAINES PULLED UP IN YOUR PATROL
10 CAR HAD INVESTIGATOR HUTCHINS ALREADY GONE THROUGH THE FRONT
11 DOOR?

12 A I DON'T KNOW

13 Q SO YOU DON'T KNOW IF THE DOOR HAD BEEN BREACHED OR
14 ANYTHING? YOU WERE STILL COMING TO THE BACK?

15 A THAT'S CORRECT

16 Q THANK YOU, OFFICER LACHICA

17 A YES, SIR

18 MS MILLICAN JUST BRIEFLY, YOUR HONOR

19 REDIRECT EXAMINATION BY MS MILLICAN

20 Q WHO LOCATED THE BAGGY OF CRACK ON THE GROUND?

21 A I BELIEVE IT WAS LIEUTENANT DUNCAN

22 Q AND WHO RECOVERED IT?

23 A I DON'T KNOW

24 MS MILLICAN THAT'S ALL I HAVE, YOUR HONOR

25 THE COURT YOU CAN STEP DOWN, SIR

1 A THANK YOU

2 THE COURT CALL YOUR NEXT WITNESS

3 MS MILLICAN THE STATE WOULD CALL LIEUTENANT BRIAN
4 DUNCAN

5 BRIAN DUNCAN, BEING DULY
6 SWORN TESTIFIED AS FOLLOWS

7 DIRECT EXAMINATION BY MS MILLICAN

8 Q PLEASE STATE YOUR NAME FOR THE RECORD

9 A BRIAN DUNCAN

10 Q AND WHERE DO YOU WORK?

11 A SPARTANBURG COUNTY SHERIFF'S OFFICE

12 Q HOW LONG HAVE YOU BEEN EMPLOYED BY THE SPARTANBURG
13 COUNTY SHERIFF'S OFFICE?

14 A TWELVE YEARS

15 Q WHAT ARE YOUR DUTIES OR ASSIGNMENTS THERE?

16 A I'M THE LIEUTENANT FOR THE NARCOTICS VICE UNIT I TOOK
17 THAT OVER IN JANUARY I WAS ALSO LIEUTENANT IN THE SAME
18 DIVISION FROM '99 TO 2001

19 Q WHAT EDUCATION OR TRAINING DID YOU RECEIVE WHILE
20 WORKING FOR THE SHERIFF'S OFFICE?

21 A WELL, I'VE BEEN TO THE ACADEMY FOR NUMEROUS COURSES FOR
22 BASIC LAW ENFORCEMENT AS WELL AS NARCOTICS INVESTIGATIONS
23 I'VE BEEN TO NUMEROUS NARCOTICS INVESTIGATIONS CLASSES AS
24 WELL

25 Q YOU WERE ON DUTY ON MARCH 17TH, 2005?

1 A I WAS

2 Q DID YOU TAKE PART IN THE EXECUTION OF A SEARCH WARRANT
3 AT 108 RAYMOND DRIVE IN CHESNEE?

4 A I DID

5 Q DO YOU RECALL WHAT THE WEATHER WAS LIKE THAT DAY?

6 A YES JUST AS THE OTHER OFFICER SAID, IT WAS A PRETTY
7 MISERABLE DAY, VERY WET AND RAINY THERE HAD BEEN SOME
8 SLEET THE GROUND WAS PRETTY SOGGY

9 Q WHAT WAS YOUR ROLE IN THE EXECUTION OF THAT SEARCH
10 WARRANT?

11 A INITIALLY MY RESPONSIBILITY WAS INSIDE THE RESIDENCE
12 ON AN ENTRY TEAM BASICALLY WE HAVE SEVERAL GUYS IN
13 SITUATIONS LIKE THIS WHERE SEARCH WARRANTS ARE EXECUTED
14 WHERE WE MADE ENTRY ON THE FRONT DOOR OF THE RESIDENCE WITH
15 A SHIELD AND OTHER ITEMS TO TRY TO MAKE OURSELVES PROTECTED
16 WE WENT INSIDE THE RESIDENCE AND SECURED EVERYBODY THAT WAS
17 THERE WITH HANDCUFFS AND CHECKED THEM FOR WEAPONS AND AT
18 THAT POINT IT'S ALL THE NARCOTICS INVESTIGATOR'S
19 RESPONSIBILITY TO SEARCH WHATEVER THE RESIDENCE IS, THE AREA
20 AROUND IT AND IT'S MY RESPONSIBILITY TO ASSIST IN THAT AS
21 WELL AS SUPERVISE THE SCENE

22 Q DID YOU SEE THE DEFENDANT, CHRISTOPHER BURKE, ON THAT
23 DAY?

24 A I DID I WAS AWARE ONCE WE HAD EVERYBODY SECURED
25 INSIDE THE RESIDENCE THAT SOMEONE HAD FLED OUT THE BACK DOOR

1 WHENEVER WE MADE ENTRY IN THE FRONT AND HE WAS BROUGHT
2 INSIDE THE RESIDENCE AND MIRANDIZED AFTER HE WAS CAUGHT BY
3 DEPUTY LACHICA

4 Q WHAT DID YOU DO NEXT?

5 A WELL, THE INVESTIGATOR STARTED THE SEARCH WE'D
6 ALREADY FOUND A COUPLE OF ITEMS THAT WERE JUST LAYING OUT, A
7 GUN, AND SOME OTHER ITEMS OF DRUGS, SOME ITEMS OF DRUGS
8 CRACK COCAINE AND POWDER COCAINE WERE FOUND DIRECTLY OUTSIDE
9 A WINDOW IN THE RESIDENCE AND AS OTHER INVESTIGATORS WERE
10 SEARCHING THE INSIDE OF THE RESIDENCE I WENT OUTSIDE WITH
11 DEPUTY LACHICA AND THE CHESNEE POLICE OFFICER, AND WE
12 STARTED SEARCHING THE AREA WHERE MR BURKE, THE DEFENDANT,
13 HAD RUN WE FIGURED THAT MAYBE HE HAD DISCARDED SOME DRUG
14 EVIDENCE WHENEVER HE WAS RUNNING SO I ASSISTED THEM IN
15 THAT

16 Q DID YOU SEARCH THE AREA FROM THE POINT WHERE CHRIS
17 BURKE RAN FROM THE BACK DOOR TO WHERE HE WAS APPREHENDED?

18 A WE DID BASICALLY WE JUST STARTED FROM THE BACK DOOR
19 AND WORKED OUR WAY TO WHERE WE FOUND HIM IN THE AREAS RIGHT
20 AROUND WHERE HE WAS APPREHENDED AND I WOULD SAY PROBABLY
21 FIFTEEN FEET FROM WHERE DEPUTY LACHICA AND THE CHESNEE
22 POLICE OFFICER APPREHENDED HIM I FOUND A BAGGY OF WHAT I
23 THOUGHT TO BE CRACK COCAINE

24 Q PLEASE LOOK AT WHAT'S BEEN MARKED AS STATE'S EXHIBITS
25 NUMBER 9, 10 AND 11 AND TELL ME IF YOU RECOGNIZE THOSE

1 A YES THESE ARE PHOTOS THAT WERE TAKEN THAT DAY BY
2 ANOTHER DEPUTY, BUT I WAS THERE WHENEVER THEY WERE TAKEN
3 IT SHOWS THE BAGGY OF CRACK COCAINE THAT WAS FOUND LAYING IN
4 -- IT WAS KIND OF SOME BRUSH IT WAS BEHIND AN OUTBUILDING
5 THAT'S ALREADY BEEN DRAWN UP ON THE BOARD HERE THERE WERE
6 SOME OTHER ITEMS RIGHT AROUND THIS TREE NEAR WHERE THE DRUGS
7 WERE FOUND, SOME OLD DISCARDED ITEMS FROM JUST WOOD AND
8 WHATNOT BUT THESE PHOTOS SHOW THAT GENERAL AREA AS WELL AS
9 THE DRUG EVIDENCE

10 Q ARE YOU IN ANY OF THOSE PHOTOS?

11 A I AM I'M IN ACTUALLY A COUPLE OF THEM ONE OF THE
12 PHOTOS I'M SHOWN POINTING DOWNWARD THAT'S -- I'M STANDING
13 DIRECTLY ABOVE WHERE THE DRUGS WERE FOUND ON THE GROUND AS
14 WELL AS ANOTHER PHOTO THAT SHOWS BASICALLY JUST THE VANTAGE
15 POINT STANDING IN THE YARD OF THIS RESIDENCE A PICTURE WAS
16 TAKEN SHOWING THE OUTBUILDING AND THE AREA THAT I FOUND THE
17 DRUGS AT

18 Q USING THAT MARKER LYING IN FRONT OF YOU RIGHT THERE,
19 COULD YOU SHOW THE JURY EXACTLY WHERE YOU'RE REFERRING TO
20 AROUND THE OUTBUILDING AND THE VANTAGE POINTS OF THOSE?

21 A YES THERE'S TWO PHOTOS THAT HAVE ME IN THEM, BUT
22 BASICALLY IN BOTH PHOTOS I'M STANDING AGAIN IN THIS AREA
23 THIS IS THE OUTBUILDING FROM THIS YARD AREA AND I'M
24 STANDING ABOUT RIGHT HERE, STANDING ABOVE WHERE THE DRUGS
25 WERE FOUND

1 Q THANK YOU DID YOU TOUCH THE DRUGS AFTER YOU FOUND
2 THEM?

3 A NO, I DIDN'T I DID OBSERVE THEM CLOSELY I MEAN, I
4 GOT DOWN ON MY HANDS AND KNEES TO LOOK AT THEM BECAUSE I
5 WANTED TO SEE IF, AGAIN, AS I'VE ALREADY TESTIFIED, IT WAS
6 VERY RAINY THAT DAY, THE GROUND WAS SOAKING WET AND VERY
7 SLIPPERY AND I WANTED TO SEE IF THE ITEM LOOKED LIKE IT
8 HAD BEEN THERE A WHILE AND IT DID NOT IT WAS DRY IT
9 WAS A DRY BAGGY THAT HAD CRACK IN IT

10 Q WAS THE BAGGY LYING ON THE GROUND SITUATED THAT IT
11 WOULD HAVE PUDDLED UP SOME WATER HAD IT BEEN THERE FOR A
12 LITTLE WHILE THAT DAY?

13 A CERTAINLY

14 Q WHO DID COLLECT THE BAGGY?

15 A INVESTIGATOR JOSH KELLY WHENEVER WE DO SEARCH
16 WARRANTS, IF ITEMS OF DRUGS ARE FOUND GENERALLY THE PERSON
17 THAT FINDS THEM WILL JUST NOTE WHERE THEY'RE AT AND WE
18 HAVE ONE PERSON THAT'S DESIGNATED TO RETRIEVE THOSE ITEMS SO
19 THAT YOU DON'T HAVE A BUNCH OF PEOPLE TOUCHING DRUG
20 EVIDENCE AND HE WAS THE ONLY ONE THAT -- BASICALLY I
21 CALLED HIM ON THE RADIO AND TOLD HIM TO COME OUTSIDE HE
22 CAME TO THIS LOCATION AND RECOVERED THE DRUGS

23 Q DID YOU OBSERVE A SURVEILLANCE SYSTEM AT THIS LOCATION?

24 A I DID THERE WERE CAMERAS, I THINK, FOUR CAMERAS ON
25 TOP OF THE MOBILE HOME POINTED IN DIFFERENT VANTAGE POINTS

1 SO THAT BASICALLY YOU COULD BE SEEN IF YOU APPROACHED THE
2 TRAILER FROM ANY DIRECTION, EVEN FROM BEHIND IT

3 Q IN YOUR EXPERTISE AND EXPERIENCE AS A NARCOTICS OFFICER
4 IS IT COMMON WHEN SOMEONE POSSESSING DRUGS TAKES OFF RUNNING
5 AND THEY'RE TRYING TO ELUDE THE POLICE FOR THEM TO DISCARD
6 IT?

7 A ABSOLUTELY IT'S HAPPENED TO ME PERSONALLY DOZENS IF
8 NOT HUNDREDS OF TIMES PROBABLY IT'S VERY COMMON

9 Q AND ALSO BASED ON YOUR EXPERTISE AND YOUR EXPERIENCE IS
10 IT COMMON FOR A DRUG DEALER TO PURCHASE CRACK COCAINE FROM A
11 HOUSE THAT MANUFACTURES THE DRUG INSTEAD OF MANUFACTURING IT
12 THEMSELVES?

13 A ABSOLUTELY SOME PEOPLE DON'T WANT TO TAKE THE TIME TO
14 HAVE TO COOK IT UP AND OTHER PEOPLE ARE BETTER AT COOKING
15 CRACK THAN OTHERS SO, YES, IT'S VERY COMMON

16 MS MILLICAN I HAVE NO FURTHER QUESTIONS AT THIS
17 TIME, YOUR HONOR

18 CROSS EXAMINATION BY MR RAY

19 Q HOW ARE YOU, OFFICER DUNCAN?

20 A FINE

21 Q YOU WERE INVOLVED IN -- LET ME REPHRASE THAT YOU WENT
22 THROUGH THE FRONT DOOR OF THE HOUSE INITIALLY, CORRECT?

23 A THAT'S CORRECT

24 Q OR THE TRAILER WERE YOU BEHIND INVESTIGATOR HUTCHINS
25 OR WERE YOU IN FRONT?

1 A I WAS BASICALLY BEHIND HIM INITIALLY, YES

2 Q AND YOU WERE HOLDING THE SHIELD, CORRECT?

3 A THAT'S CORRECT WE USED TWO SHIELDS THAT DAY

4 Q AND YOUR JOB WAS TO COVER THE RIGHT SIDE AFTER YOU WENT

5 IN?

6 A THAT'S CORRECT

7 Q AND TURNING TO THE RIGHT YOU SAW A BEDROOM DOOR,

8 CORRECT?

9 A THAT'S CORRECT

10 Q AND YOU KICKED IN THE DOOR, IS THAT RIGHT?

11 A IF I REMEMBER CORRECTLY, YES

12 Q AND WHEN YOU DID BRAD LOGAN CHARGED YOU, IS THAT

13 CORRECT?

14 A THAT'S CORRECT

15 Q SO YOU AND I BELIEVE OFFICER STEWART FOUGHT WITH HIM

16 FOR A LITTLE WHILE, CORRECT?

17 A THERE WAS A STRUGGLE INSIDE THE RESIDENCE IT WAS NOT

18 SO MUCH WITH ME AS WITH THE PEOPLE THAT WERE BEHIND ME MY

19 HANDS WERE KIND OF FULL WITH THE SHIELD

20 Q AFTER FIGHTING WITH BRAD LOGAN DID YOU GO INTO THE BACK

21 BEDROOM WHERE HE'D BEEN?

22 A YES

23 Q AND DID YOU FIND ANYTHING IN THERE?

24 A THERE WAS A GUN LAYING ON -- IT WAS KIND OF A HEADBOARD

25 TO THE BED THERE WERE SOME PILLS LAYING THERE, AN AMOUNT

1 OF MONEY AND THE WINDOW WAS UP PARTIALLY

2 Q AND AS YOU TESTIFIED EARLIER WHEN YOU FIND DRUGS, OR
3 WEAPONS, OR THINGS LIKE THAT YOU NORMALLY NOTE AND TELL ONE
4 OFFICER THAT'S INVOLVED IN ACTUALLY GETTING THOSE ITEMS,
5 CORRECT?

6 A THAT'S NORMALLY THE PROCEDURE THERE ARE TIMES THAT IF
7 WE FIND A GUN OR SOMETHING THAT'S GOING TO BE A SAFETY RISK
8 WE MAY MAKE SURE THAT IT'S SAFE, BUT GENERALLY WE LEAVE
9 THOSE ITEMS THERE

10 Q SO WHEN YOU FOUND THOSE ITEMS WHAT DID YOU DO ABOUT --
11 DID YOU TELL INVESTIGATOR KELLY THEN THAT THOSE ITEMS WERE
12 THERE?

13 A THERE WERE SEVERAL INVESTIGATORS IN THE ROOM THERE I
14 WAS NOT -- I DON'T RECALL SPECIFICALLY SAYING, JOSH, THERE
15 ARE ITEMS THAT ARE HERE, BUT -- BECAUSE THEY WERE READILY IN
16 PLAIN VIEW, IN OPEN VIEW, I KNEW THAT HE WOULD FIND THEM AT
17 SOME POINT

18 Q AND THERE WERE SEVERAL OTHER PEOPLE IN THE TRAILER AS
19 WELL?

20 A THAT'S CORRECT

21 Q SO AFTER GOING INTO THE BEDROOM, Y'ALL LOCATED THE
22 ITEMS IN THE BEDROOM, AT SOME POINT YOU UNDERSTOOD THAT
23 SOMEONE HAD BEEN DETAINED OUTSIDE THE TRAILER, CORRECT?

24 A IT WAS VERY SHORTLY AFTER WE ENTERED THE RESIDENCE THAT
25 I KNEW THAT SOMEBODY HAD GONE OUT THE BACK DOOR

1 Q AND DID THEY BRING THAT PERSON INSIDE?

2 A THEY DID, YES

3 Q AND MY UNDERSTANDING WAS FROM EARLIER TESTIMONY AND
4 WE'VE -- OFFICER HUTCHINS SAID EVERYONE WAS READ THEIR
5 MIRANDA RIGHTS, CORRECT?

6 A THAT'S CORRECT

7 Q DID Y'ALL ATTEMPT TO TALK TO ANY OF THESE PEOPLE AND
8 SEE WHAT THEY WOULD TELL YOU WAS GOING ON?

9 A INVESTIGATOR HUTCHINS, AND I'M NOT SURE, I THINK THERE
10 WAS SOMEBODY ELSE WITH HIM, THEY INTERVIEWED EVERYBODY THAT
11 WAS THERE BASED ON MY MEMORY I WAS NOT IN ON ALL OF THOSE
12 INTERVIEWS BECAUSE I WAS JUST MAKING SURE THE SCENE WAS
13 CLEAR, AND I WAS, AGAIN, OUTSIDE FOR A PART OF THE TIME

14 Q SO AFTER EVERYONE'S SECURED INSIDE AND THEY BROUGHT THE
15 PERSON WHO WAS DETAINED OUTSIDE BACK INTO THE TRAILER
16 EVERYTHING HAD CALMED DOWN AND AT SOME POINT, TELL ME IF I'M
17 CORRECT, YOU WENT OUTSIDE TO LOOK AROUND THE AREA TO SEE
18 WHAT YOU COULD FIND, CORRECT?

19 A THAT'S CORRECT

20 Q BECAUSE THE SEARCH WARRANT INCLUDED OUTBUILDINGS AND
21 THE CURTILAGE AREA OF THE HOUSE, CORRECT?

22 A IT DID

23 Q SO IN DOING THAT YOU HAPPENED UPON A BAGGY WHICH
24 CONTAINED, I GUESS, IT WAS AN OFF-WHITE ROCK SUBSTANCE?

25 A THAT'S CORRECT

1 Q AND THAT WAS OUT HERE AROUND AN OUTBUILDING?

2 A THAT'S CORRECT IT WAS BEHIND THE OUTBUILDING IN THE
3 GROWN UP WEEDS, WOODED AREA

4 Q DID YOU SEE THE OTHER DRUGS THAT WERE FOUND OUTSIDE,
5 WHERE THEY WERE LOCATED?

6 A I DID

7 Q AND THEY WERE LOCATED BEHIND OR OUTSIDE A WINDOW IN
8 THIS BACK BEDROOM, CORRECT?

9 A IT WAS -- THE WINDOW WAS ON THE ACTUAL SIDE OF THE
10 TRAILER

11 Q IT WAS HERE?

12 A YES

13 Q SO YOU FOUND DRUGS OUTSIDE THIS BEDROOM WINDOW?

14 A IT WAS DIRECTLY BESIDE THE TRAILER LAYING UNDER THE
15 WINDOW

16 Q BESIDE, OKAY AND THEY WEREN'T FINGERPRINTED, CORRECT,
17 ANY OF THE DRUGS, ANY OF THE BAGGIES?

18 A I THINK THE BAGGY THAT I FOUND, I THINK THAT IT WAS AT
19 LEAST ATTEMPTED TO BE FINGERPRINTED MANY TIMES WE DON'T
20 FINGERPRINT BAGGIES BECAUSE WE'VE TRIED IT HUNDREDS OF TIMES
21 AND WE RARELY FIND ANYTHING ON IT I'M NOT POSITIVE ABOUT
22 THAT, BUT I THINK THAT THE BAGGY THAT I FOUND WAS
23 FINGERPRINTED

24 Q BUT YOU'RE NOT SURE IT WAS FINGERPRINTED?

25 A I'M NOT POSITIVE I'M BASING MY ANSWER BASED ON -- I

1 THOUGHT WE HAD DISCUSSED IT THAT DAY AS WELL AS JUST LOOKING
2 AT THE OUTSIDE OF THE BAG I THINK IT APPEARS THAT IT HAD
3 BEEN SOMEBODY ELSE MAY BE ABLE TO -- INVESTIGATOR KELLY
4 MAY BE ABLE TO TESTIFY TO THAT BETTER

5 Q AND HAVE YOU EVER SEEN A RETURN WHERE ANY FINGERPRINTS
6 WERE ANALYZED FROM THIS INCIDENT?

7 A I HAVE NOT, NO

8 Q HOW ABOUT THE GUN, WAS IT FINGERPRINTED?

9 A I THINK THAT IT WAS SOMETIMES THERE ARE FINGERPRINTS
10 FOUND ON GUNS I'M NOT SURE BUT WE WERE PRETTY SURE WE
11 KNEW WHOSE THAT WAS THE OWNER HAD IT TATTOOED ON HIS ARM

12 Q WHO WAS THAT?

13 A BRAD LOGAN

14 Q AND I'M CORRECT IN SAYING THAT NO DRUGS WERE ACTUALLY
15 FOUND ON CHRISTOPHER BURKE, CORRECT?

16 A THAT'S CORRECT

17 Q AND THE -- THERE'S A FAIRLY SUBSTANTIAL AMOUNT OF MONEY
18 FOUND IN THAT BACK BEDROOM, CORRECT?

19 A THAT'S CORRECT

20 Q AND A DRUG DOG ACTUALLY INDICATED ON THAT MONEY?

21 A HE DID, YES

22 Q THANK YOU, OFFICER DUNCAN

23 MS MILLICAN THE STATE HAS NOTHING FURTHER, YOUR
24 HONOR

25 THE COURT ALL RIGHT, SIR, YOU CAN STEP DOWN

1 MS THILL YOUR HONOR, MAY WE APPROACH?

2 THE COURT YES, MA'AM

3 (WHEREUPON A BENCH CONFERENCE WAS HELD OFF THE RECORD
4 IN THE PRESENCE OF THE JURY, BUT OUT OF THEIR HEARING)

5 MS THILL YOUR HONOR, THE STATE WOULD NEXT CALL JOSH
6 KELLY

7 JOSHUA KELLY, BEING DULY
8 SWORN TESTIFIED AS FOLLOWS

9 DIRECT EXAMINATION BY MS THILL

10 Q WOULD YOU STATE YOUR NAME AND OCCUPATION FOR THE
11 RECORD?

12 A JOSHUA KELLY I'M A NARCOTICS INVESTIGATOR FOR THE
13 SPARTANBURG COUNTY SHERIFF'S OFFICE

14 Q AND HOW LONG HAVE YOU BEEN EMPLOYED WITH THE SHERIFF'S
15 OFFICE?

16 A APPROXIMATELY FIVE YEARS

17 Q AND WHAT HAVE YOUR ASSIGNMENTS FOR THE SHERIFF'S OFFICE
18 BEEN OVER THE YEARS?

19 A I STARTED OUT IN UNIFORM PATROL WHEN I FIRST GOT HIRED
20 BY THE SHERIFF'S OFFICE I'VE CURRENTLY BEEN WORKING IN THE
21 NARCOTICS DIVISION, AND BEEN THERE FOR APPROXIMATELY FOUR
22 YEARS

23 Q AND WHILE YOU'VE BEEN AT THE SHERIFF'S OFFICE WHAT HAS
24 YOUR TRAINING AND EDUCATION BEEN?

25 A I HAVE AN ASSOCIATE'S DEGREE IN CRIMINAL JUSTICE WHEN

1 HIRED AT THE SHERIFF'S OFFICE, I WENT TO THE ACADEMY DOWN IN
2 COLUMBIA I'VE ALSO TAKEN NUMEROUS NARCOTICS INVESTIGATION
3 AND UNDERCOVER CLASSES IN COLUMBIA AT THE ACADEMY AS WELL AS
4 OTHER NARCOTIC INVESTIGATION CLASSES PUT ON BY NUMEROUS
5 COMPANIES

6 Q AND OBVIOUSLY ONE OF YOUR DUTIES AS A NARCOTICS OFFICER
7 IS TO INVESTIGATE THE USE OF ILLEGAL NARCOTICS, CORRECT?

8 A YES, MA'AM

9 Q HAVE YOU ALSO HAD OCCASION TO EXECUTE SEARCH WARRANTS?

10 A YES, MA'AM

11 Q HOW MANY TIMES APPROXIMATELY?

12 A IN THE EXECUTION OF SEARCH WARRANTS, OVER A HUNDRED

13 Q AND DID YOU EXECUTE A SEARCH WARRANT ON THE DATE IN
14 QUESTION AT THE RAYMOND DRIVE ADDRESS?

15 A YES, MA'AM

16 Q AND WHAT WAS YOUR DUTY IN THE EXECUTION OF THAT SEARCH
17 WARRANT?

18 A I WAS ASSIGNED TO THE ENTRY TEAM ONCE ENTRY AND ALL
19 SUBJECTS ARE SECURED INSIDE THE RESIDENCE, I THEN START THE
20 RETURN PORTION OF THE SEARCH WARRANT AND WHAT THE RETURN
21 PORTION IS, IT'S JUST THE BACK PAGE OF THE SEARCH WARRANT
22 WHAT I DO IS I LIST DOWN EVERYTHING THAT WE'RE TAKING AS FAR
23 AS EVIDENCE FOR THE SHERIFF'S OFFICE AND THEN I LEAVE A
24 COPY FOR THE RESIDENCE OR WHOEVER LIVES AT THE RESIDENCE

25 Q AND WHAT IS THE SHERIFF'S OFFICE PROTOCOL AS FAR AS THE

1 RECOVERY OF THAT EVIDENCE?

2 A ONCE I RECOVER IT I'LL PLACE IT INTO EVIDENCE, THE
3 PROPERTY AND EVIDENCE BAG, AND THEN PLACE IT INTO THE DROP-
4 BOX AT THE SHERIFF'S OFFICE OR IF IT'S SOMETHING EXTREMELY
5 LARGE, IT DOESN'T FIT INTO THE DROP-BOX, WE CONTACT THE
6 EVIDENCE CUSTODIAN AND HAND IT OVER TO THEM

7 Q AND IF ANOTHER INDIVIDUAL LOCATES SOMETHING ON SCENE DO
8 THEY -- HOW DOES THAT PROTOCOL WORK?

9 A IN MOST INSTANCES SOMEBODY WILL NOTIFY WHOEVER'S DOING
10 THE RETURN, WHICH IN THIS CASE WAS ME, I WILL COME TO THAT
11 SECTION ON THIS DAY I TOOK A PHOTOGRAPH OF THE PIECE OF
12 EVIDENCE AND THEN I RECOVERED IT AND PLACED IT INTO A
13 PROPERTY BAG I BELIEVE ON THAT DAY I LABELED EVERY ITEM

14 Q I'M GOING TO SHOW YOU WHAT'S BEEN MARKED AS STATE'S
15 EXHIBIT NUMBER 2 CAN YOU IDENTIFY THAT EXHIBIT?

16 A YES, MA'AM

17 Q WHAT IS IT?

18 A ON THE BAG THAT'S INSIDE THIS LARGER VACUUM SEALED BAG
19 IS A PLASTIC BAG THAT SAYS OUTSIDE ON GROUND NEAR SHED
20 IT'S MARKED WITH A LETTER "E" AND IT MATCHES UP WITH THE
21 SEARCH WARRANT RETURN LETTER "E" WHERE IT SAYS A PLASTIC BAG
22 CONTAINING OFF-WHITE ROCK-LIKE SUBSTANCE FOUND OUTSIDE ON
23 GROUND UNDER TREE NEAR SHED BY LIEUTENANT DUNCAN

24 Q AND IN YOUR EXPERIENCE WHAT IS INSIDE THAT BAG?

25 A IT APPEARS TO ME TO BE CRACK COCAINE

1 Q AND AFTER YOU RECOVERED THAT CRACK COCAINE FROM THAT
2 LOCATION WHAT DID YOU DO WITH IT?

3 A IT WAS IN A DIFFERENT PLASTIC BAG WHAT I DID SINCE IT
4 WAS OUTSIDE IN THE RAIN AND IT WAS IN AN AREA THAT POSSIBLY
5 COULD BE SAID TO NOT BE ANYBODY'S, I SEPARATED THE DRUGS
6 FROM THE BAG THAT IT WAS IN, PLACED THE DRUGS IN A SEPARATE
7 BAG, AND THEN PLACED THE ORIGINAL BAG IN THIS ENVELOPE FOR
8 FINGERPRINTING

9 Q AND IS IT SUBSTANTIALLY IN THE SAME CONDITION AS WHEN
10 YOU RECOVERED AT LEAST THE CRACK COCAINE ITSELF?

11 A YES

12 Q I'M GOING TO SHOW YOU WHAT'S MARKED AS STATE'S EXHIBIT
13 NUMBER 3 CAN YOU TELL THE JURY WHAT THAT IS?

14 A YES THIS IS MARKED WITH A LETTER "A" AND THERE'S
15 SOME PILLS IN A SMALLER BAG MARKED WITH A LETTER "M" WHAT
16 THIS IS IS -- ON THE SEARCH WARRANT RETURN IT SAYS ONE
17 PLASTIC BAG CONTAINING OFF-WHITE ROCK-LIKE SUBSTANCE, ONE
18 PLASTIC BAG CONTAINING WHITE SUBSTANCE, AND ONE PLASTIC BAG
19 CONTAINING -- GPM FOUND OUTSIDE BELOW WINDOW ON GROUND TO
20 THE RIGHT OF THE FRONT DOOR OUTSIDE BEDROOM WINDOW BY
21 LACHICA AND THIS WAS THE DRUGS THAT WERE FOUND RIGHT
22 OUTSIDE THE BEDROOM WINDOW ON THE RIGHT SIDE OF THE
23 RESIDENCE

24 Q AND ONCE IT CAME INTO YOUR POSSESSION AT THAT LOCATION,
25 AGAIN, WHAT DID YOU DO WITH IT?

1 A I, AGAIN, PLACED IT INTO A LARGER BAG AND MARKED IT
2 WITH A LETTER THAT WAY IT WOULD COINCIDE WITH THE RETURN
3 THE COURT WHAT'S THE EXHIBIT NUMBER THAT HE WAS JUST
4 TALKING ABOUT?

5 MS THILL EXHIBIT NUMBER 3, YOUR HONOR

6 Q I'M GOING TO SHOW YOU WHAT'S MARKED AS STATE'S EXHIBIT
7 NUMBER 4 CAN YOU TELL ME WHAT THAT IS?

8 A YES, MA'AM THIS IS A PLASTIC BAG CONTAINING OFF-WHITE
9 ROCK-LIKE SUBSTANCE FOUND IN THE FRONT RIGHT PANTS POCKET OF
10 BRAD LOGAN BY INVESTIGATOR JOE FARRIS

11 Q AND HOW ARE YOU ABLE TO RECOGNIZE IT?

12 A AGAIN, MY NAME IS SIGNED ON THE -- WHAT'S CALLED A BEST
13 BAG ON THE INSIDE AND I VERIFIED IT EVEN FURTHER, I HAVE
14 AN INITIAL, A LETTER "B" IT SAYS PERSON OF BRAD LOGAN
15 AND THE "B" CORRESPONDS WITH THE LETTER "B" ON THE SEARCH
16 WARRANT RETURN

17 Q AND ONCE IT CAME INTO YOUR POSSESSION AT THAT LOCATION
18 WHAT DID YOU DO WITH IT?

19 A AGAIN, PHOTOGRAPHED -- I BELIEVE I PHOTOGRAPHED THAT
20 PIECE OF MATERIAL AND LABELED IT AND PUT IT IN THE BEST BAG
21 AFTER FIELD TESTING IT

22 Q I'M GOING TO SHOW YOU WHAT'S MARKED AS STATE'S EXHIBIT
23 NUMBER 6 CAN YOU TELL THE JURY WHAT THAT IS?

24 A YOU MEAN NUMBER 13?

25 Q NO, NUMBER 6

1 A THIS IS A BOX OF SANDWICH BAGS THAT HAS A LETTER "G"
2 RIGHT HERE ON THE TOP WHAT THAT IS IS ONE BOX OF GLAD
3 SANDWICH BAGS FOUND ON A SHELF ABOVE KITCHEN SINK BY
4 INVESTIGATOR JOE FARRIS

5 Q AND ONCE IT CAME INTO YOUR POSSESSION WHAT DID YOU DO
6 WITH IT?

7 A I PHOTOGRAPHED IT FIRST I THEN MARKED IT WITH A
8 LETTER "G" TO CORRESPOND WITH THE SEARCH WARRANT RETURN AND
9 PLACED IT INTO EVIDENCE

10 Q AND EXCEPT FOR THE FACT THAT I REMOVED ONE BAGGY FOR
11 STATE'S EXHIBIT 13 IS IT SUBSTANTIALLY IN THE SAME CONDITION
12 AS WHEN YOU RETRIEVED IT?

13 A YES IT APPEARS SIMILAR TO ALL THE OTHER BAGGIES

14 MS THILL YOUR HONOR, AT THIS TIME THE STATE WOULD
15 LIKE TO MOVE IN STATE'S EXHIBIT NUMBER 6 INTO EVIDENCE

16 MR RAY YOUR HONOR, WE WOULD OBJECT AS TO FOUNDATION
17 I DON'T KNOW WHAT THE CHAIN OF CUSTODY HAS BEEN ON THOSE
18 BAGGIES

19 MS THILL YOUR HONOR, INVESTIGATOR KELLY TESTIFIED
20 THAT HE RECOVERED THOSE FROM THE SCENE, THAT HE MARKED IT,
21 AND THAT IT'S SUBSTANTIALLY IN THE SAME CONDITION SINCE
22 IT'S NOT A FUNGIBLE ITEM THE STATE DOESN'T HAVE TO PROVIDE A
23 CHAIN OF EVIDENCE

24 THE COURT LET ME SEE THE EXHIBIT PLEASE HOW DID YOU
25 MARK IT?

1 A I TOOK A STICKER, AND THAT LETTER "G" ON IT, PUT THAT
2 ON THERE AND THEN I CORRESPONDED IT WITH THE LETTER "G" ON
3 THE SEARCH WARRANT RETURN AND THEN IT'S PLACED INTO
4 ANOTHER CONTAINER WHICH IS THEN PLACED INTO EVIDENCE AT THE
5 SHERIFF'S OFFICE

6 THE COURT THAT'S YOUR HANDWRITING ON THE "G"?

7 A YES, SIR

8 THE COURT WELL, WITHOUT NECESSARILY AGREEING WITH
9 EVERYTHING YOU SAID, I ADMIT IT INTO EVIDENCE
10 (WHEREUPON STATE'S EXHIBIT 6 WAS ADMITTED INTO
11 EVIDENCE)

12 MS THILL THANK YOU, YOUR HONOR

13 Q INVESTIGATOR KELLY, IN FRONT OF YOU IS STATE'S EXHIBIT
14 NUMBER 13 CAN YOU TELL THE JURY WHAT THAT IS?

15 A NUMBER 13?

16 Q YES

17 A IT'S A PLASTIC BAG I BELIEVE I SAW YOU PULL IT FROM
18 THE GLAD SANDWICH BAG BOX

19 Q AND IS THAT PLASTIC BAGGY CONSISTENT OR INCONSISTENT
20 WITH THE PLASTIC BAGGIES THAT THE CRACK COCAINE WAS PACKAGED
21 IN?

22 A THAT I CANNOT TELL AT THIS TIME WE'D HAVE TO OPEN UP
23 THESE VACUUM SEALED BAGS TO COMPARE THEM

24 Q LET ME SHOW YOU WHAT'S BEEN MARKED AS STATE'S EXHIBIT
25 NUMBER 5 CAN YOU TELL THE JURY WHAT THAT IS?

1 A YES, MA'AM THIS IS A DIGITAL SCALE THAT WAS FOUND AT
2 THE SCENE AGAIN, I MARKED IT WITH A LETTER "G" TO
3 CORRESPOND WITH THE SEARCH WARRANT RETURN AND IT SAYS ONE
4 BROWN IN COLOR DIGITAL SCALE AND THEN IT GOES ON TO SAY
5 AND ONE BOX OF GLAD SANDWICH BAGGIES FOUND ON THE SHELF
6 ABOVE THE KITCHEN SINK BY INVESTIGATOR FARRIS

7 Q AND AGAIN, HOW ARE YOU ABLE TO RECOGNIZE THAT?

8 A BY THE STICKER THAT HAS THE LETTER "G" ON IT

9 Q AND WHEN AND WHERE DID IT COME INTO YOUR POSSESSION?

10 A IT CAME INTO MY POSSESSION AFTER INVESTIGATOR FARRIS
11 NOTIFIED ME OF WHERE IT WAS FOUND I RECOVERED IT, MARKED
12 IT, AND THEN PLACED IT IN EVIDENCE AT THE SHERIFF'S OFFICE

~~13 Q AND IT IS SUBSTANTIALLY IN THE SAME CONDITION AS THE~~
14 ~~DAY YOU RECOVERED IT?~~

15 A YES, MA'AM

16 MS THILL YOUR HONOR, AT THIS TIME THE STATE WOULD
17 LIKE TO MOVE STATE'S EXHIBIT NUMBER 5 INTO EVIDENCE

18 MR RAY NO OBJECTION, YOUR HONOR

19 THE COURT IT'S ADMITTED

20 (WHEREUPON STATE'S EXHIBIT 5 WAS ADMITTED INTO
21 EVIDENCE)

22 Q INVESTIGATOR KELLY, IN YOUR EXPERIENCE CAN YOU DESCRIBE
23 TO THE JURY WHEN YOU'VE COME IN CONTACT WITH THESE TYPES OF
24 SCALES AND WHAT THAT MEANS?

25 A A LOT OF TIMES THESE SCALES ARE USED TO DIVIDE

1 QUANTITIES OF DRUGS INTO SMALLER PORTIONS OR LARGER PORTIONS
2 DEPENDING UPON WHAT THE -- IF IT'S A SUPPLIER THEY'RE
3 DEALING WITH OR IF THEY'RE DEALING WITH BUYERS IF SOMEBODY
4 CAME AND ASKED FOR A QUARTER OUNCE, THE POSSIBILITY OF
5 WEIGHING IT OUT JUST TO MAKE SURE IT'S EXACT IN THE WEIGHT
6 OR SOMEWHERE CLOSE TO THE EXACT

7 Q I'M GOING TO SHOW YOU WHAT'S BEEN MARKED AS STATE'S
8 EXHIBIT NUMBER 7 CAN YOU TELL THE JURY WHAT THAT IS?

9 A YES IT'S A SURVEILLANCE CAMERA THIS ONE'S A BLACK
10 AND WHITE SECURITY CAMERA BY SWANN IT WAS ALSO MARKED DOWN
11 ON THE SEARCH WARRANT RETURN IT'S MARKED AS LETTER "I",
12 THREE TELEVISION MONITORS AND FOUR CAMERAS FOUND IN THE
13 LIVINGROOM BY INVESTIGATOR HUTCHINS SOME OF THE CAMERAS
14 WERE ON THE ROOF OF THE RESIDENCE AND A MONITOR WAS
15 SITTING RIGHT IN THE LIVINGROOM AREA

16 Q AND DO YOU KNOW HOW MANY CAMERAS YOU CONFISCATED IN
17 ALL?

18 A I BELIEVE THERE WAS FOUR SET UP AND ACTUALLY RUNNING
19 AND WORKING TO THE MONITOR

20 Q AND IS THAT CAMERA IN THE SAME CONDITION AS WHEN YOU
21 FIRST RECOVERED IT?

22 A YES, MA'AM

23 MS THILL YOUR HONOR, AT THIS TIME THE STATE WOULD
24 MOVE IN STATE'S EXHIBIT NUMBER 7

25 MR RAY NO OBJECTION, YOUR HONOR

1 THE COURT ADMITTED

2 (WHEREUPON STATE'S EXHIBIT 7 WAS ADMITTED INTO
3 EVIDENCE)

4 Q INVESTIGATOR KELLY, I'M GOING TO SHOW YOU WHAT'S BEEN
5 MARKED AS STATE'S EXHIBIT NUMBER 14 AND 15 CAN YOU TELL ME
6 WHAT THOSE ARE PICTURES OF?

7 A NUMBER 15 SHOWS THE FRONT OF THE RESIDENCE TO THE
8 RIGHT HAND SIDE YOU CAN SEE OFF, IT'S A LITTLE BIT BLURRED,
9 BUT IT'S ONE OF THE VIDEO CAMERAS NUMBER 14 IS A PICTURE
10 OF THE SIDE OF THE RESIDENCE WHERE THERE IS THE NUMBER TO
11 THE RESIDENCE, 108, SEEN AND JUST AT THE VERY TOP YOU CAN
12 SEE ONE OF THE VIDEO CAMERAS

13 Q ~~AND ARE THOSE ARE STATE'S EXHIBIT 14 AND 15 AN~~
14 ~~ACCURATE DEPICTION OF THE SURVEILLANCE SYSTEM AS IT EXISTED~~
15 ~~THE DAY YOU SAW IT?~~

16 A YES, MA'AM

17 MS THILL YOUR HONOR, AT THIS TIME THE STATE WOULD
18 MOVE STATE'S EXHIBIT NUMBER 14 AND 15 INTO EVIDENCE

19 MR RAY NO OBJECTION, YOUR HONOR

20 THE COURT ADMITTED

21 (WHEREUPON STATE'S EXHIBITS 14 AND 15 WERE ADMITTED
22 INTO EVIDENCE)

23 Q INVESTIGATOR KELLY, STATE'S EXHIBIT NUMBER 12, CAN YOU
24 DESCRIBE TO THE JURY WHAT THAT'S A PHOTO OF?

25 A YES, MA'AM IT'S IN THE LIVINGROOM AREA IT IS THREE

1 TELEVISION MONITORS OR VIDEO MONITORS YOU CAN SEE ON --
2 YOU CAN ACTUALLY SEE IN TWO OF THE BIGGER SCREENS OUTSIDE OF
3 THE RESIDENCE ONE IS SHOWING THE PORCH -- A PORTION OF THE
4 PORCH AREA ANOTHER IS SHOWING THE PARKING LOT OR, I GUESS,
5 THE DRIVEWAY FRONT OF THE RESIDENCE

6 Q AND YOU CONFISCATED THAT VIDEO EQUIPMENT AND THOSE TVs,
7 CORRECT?

8 A YES, MA'AM

9 Q DOES THAT PICTURE ADEQUATELY REPRESENT THE TELEVISIONS
10 AND OTHER SURVEILLANCE EQUIPMENT THAT WAS RECOVERED FROM
11 THAT AREA ON THAT DAY?

12 A YES, MA'AM

13 MS THILL YOUR HONOR, AT THIS TIME THE STATE WOULD
14 LIKE TO MOVE STATE'S EXHIBIT NUMBER 12 INTO EVIDENCE

15 MR RAY NO OBJECTION, YOUR HONOR

16 THE COURT ADMITTED

17 (WHEREUPON STATE'S EXHIBIT 12 WAS ADMITTED INTO
18 EVIDENCE)

19 Q INVESTIGATOR KELLY, I'M GOING TO SHOW YOU WHAT'S MARKED
20 AS STATE'S EXHIBIT NUMBER 16 CAN YOU TELL THE JURY WHAT'S
21 IN STATE'S EXHIBIT NUMBER 16?

22 A YOU HAVE A PLASTIC BAG THAT'S LABELED "H" CONTAINING A
23 PYREX DISH, A PLASTIC BAG CONTAINING A SPOON, AND A PLASTIC
24 BAG CONTAINING A -- IT LOOKS TO BE A PIECE OF A CLOTHES
25 HANGER, PIECE OF METAL

1 Q AND HOW ARE YOU ABLE TO RECOGNIZE THOSE THREE PIECES OF
2 EVIDENCE?

3 A I LABELED THE "H" ON HERE AND I BELIEVE I PLACED ALL
4 THREE ITEMS IN THIS BAG THEY COINCIDE WITH THE LETTER "H"
5 ON THE SEARCH WARRANT RETURN IT SAYS ONE PYREX MEASURING
6 CUP, ONE SPOON, AND ONE PIECE OF METAL FOUND IN THE CABINET
7 ABOVE THE SINK IN THE KITCHEN BY INVESTIGATOR MCSWAIN

8 Q AND ONCE THOSE CAME INTO YOUR POSSESSION WHAT DID YOU
9 DO WITH THEM?

10 A I PLACED THEM INTO EVIDENCE TO BE SENT OVER TO THE LAB
11 TO BE TESTED FOR ANY TYPE OF DRUGS ON THEM THERE WAS SOME
12 PARTIAL RESIDUE ON SOME OF THE ITEMS

13 Q AND ARE THEY SUBSTANTIALLY IN THE SAME CONDITION AS
14 WHEN YOU FIRST RECOVERED THEM?

15 A YES, MA'AM

16 MS THILL YOUR HONOR, AT THIS TIME THE STATE WOULD
17 MOVE IN STATE'S EXHIBIT NUMBER 16

18 MR RAY NO OBJECTION, YOUR HONOR

19 (WHEREUPON STATE'S EXHIBIT 16 WAS ADMITTED INTO
20 EVIDENCE)

21 Q INVESTIGATOR KELLY, ---

22 THE COURT ADMITTED

23 MS THILL EXCUSE ME, YOUR HONOR

24 THE COURT SORRY I WAS A LITTLE SLOW ON THE DRAW
25 THAT TIME

1 Q IN YOUR EXPERIENCE AS A NARCOTICS INVESTIGATOR WHY
2 WOULD YOU CONFISCATE A PYREX MEASURING CUP, A SPOON, AND A
3 PIECE OF METAL?

4 A IN THIS CASE THIS WAS -- IT APPEARED TO BE A CRACK
5 HOUSE IN THESE TYPE OF INVESTIGATIONS A LOT OF TIMES DRUG
6 DEALERS WILL BUY COCAINE TO START WITH AND THEN THEY WILL
7 TURN IT INTO CRACK AND IN ORDER TO TURN IT INTO CRACK YOU
8 ACTUALLY COOK IT UP IN THAT PROCESS THESE ARE SOME OF THE
9 COMMON ITEMS THAT ARE USED IN THE COOKING OF COCAINE TO TURN
10 IT INTO CRACK

11 Q THANK YOU I HAVE NO FURTHER QUESTIONS PLEASE ANSWER
12 ANY QUESTIONS MR RAY MAY HAVE FOR YOU

13 CROSS EXAMINATION BY MR RAY

14 Q HOW ARE YOU, OFFICER KELLY?

15 A GOOD

16 Q WHEN THE SEARCH WARRANT WAS SERVED YOU WENT THROUGH THE
17 FRONT DOOR, CORRECT?

18 A YES, SIR

19 Q WERE YOU SECOND, THIRD, OR FOURTH? DO YOU REMEMBER?

20 A I CAN'T REMEMBER EXACTLY WHERE I WAS AT I KNOW I
21 WASN'T IN THE FIRST THREE

22 Q WERE YOU INVOLVED WITH THE SCUFFLE WITH BRAD LOGAN?

23 A NO, SIR

24 Q WHEN YOU WENT AROUND AND STARTED LOGGING IN ALL THE
25 DIFFERENT THINGS YOU'D FOUND -- YOU SAID EXHIBIT NUMBER 2,

1 THE SUBSTANCE INSIDE THE BAGGY WAS TAKEN OUT AND STORED IN
2 ONE OF THE BAGS YOU HAVE THERE, CORRECT?

3 A YES, SIR I TOOK THE ACTUAL DRUGS OUT OF THE ORIGINAL
4 PLASTIC BAG AND PLACED THEM INTO ANOTHER ONE

5 Q AND THE ORIGINAL PLASTIC BAG WAS SENT OFF FOR
6 FINGERPRINTING?

7 A I BELIEVE IT'S IN THIS ENVELOPE RIGHT HERE IN THIS
8 VACUUM SEALED BAG

9 Q WHAT IS? THE BAG THAT WAS SENT FOR FINGERPRINTING?

10 A I BELIEVE THE ORIGINAL ONE IS POSSIBLY IN THERE I
11 CAN'T SAY FOR SURE SINCE WE CAN'T OPEN IT

12 Q BUT IT WAS SENT FOR FINGERPRINTING, CORRECT?

13 A YES THE REASON THAT I REMOVED THE DRUGS FROM IT WAS
14 TO HAVE IT FINGERPRINTED AND AT THE BOTTOM OF THE ENVELOPE
15 IT SAYS REMOVED FOR FINGERPRINTING

16 Q WHERE ARE THE RESULTS OF THAT FINGERPRINTING?

17 A I'M NOT SURE

18 Q SO WE DON'T KNOW WHAT THE RESULTS ARE?

19 A NO, SIR I'M NOT AWARE

20 Q OR YOU DON'T, DO YOU?

21 A NO

22 Q DO YOU KNOW IF ANYONE KNOWS THE RESULTS OF THAT
23 FINGERPRINTING?

24 A I IMAGINE SOMEBODY BACK IN OUR ID DIVISION SHOULD KNOW
25 IF THEY FINGERPRINTED IT

1 Q BUT WE DON'T KNOW WHO MIGHT KNOW?

2 A NO, SIR

3 Q WERE ANY OF THE OTHER PLASTIC BAGGIES SENT FOR
4 FINGERPRINTING?

5 A LET ME JUST CHECK TO MAKE SURE I DON'T BELIEVE SO

6 Q AND THE PISTOL WASN'T SENT FOR FINGERPRINTING, WAS IT?

7 A NO, SIR

8 Q THERE WAS FURNITURE IN THIS HOUSE, CORRECT? IN THIS
9 TRAILER?

10 A THERE WAS SOME ITEMS OF FURNITURE

11 Q A COUCH AND SOME CHAIRS?

12 A I CAN'T REMEMBER ANY COUCH FOR SURE THERE COULD HAVE
13 BEEN ONE I REMEMBER A BED IN THE ONE BEDROOM TO THE RIGHT

14 Q A BED

15 A AND A DRESSER

16 Q BED AND DRESSER BESIDES WHAT WAS CONFISCATED WERE
17 THERE OTHER PERSONAL ITEMS IN THIS PLACE?

18 A I CAN'T -- SUCH AS?

19 Q PHOTOS OR ---

20 A I CAN'T REMEMBER FOR SURE

21 Q ANY CLOTHES?

22 A I'M ASSUMING THERE WAS MAYBE A PIECE OR TWO OF
23 CLOTHING, BUT I CAN'T REMEMBER FOR SURE

24 Q WHAT ABOUT IN THE REFRIGERATOR, ANYTHING IN THERE? WAS
25 THERE A REFRIGERATOR?

1 A I BELIEVE SO I DON'T SEE ANYTHING ON MY RETURN AS
2 LISTING ANYTHING RECOVERED FROM THE REFRIGERATOR

3 Q WERE THERE DISHES BESIDES THE PYREX?

4 A I CAN'T REMEMBER FOR SURE

5 Q TO THE BEST OF YOUR KNOWLEDGE WHO WAS LIVING IN THIS
6 TRAILER?

7 A I BELIEVE BASED ON THE BOOKING INFORMATION MR BRAD
8 LOGAN WAS LIVING THERE

9 Q AND ALL FIVE PEOPLE WHO WERE THERE WERE ARRESTED THAT
10 DAY, CORRECT?

11 A THAT IS CORRECT

12 Q AND ALL FIVE WERE CHARGED FOR DIFFERENT TRAFFICKING AND
13 SUCH, CORRECT?

14 A THAT IS CORRECT

15 Q AND I BELIEVE ALL FIVE WERE CHARGED WITH POSSESSION OF
16 A FIREARM DURING THE COMMISSION OF A VIOLENT CRIME, CORRECT?

17 A I'M NOT EXACTLY SURE I'D HAVE TO CHECK THE REPORT

18 Q IS THIS THE REPORT YOU'RE REFERRING TO?

19 A YES, SIR

20 Q DOES THAT INDICATE THAT ALL FIVE WERE CHARGED WITH
21 POSSESSION OF A FIREARM?

22 A YES, SIR, IT DOES

23 Q AND ALL FIVE WERE CHARGED WITH MULTIPLE DRUG OFFENSES,
24 CORRECT?

25 A YES, SIR, THAT IS CORRECT

1 Q THANK YOU THANK YOU, INVESTIGATOR KELLY

2 A THANK YOU

3 MS THILL JUST BRIEFLY, YOUR HONOR

4 REDIRECT EXAMINATION BY MS THILL

5 Q INVESTIGATOR KELLY, DO YOU KNOW WHAT THE SHERIFF'S
6 OFFICE POLICY IS IF AN ITEM IS FINGERPRINTED AND NO
7 FINGERPRINTS ARE FOUND ON THAT ITEM?

8 A NO, MA'AM I'M NOT EXACTLY SURE WHAT THE

9 Q DO YOU KNOW IF THE IDENTIFICATION TECHNICIANS FIND NO
10 FINGERPRINTS WHATSOEVER WHETHER THEY GENERATE A REPORT OR
11 NOT?

12 A I'M NOT EXACTLY SURE WHAT THEIR DUTIES ARE

13 Q WHERE DID YOU LOCATE STATE'S EXHIBIT NUMBER 2, WHICH
14 WERE THE DRUGS THAT WERE FOUND IN PROXIMITY TO THE
15 DEFENDANT?

16 A WHERE DID I LOCATE THEM?

17 Q YES

18 MR RAY YOUR HONOR, I'D OBJECT THIS IS GOING
19 OUTSIDE THE BOUNDS OF MY CROSS EXAMINATION

20 MS THILL YOUR HONOR, HE CLEARLY INDICATED THROUGH
21 HIS CROSS EXAMINATION THE COMMONALITY BETWEEN THE DRUGS
22 OUTSIDE THE WINDOW AND THE DRUGS THAT WERE FOUND BY THE
23 DEFENDANT I THINK IT'S ---

24 THE COURT OVERRULED

25 Q WHERE DID YOU FIND THE DRUGS THAT WERE LOCATED IN

1 PROXIMITY TO THE DEFENDANT?

2 MR RAY OBJECTION, YOUR HONOR I BELIEVE THAT'S THE
3 SAME QUESTION ---

4 THE COURT YOU WANT ME TO OVERRULE THAT OBJECTION TOO?

5 MR RAY YES, SIR

6 THE COURT ' OVERRULED

7 A THEY WERE NEAR THE SHED THAT WAS DRAWN BY DEPUTY
8 LACHICA ON THE BOARD UP THERE

9 Q AND IS IT POSSIBLE THAT THOSE DRUGS COULD HAVE BEEN
10 THROWN FROM THAT SAME WINDOW?

11 A I DON'T SEE HOW THAT COULD HAVE BEEN POSSIBLE AT ALL

12 Q IN YOUR EXPERIENCE AS A NARCOTICS OFFICER WHY WERE ALL
13 FIVE INDIVIDUALS CHARGED?

14 A THERE WAS DRUGS FOUND IN COMMON AREAS, DRUGS WHERE
15 ANYBODY HAD ACCESS TO, AND ---

16 THE COURT WAIT JUST A SECOND LET ME SEE Y'ALL OVER
17 HERE

18 (WHEREUPON A BENCH CONFERENCE WAS HELD OFF THE RECORD
19 IN THE PRESENCE OF THE JURY, BUT OUT OF THEIR HEARING)

20 Q INVESTIGATOR KELLY, DID YOU CHARGE ALL FIVE DEFENDANTS
21 WITH THE DRUGS THAT WERE FOUND OUTSIDE IN THE YARD NEXT TO
22 THE outhouse?

23 A NO, MA'AM

24 Q WHO WAS CHARGED WITH THOSE DRUGS?

25 A CHRISTOPHER BURKE

1 Q THANK YOU NO FURTHER QUESTIONS

2 MR RAY JUST A COUPLE OF BRIEF QUESTIONS, YOUR HONOR

3 THE COURT ALL RIGHT, SIR

4 RECROSS EXAMINATION BY MR RAY

5 Q CHRISTOPHER BURKE WAS THE ONLY ONE CHARGED WITH THE
6 DRUGS FOUND NEAR THE OUTBUILDING, CORRECT?

7 A NEAR THE SHED THAT'S MY UNDERSTANDING OF IT

8 Q THE ONES THAT WERE SENT OFF FOR FINGERPRINTING,
9 CORRECT?

10 A CORRECT

11 Q HOWEVER, UNLESS I'M INCORRECT, ALL THE INDIVIDUALS WERE
12 CHARGED WITH THE DRUGS FOUND CLOSER TO THE MOBILE HOME,
13 CORRECT?

14 A I BELIEVE EVERYBODY WAS CHARGED WITH THE DRUGS THAT
15 WERE FOUND DIRECTLY OUTSIDE THE WINDOW

16 Q THANK YOU, INVESTIGATOR KELLY

17 THE COURT YOU CAN STEP DOWN, SIR

18 A THANK YOU

19 MS MILLICAN MARGARET GREER

20 MARGARET GREER, BEING

21 DULY SWORN TESTIFIED AS FOLLOWS

22 DIRECT EXAMINATION BY MS MILLICAN

23 Q PLEASE STATE YOUR FULL NAME FOR THE RECORD

24 A MARGARET GREER

25 Q WHERE DO YOU WORK, MS GREER?

1 A I WORK FOR THE SPARTANBURG COUNTY SHERIFF'S OFFICE IN
2 THE EVIDENCE ROOM

3 Q WHAT IS YOUR TITLE OR YOUR DUTIES THERE?

4 A I'M CURRENTLY A DEPUTY III AND I'M IN CHARGE OF
5 RECEIVING EVIDENCE FROM THE DROP-BOX AND FROM THE OFFICERS
6 AND PUTTING THAT INTO THE EVIDENCE ROOM OR INTO THE DRUG
7 VAULT

8 Q HOW LONG HAVE YOU BEEN EMPLOYED BY THE SHERIFF'S OFFICE
9 AND HOW LONG HAVE YOU HAD THAT CURRENT POSITION?

10 A I'VE WORKED AT THE SHERIFF'S OFFICE ABOUT A YEAR AND A
11 HALF I'VE HAD THE POSITION THAT I HOLD NOW FOR ABOUT A
12 YEAR PRIOR TO THAT I WORKED FOR SPARTANBURG CITY FOR ABOUT
13 ELEVEN AND A HALF YEARS

14 Q WHAT IS THE PROCEDURE OR PROTOCOL FOR DROPPING OFF
15 EVIDENCE WITH THE SHERIFF'S OFFICE EVIDENCE CUSTODIAN?

16 A OFFICERS CAN EITHER DROP ITEMS INTO THE DROP-BOX --
17 THIS IS LOCATED IN THE PATROL ROOM IF IT'S A LARGE ITEM,
18 IF THEY WANT TO BRING IT TO THE EVIDENCE ROOM DIRECTLY, THEY
19 CAN DO THAT IF ME OR THE OTHER OFFICER WHO WORKS BACK
20 THERE ARE NOT THERE AND IT'S A LARGE ITEM, THEN THEY GO TO
21 THE ID OFFICE AND PLACE IT INTO A LOCKER THERE

22 Q THIS DROP-BOX THEY CAN LEAVE ITEMS IN, IS IT SECURED?

23 A IT IS IT'S LIKE A BIG MAILBOX AND IT'S GOT -- IT'S
24 ALL LOCKED AND YOU CAN'T REACH DOWN INTO IT

25 Q DID YOU RECEIVE DRUGS INTO EVIDENCE IN CONNECTION WITH

1 THIS CASE, STATE VERSUS CHRISTOPHER BURKE?

2 A YES, MA'AM, I DID

3 Q WHEN YOU RECEIVE EVIDENCE OF ILLEGAL NARCOTICS WHAT DO
4 YOU DO WITH THEM?

5 A WHAT HAPPENS IS THEY COME IN THE BEST ENVELOPES THAT
6 ARE IN TURN IN A MANILLA ENVELOPE I WOULD GO TO THE DROP-
7 BOX, OPEN IT UP, RECEIVE THE ENVELOPES FROM OUT OF THERE,
8 BRING THEM BACK TO THE EVIDENCE ROOM, OPEN IT UP, MAKE SURE
9 THAT ALL THE PAPERWORK IS RIGHT, THAT THE BAGS ARE SEALED
10 PROPERLY, THAT EVERYTHING THAT'S ON THE BAGS MATCHES UP WITH
11 THE PAPERWORK THEN I FILL OUT THAT I RECEIVED THE DRUGS
12 AND THEN I PUT THEM INTO THE COMPUTER AND THEN TURN THEM
13 OVER INTO THE DRUG VAULT WHERE THEY'RE LATER PICKED UP BY
14 THE CHEMIST

15 Q IN WHAT CONDITION DID YOU RECEIVE THE DRUGS IN THIS
16 CASE?

17 A I RECEIVED THE DRUGS IN THIS CASE ALL IN THE PROPER
18 BEST BAGS SEALED PROPERLY WITH THE PROPER PAPERWORK

19 Q PLEASE LOOK AT WHAT'S BEEN MARKED AS STATE'S EXHIBIT
20 NUMBER 4 DO YOU RECOGNIZE IT?

21 A YES, MA'AM, I DO

22 Q WHAT IS IT?

23 A THIS IS THE BEST BAG THAT I RECEIVED, ONE OF THE BEST
24 BAGS THAT I RECEIVED IT'S GOT THE NUMBER 7491, WHICH
25 CORRESPONDS WITH THE PAPERWORK THAT I RECEIVED FROM THE

1 PAPERWORK IN THE DROP-BOX ALL OF THE INFORMATION WAS
2 FILLED OUT ON HERE WITH THE EXCEPTION OF, I WRITE THE
3 SUBJECT'S NAME AND THEN WHEN THE CHEMIST COMES IN AND
4 PROCESS IT, THEY WRITE THE LAB NUMBER ON THERE AS WELL

5 Q WHAT DID YOU DO WITH THESE DRUGS ONCE YOU RECEIVED THEM
6 IN THIS PARTICULAR CASE?

7 A WHEN I GOT THESE I CHECKED THEM IN, MADE SURE THEY WERE
8 ALL RIGHT, FILLED OUT MY PAPERWORK, PUT THEM INTO THE
9 COMPUTER, AND THEN I TRANSFERRED THEM TO THE DRUG VAULT

10 Q DO YOU TAMPER WITH THE DRUGS AT ALL IN YOUR PROCESS?

11 A NO, I DON'T

12 Q DID YOU IN THIS CASE?

13 A NO, THE BAGS ARE SEALED

14 Q WERE THESE DRUGS EVER REMOVED FROM YOUR CUSTODY FOR
15 TESTING?

16 A THEY WERE AFTER I GET DONE WITH THEM I PUT THEM IN
17 THE DRUG VAULT THEN WHEN THE CHEMISTS COME OVER I OPEN THE
18 DRUG VAULT FOR THEM AND THEN THEY GET THE DRUGS OUT OF THERE
19 AND TAKE THEM FOR TESTING THEN THEY RETURN THEM TO ME OR
20 THE OTHER OFFICER IN THIS CASE THEY WERE RETURNED TO ME

21 Q IN THIS CASE WHO REMOVED THOSE FROM THE DRUG VAULT AND
22 WHO RETURNED THEM?

23 A THEY WERE REMOVED BY BETH VAUGHN, ONE OF OUR CHEMISTS
24 AND THEY WERE RETURNED BY HER AS WELL

25 Q IS THE PACKAGING IN SUBSTANTIALLY THE SAME CONDITION

1 TODAY AS IT WAS IN WHEN YOU TOOK IT INTO CUSTODY?

2 A IT IS GENERALLY THIS OUTSIDE HEAT-SEALED BAG IS DONE
3 BY THE CHEMIST THEY WOULD BE IN THE SEALED BAG THAT'S
4 INSIDE HERE

5 Q HAS THAT PACKAGE BEEN IN YOUR CUSTODY AND CONTROL SINCE
6 YOU RECEIVED IT FROM THE CHEMIST UNTIL TODAY IN THE
7 COURTROOM?

8 A YES, MA'AM

9 Q PLEASE LOOK AT STATE'S NUMBER 2 AND 3

10 A YES, MA'AM

11 Q DID YOU RECEIVE THESE PARTICULAR PACKAGES INTO EVIDENCE
12 REGARDING THIS CASE AS WELL?

13 A I DID I RECEIVED THEM ALL AT THE SAME TIME

14 Q IN WHAT CONDITION DID YOU RECEIVE THOSE PACKAGES?

15 A THEY WERE PROPERLY SEALED WITH THE PROPER PAPERWORK

16 Q AND ARE THOSE IN SUBSTANTIALLY THE SAME CONDITION TODAY
17 AS WHEN YOU RECEIVED THEM?

18 A YES, MA'AM

19 MS MILLICAN NO FURTHER QUESTIONS FOR THIS WITNESS AT
20 THIS TIME, YOUR HONOR

21 MR RAY WE HAVE NO QUESTIONS, YOUR HONOR

22 THE COURT YOU CAN STEP DOWN, MA'AM

23 A THANK YOU

24 MS MILLICAN THE STATE CALLS BETH VAUGHN TO THE
25 STAND

1 BETH VAUGHN, BEING DULY

2 SWORN TESTIFIED AS FOLLOWS

3 DIRECT EXAMINATION BY MS MILLICAN

4 Q PLEASE STATE YOUR NAME FOR THE RECORD

5 A BETH VAUGHN

6 Q WHAT'S YOUR OCCUPATION?

7 A I'M A FORENSIC CHEMIST WITH THE SPARTANBURG COUNTY
8 SHERIFF'S OFFICE

9 Q WHAT ARE YOUR DUTIES AND YOUR TITLE -- YOU SAID YOU
10 WERE A FORENSIC CHEMIST WHAT ARE YOUR DUTIES AS A FORENSIC
11 CHEMIST WITH THE SHERIFF'S OFFICE?

12 A WE DO DRUG ANALYSIS, POISON ANALYSIS, AND WE PROCESS
13 CLANDESTINE LABS

14 Q HOW LONG HAVE YOU BEEN EMPLOYED DOING ---

15 A APPROXIMATELY THREE YEARS

16 Q WHAT TYPES OF EDUCATION AND TRAINING DO YOU HAVE
17 GENERALLY?

18 A I HAVE A BACHELOR'S OF SCIENCE IN CHEMISTRY AND A
19 BACHELOR'S OF SCIENCE IN BIOCHEMISTRY FROM THE COLLEGE OF
20 CHARLESTON I ALSO HAVE A MASTER'S IN CHEMISTRY FROM THE
21 UNIVERSITY OF SOUTH CAROLINA I WAS TRAINED IN DRUG
22 ANALYSIS BY THE LIEUTENANT OF THE FORENSICS LAB AT THE
23 SPARTANBURG COUNTY SHERIFF'S OFFICE I'VE BEEN TO THE DEA
24 FORENSIC CHEMIST SCHOOL I'VE ALSO BEEN TO THE DEA
25 CLANDESTINE LAB SCHOOL I'M A MEMBER OF THE CLANDESTINE LAB

1 INVESTIGATING CHEMIST ASSOCIATION

2 Q DO YOU ATTEND CONTINUING EDUCATION CLASSES?

3 A I DO WE'RE REQUIRED FORTY HOURS A YEAR IN OUR PRIMARY
4 FIELD, WHICH IS DRUG ANALYSIS AND THEN TWENTY ADDITIONAL
5 HOURS IN ANY SECONDARY FIELD WE HAVE

6 Q HAVE YOU HAD THE OCCASION TO CHEMICALLY ANALYZE
7 SUBSTANCES TO DETERMINE WHETHER OR NOT THEY CONTAIN A
8 NARCOTIC OR NARCOTIC TYPE DRUG?

9 A I HAVE

10 Q ABOUT HOW MANY TIMES?

11 A FIFTEEN HUNDRED OR MORE FOR THE PAST TWO AND A HALF
12 YEARS

13 Q HAVE YOU TESTIFIED BEFORE TODAY AS AN EXPERT IN THE
14 ANALYSIS OF NARCOTICS?

15 A I HAVE

16 Q APPROXIMATELY HOW MANY TIMES?

17 A SIX

18 Q ALL SIX TIMES IN SOUTH CAROLINA?

19 A YES, MA'AM

20 MS MILLICAN AT THIS TIME, YOUR HONOR, I WOULD LIKE
21 TO OFFER BETH VAUGHN AS AN EXPERT IN THE FIELD OF CHEMISTRY
22 IN THE ANALYSIS OF NARCOTICS

23 MR RAY NO OBJECTION, YOUR HONOR

24 THE COURT SHE IS SO DESIGNATED AS AN EXPERT

25 Q MS VAUGHN, PLEASE LOOK AT WHAT'S BEEN MARKED AS

1 STATE'S EXHIBIT 2, 3 AND 4 STARTING WITH STATE'S EXHIBIT
2 NUMBER 2, DO YOU RECOGNIZE THAT?

3 A I DO

4 Q HOW ARE YOU ABLE TO IDENTIFY IT?

5 A ON THE BEST BAG, WHICH IS INSIDE, ARE MY INITIALS, THE
6 DATE, AND AN OKAY AND ON THE OUTSIDE SEALED PART ARE MY
7 INITIALS, THE DATE, AND THE LAB NUMBER ASSOCIATED WITH IT

8 Q NOW DO YOU HAVE THE SAME SORT OF MARKS ON 3 AND 4?

9 A I DO YES, MA'AM

10 Q WHEN DID YOU RECEIVE THAT PACKAGE?

11 A STATE'S EXHIBIT 2?

12 Q YES

13 A ON THE 17TH OF MARCH

14 Q WHEN DID YOU RECEIVE STATE'S EXHIBIT NUMBER 3?

15 A ON THE 17TH OF MARCH

16 Q AND NUMBER 4?

17 A ACTUALLY, I DON'T HAVE THAT REPORT IN FRONT OF ME

18 MS MILLICAN JUST ONE MOMENT, YOUR HONOR

19 Q ARE THESE YOUR NOTES?

20 A THEY ARE I KNOW THAT BECAUSE AT THE BOTTOM OF THE
21 SHEET ARE MY INITIALS AND THE DATE AND ACTUALLY, EVERY
22 SUBSEQUENT PAGE ARE DATED AND INITIALED BY ME WITH THE LAB
23 NUMBER ASSOCIATED WITH IT SO THAT I CAN RECOGNIZE THE PAGES

24 Q AND DO THEY REFRESH YOUR RECOLLECTION?

25 A THIS ISN'T THE RIGHT REPORTS FOR THIS EXHIBIT STATE'S

1 EXHIBIT 4, REPORT L050203

2 Q WELL, JUST LOOKING AT EXHIBITS 2 AND 3 WHERE AND HOW
3 DID YOU RECEIVE THAT PACKAGE?

4 A FROM THE DRUG ROOM IN THE EVIDENCE OFFICE

5 Q AND FOR WHAT PURPOSE DID IT COME INTO YOUR POSSESSION?

6 A FOR DRUG ANALYSIS

7 Q DID YOU TEST THE SUBSTANCES?

8 A I DID

9 Q DESCRIBE HOW THE DRUGS WERE PACKAGED WHEN YOU RECEIVED
10 THEM AND THE PURPOSE OF THAT PACKAGING

11 A IF I MAY REFER BACK?

12 Q YES

13 A I ASSIGN EACH ONE A LAB NUMBER WHEN IT COMES IN IT'S
14 HOW WE KEEP RECORD OF IT IN THE LAB AND LAB NUMBER
15 L050202, WHICH IS STATE'S EXHIBIT NUMBER 2, CAME TO ME IN A
16 PLASTIC BAG IN A ZIPLOC THAT WAS LABELED OUTSIDE ON GROUND
17 NEAR SHED AND IT HAD THE LETTER "E" ON IT IT'S THE
18 ACTUAL ZIPLOC IT'S STILL IN NOW

19 AND THEN STATE'S EXHIBIT NUMBER 3, WHICH I ASSIGNED LAB
20 NUMBER L050201, THERE WERE SEVERAL DIFFERENT PACKAGES IN
21 THERE THERE WAS A WHITE POWDER SUBSTANCE IN A PLASTIC BAG
22 IN ANOTHER ZIPLOC THAT WAS ALSO LABELED AND OFF-WHITE
23 COOKIE SUBSTANCE IN A PLASTIC BAG IN A ZIPLOC LABELED "A"
24 OUTSIDE ON THE GROUND AND THEN THIRTEEN ORANGE TABLETS IN
25 A ZIPLOC LABELED "M" AND THEY'RE ACTUALLY IN THE ZIPLOCS

1 THEY ARRIVED TO ME IN AND THE SAME LABEL

2 Q MS VAUGHN, IF YOU COULD PLEASE, ARE THESE THE NOTES

3 THAT ARE IN REFERENCE TO STATE'S EXHIBIT NUMBER 4?

4 A YES, THEY ARE

5 Q THOSE ARE YOUR NOTES?

6 A THEY ARE THEY HAVE MY SIGNATURE ON THEM AND THE DATE

7 THAT I SIGNED IT THEY ALSO HAVE THE CORRECT LAB NUMBER,

8 L050203, WHICH I CAN MATCH UP TO THE LAB NUMBER I ASSIGNED

9 IT

10 Q WITH REGARD TO STATE'S EXHIBIT NUMBER 4 DID YOU RECEIVE

11 IT IN THE SAME MANNER AS STATE'S EXHIBIT NUMBER 2 AND 3?

12 AND DID IT COME TO YOUR POSSESSION FOR THE SAME PURPOSE?

13 A YES

14 Q DID YOU TEST THESE THREE SUBSTANCES?

15 A I DID

16 Q PLEASE DESCRIBE HOW THE DRUGS WERE PACKAGED WHEN YOU

17 RECEIVED THEM ON STATE'S EXHIBIT NUMBER 4 WITH THE PURPOSE

18 OF THAT ---

19 A THEY WERE ALSO PACKAGED IN A PLASTIC BAG INSIDE A

20 ZIPLOC, THE SAME ZIPLOC THEY'RE IN NOW THAT'S LABELED THE

21 PERSON OF BRAD LOGAN

22 Q WOULD YOU HAVE TESTED ANY OF THESE DRUGS IN THESE BEST

23 BAGS HAD THEY BEEN OPENED OR TAMPERED WITH?

24 A NO WHEN WE GO INTO THE EVIDENCE OFFICE WE LOOK AT THE

25 BEST PACK IT'S GOT A SEAL AT THE TOP AND LINES DOWN THE

1 SIDE SO IF ANYONE TRIED TO TAMPER WITH IT IT WOULD BE
2 EVIDENT IF THERE'S ANY TAMPERING WHATSOEVER WE WON'T TAKE
3 IT WHEN WE GET BACK TO THE LAB WE ACTUALLY RELOOK AT IT,
4 MAKE SURE ONCE AGAIN IT'S COMPLETELY SEALED THAT'S WHEN I
5 INITIAL, DATE, AND PUT AN OKAY ON THE BEST BAG AND THAT
6 TELLS ME THAT IT WAS SEALED BEFORE I EVER OPENED IT TO WORK
7 IT

8 Q DID YOU PERFORM TESTS ON THOSE SUBSTANCES?

9 A I DID

10 Q WHAT TESTS WERE PERFORMED?

11 A IN ALL CASES WE DO A PRESUMPTIVE TEST AND THEN A
12 CONFIRMATORY TEST THE PRESUMPTIVE TEST IS EITHER -- IN THE
13 CASE OF TABLETS WE LOOK UP IN BOOKS BASED OFF THE MARKINGS
14 ON THE TABLETS AND IN THE CASE OF POWDER SUBSTANCES OR
15 ROCK SUBSTANCES, WE DO A CHEMICAL TEST AND THERE'S A COLOR
16 CHANGE ASSOCIATED WITH THAT TEST THAT GIVES US AN IDEA OF
17 WHAT WE HAVE AT THAT POINT WE THEN RUN A CONFIRMATORY TEST
18 WHERE WE ACTUALLY PUT IT ON AN INSTRUMENT, IT SPITS OUT DATA
19 TO US, AND IT TELLS US EXACTLY WHAT THE DRUG IS

20 Q AFTER TESTING THE SUBSTANCES WERE YOU ABLE TO STATE
21 WHAT THE SUBSTANCES WERE?

22 A YES

23 Q WHAT WERE THEY?

24 A IN STATE'S EXHIBIT 2, THE OFF-WHITE ROCK SUBSTANCE WAS
25 COCAINE CRACK FOUND AT A WEIGHT OF TWELVE POINT EIGHT THREE

1 GRAMS

2 AND STATE'S EXHIBIT 4, THE OFF-WHITE ROCK SUBSTANCE WAS
3 COCAINE CRACK FOUND AT A WEIGHT OF TWENTY-EIGHT POINT EIGHT
4 SIX GRAMS

5 AND THEN STATE'S EXHIBIT 3, IT ACTUALLY HAD THREE
6 SEPARATE ITEMS, THE WHITE POWDER SUBSTANCE WAS COCAINE AT A
7 WEIGHT OF THIRTY POINT THREE FIVE GRAMS THE OFF-WHITE
8 COOKIE SUBSTANCE WAS COCAINE CRACK FOUND AT A WEIGHT OF
9 TWENTY-SEVEN POINT TWO ONE GRAMS AND THERE WERE THIRTEEN
10 PEACH TABLETS WITH THE INSCRIPTION OF MYLAN A3 THAT WAS
11 INDICATED AS ALPRAZOLAM

12 Q PLEASE STATE THE BASIS FOR YOUR OPINION AS TO WHAT
13 THESE ITEMS TESTED FOR

14 A I BASED IT OFF OF MY PRESUMPTIVE AND CONFIRMATORY TEST,
15 INSTRUMENTATION DATA

16 Q DESCRIBE HOW THE DRUGS WERE PACKAGED WHEN YOU FINISHED
17 TESTING THEM

18 A ONCE I FINISHED TESTING THEM -- THE ZIPLOC THAT THEY
19 ARRIVED IN IS IN GOOD CONDITION I PUT THEM BACK INTO THAT
20 ZIPLOC, WHICH I DID IN ALL OF THESE CASES ONCE I DO THAT I
21 INITIAL THE ZIPLOC, DATE IT, AND PUT THE LAB NUMBER ON IT
22 I DO THAT WITH EVERYTHING I TOUCH I DATE IT, INITIAL IT,
23 AND PUT THE LAB NUMBER ON IT THEN I RETURN THE BEST BAG
24 AND THE ZIPLOCS INTO THIS HEAT-SEALED BAG I INITIAL, DATE,
25 PUT THE LAB NUMBER IN THE SEAL AND THEN SEAL IT CLOSED

1 Q ARE THOSE BAGS IN SUBSTANTIALLY THE SAME CONDITION AS
2 WHEN YOU SEALED THEM?

3 A YES THEY HAVE MY INITIALS, THE DATE, LAB NUMBER, AND
4 THE SEALS

5 Q WHAT DO YOU USE TO WEIGH THE SUBSTANCE YOU'RE
6 ANALYZING?

7 A AN ANALYTICAL BALANCE

8 Q IS THAT MORE ACCURATE THAN THE OFFICERS WOULD USE IN
9 THE FIELD?

10 A YES, MA'AM WE CALIBRATE IT ONCE A MONTH AND THEN
11 YEARLY AN OUTSIDE SOURCE COMES IN AND CALIBRATES IT FOR US
12 SO THAT IT'S ACCURATE

13 Q COULD YOU PLEASE STATE WHAT THE WEIGHT WAS FOR STATE'S
14 EXHIBIT NUMBER 2, THE ITEM FOUND OUT BY THE SHED?

15 A STATE'S EXHIBIT NUMBER 2 WAS TWELVE POINT EIGHT THREE
16 GRAMS

17 Q ARE THE BAGGIES IN STATE'S EVIDENCE 2, 3 AND 4 WHEN THE
18 DRUGS WERE ORIGINALLY PACKAGED IN THEM WHEN THEY WERE FIRST
19 TURNED INTO EVIDENCE SIMILAR TO THE GLAD BAGS THAT ARE IN
20 EVIDENCE STATE'S NUMBER 13? AND I BELIEVE THE BOX IS
21 STATE'S NUMBER 6 RIGHT ABOVE YOU ON THE JUDGE'S BENCH

22 A THEY'RE ALL CRUMPLED UP DOWN IN THESE BAGS, BUT IT
23 APPEARS TO BE A SANDWICH BAG JUST LIKE THE SANDWICH BAG

24 Q IS THE CRACK IN EACH OF THE THREE BAGS, STATE'S EXHIBIT
25 2, 3 AND 4 SIMILAR IN CONSISTENCY, SHAPE, AND SIZE?

1 A THEY ARE SOME OF THEM ARE IN PIECES, AND SOME OF THEM
2 ARE CHIPPED OFF IN SOME ROCKS, AND ONE IS A WHOLE COOKIE,
3 BUT IT'S THE SAME COLOR TONE, BASIC SAME CONSISTENCY

4 Q IN YOUR OPINION WERE THOSE ROCKS CREATED FROM THE SAME
5 RECIPE AT THE SAME PLACE, TIME?

6 A YES

7 Q WHAT DID YOU DO WITH THOSE THREE ITEMS AFTER YOU
8 FINISHED TESTING THEM AND PACKAGED THEM?

9 A ONCE WE FINISH TESTING AND PACKAGING THEM WE PUT THEM
10 BACK INTO OUR SAFE THAT ONLY ME, AND LIEUTENANT, AND THE LAB
11 HAVE ACCESS TO AND AFTER SO MANY CASES WE ALL LINE THEM UP
12 IN A BOX AND THEN WE SIGN THEM BACK OUT TO THE EVIDENCE
13 OFFICER

14 Q SO DID YOU RETURN THOSE DIRECTLY TO -- WHO DID YOU
15 RETURN THEM DIRECTLY TO?

16 A I WOULD GIVE THEM TO WHICHEVER EVIDENCE OFFICER -- I
17 DON'T HAVE THAT SHEET IN FRONT OF ME SHE SAID THAT I
18 RETURNED THEM TO THE -- I DON'T HAVE THAT SHEET, BUT IT'S
19 ONE BIG LONG SHEET WE MIGHT RETURN FIFTY CASES AT ONE TIME
20 ALL PACKAGED IN A BOX TOGETHER WE HAND THAT BOX TO THE
21 EVIDENCE OFFICER, THEY SIGN OUR CHAIN

22 MS MILLICAN AT THIS TIME, YOUR HONOR, THE STATE
23 WOULD MOVE TO ADMIT STATE'S EXHIBITS NUMBER 2, 3 AND 4 INTO
24 EVIDENCE

25 MR RAY YOUR HONOR, I WOULD OBJECT AS TO EXHIBIT

1 NUMBER 4 I BELIEVE, IF MY NOTES ARE CORRECT, THAT IS WHAT
2 WAS FOUND IN THE POCKET OF BRAD LOGAN AND MR BURKE ISN'T
3 EVEN CHARGED WITH THOSE PARTICULAR DRUGS

4 THE COURT YOU OBJECT ON THE BASIS OF RELEVANCE?

5 MR RAY YES, YOUR HONOR

6 THE COURT WHAT WAS THE QUANTITY OF THAT?

7 A STATE'S EXHIBIT 4 ---

8 THE COURT I TELL YOU WHAT, THAT'S ALL RIGHT, YOU
9 DON'T HAVE TO ANSWER THAT QUESTION I WILL ADMIT STATE'S
10 EXHIBITS 2 AND 3 AND I WILL WITHHOLD RULING ON STATE'S
11 EXHIBIT 4 UNTIL WE CAN HAVE A CHANCE TO DISCUSS IT OUTSIDE
12 THE PRESENCE OF THE JURY

13 (WHEREUPON STATE'S EXHIBITS 2 AND 3 WERE ADMITTED INTO
14 EVIDENCE)

15 MS MILlicAN THANK YOU, YOUR HONOR

16 THE COURT YOU FINISHED WITH THIS WITNESS?

17 MS MILlicAN NO FURTHER QUESTIONS, YOUR HONOR

18 THE COURT IS THERE ANY CROSS EXAMINATION?

19 MR RAY JUST A FEW QUESTIONS, YOUR HONOR

20 THE COURT ALL RIGHT

21 CROSS EXAMINATION BY MR RAY.

22 Q YOU TESTIFIED THAT THE DRUGS WERE THE SAME IN ALL OF
23 THE DIFFERENT BAGS THAT CAME FROM THE SAME -- THEY WERE MADE
24 AT THE SAME TIME?

25 A IF I HAD TO MAKE A GUESS -- I DID NOT SAY THEY'RE

1 EXACTLY THE SAME THEIR CONSISTENCY, THE COLORING OF THEM
2 ARE VERY SIMILAR

3 Q SO IT'S A GUESS?

4 A WELL, I CAN'T KNOW FOR SURE UNLESS I'M THERE WHEN
5 THEY'RE MAKING IT

6 Q THANK YOU

7 THE COURT ALL RIGHT, MA'AM, YOU CAN STEP DOWN
8 ANYTHING ELSE FROM THE STATE?

9 MS MILLICAN YOUR HONOR, THE STATE WOULD ONLY MOVE TO
10 ADMIT, JUST IN AN ABUNDANCE OF CAUTION, ALL EXHIBITS MARKED
11 2 THROUGH 16, STATE'S EXHIBITS I BELIEVE PHOTOS 9, 10 AND
12 11 HAVE NOT YET BEEN MOVED INTO EVIDENCE

13 THE COURT ALL RIGHT OTHER THAN MAKING THAT MOTION
14 TO ADMIT ADDITIONAL EVIDENCE IS THERE ANYTHING ELSE FROM THE
15 STATE?

16 MS MILLICAN NOTHING FURTHER, YOUR HONOR THE STATE
17 RESTS

18 THE COURT THE STATE RESTS?

19 MS MILLICAN YES

20 THE COURT LADIES AND GENTLEMEN, WE'RE GOING TO BREAK
21 NOW FOR THE DAY AND I'M GOING TO LET YOU GO HOME I KNOW
22 YOU'RE THINKING, WHEW, FINALLY SO PLEASE BE BACK IN THE
23 JURY ROOM RIGHT HERE Y'ALL HAVEN'T BEEN IN THIS JURY ROOM
24 YET YOU GET YOUR OWN JURY ROOM RIGHT BESIDE THE COURTROOM
25 NOW BE BACK IN THAT JURY ROOM TOMORROW MORNING BEFORE 9 00

1 AND WE'LL START WITH THE -- WE'LL RESUME TOMORROW MORNING AT
2 NINE

3 NOW THERE IS A, AS ALWAYS, THERE'S A POSSIBILITY THAT I
4 MAY NOT BE ABLE TO START RIGHT AT NINE I'LL BE OUT HERE AT
5 NINE, BUT YOU MAY NOT BE SO IF YOU'RE SITTING IN THE JURY
6 ROOM PAST NINE, BE PATIENT WITH ME I'LL GET TO YOU AS
7 QUICKLY AS I CAN Y'ALL HAVE A NICE NIGHT

8 (WHEREUPON THE JURY EXITED THE COURTROOM AT 5 44 PM)

9 THE COURT ANY OBJECTION TO 9, 10 AND 11?

10 MR RAY NO, YOUR HONOR

11 THE COURT THEY'RE ADMITTED

12 (WHEREUPON STATE'S EXHIBITS 9, 10 AND 11 WERE ADMITTED
13 INTO EVIDENCE)

14 THE COURT SO DOES THAT TAKE CARE OF ALL OF YOUR
15 EXHIBITS EXCEPT FOR 4?

16 MS MILLICAN YES, YOUR HONOR

17 THE COURT WHAT'S THE RELEVANCE OF NUMBER 4?

18 MS MILLICAN THE RELEVANCE OF NUMBER 4 WAS JUST THAT
19 IT'S SIMILAR IN CONSISTENCY, SHAPE, AND SIZE TO THE OTHERS
20 SHOWING THAT HE GOT THIS NOT JUST FOR PERSONAL USE, BUT FOR
21 TRAFFICKING FROM A PLACE

22 MR RAY I DON'T UNDERSTAND HOW THAT SHOWS THE INTENT,
23 YOUR HONOR

24 MS MILLICAN YOUR HONOR, COUPLED WITH ALL THE
25 CIRCUMSTANTIAL EVIDENCE IN THIS CASE, WITH THE AMOUNT OF

1 MONEY THE DEFENDANT HAD, AND THE DENOMINATIONS HE HAD, ---
2 THE COURT I ADMIT IT THE TRAFFICKING STATUTE IS
3 BROAD NORMALLY UNDER THE TRAFFICKING STATUTE WE PROCEED
4 UNDER THE POSSESSION PRONG OF THE SECOND ELEMENT, BUT YOU'VE
5 GOT A LOT OF EVIDENCE IN THIS CASE THAT THERE WAS A VIBRANT
6 BUSINESS OF SELLING CRACK COCAINE GOING ON OUT OF THAT
7 PARTICULAR HOUSE AND THE DEFENDANT HAVING ELECTED TO, AT
8 LEAST ACCORDING TO THE STATE'S EVIDENCE, FLEE FROM THE HOUSE
9 TIES HIM IN WITH THAT BUSINESS AND SO THE NATURE AND
10 EXTENT OF THE BUSINESS OF SELLING CRACK COCAINE IS RELEVANT
11 THE QUANTITY OF DRUGS THAT WAS ON THE PREMISES TO THAT
12 EXTENT THEN IS RELEVANT THE RELEVANCE IS PERHAPS A LITTLE
13 MORE TENUOUS THAN THE RELEVANCE OF SOME OTHER ITEMS THAT
14 HAVE BEEN INTRODUCED INTO EVIDENCE BUT AS FAR AS RELEVANCE
15 GOES ON THE FACTS OF THIS CASE, IT'S RELEVANT AND I ADMIT
16 IT

17 (WHEREUPON STATE'S EXHIBIT 4 WAS ADMITTED INTO
18 EVIDENCE)

19 MS MILLICAN THANK YOU, YOUR HONOR

20 THE COURT NOW THE DEFENDANT IS IN CUSTODY TONIGHT
21 AND THE -- TOMORROW MORNING WHEN WE GET HERE THE FIRST
22 QUESTION THAT -- YOU GOT SOME WITNESSES YOU'RE GOING TO CALL
23 THAT ARE OTHER THAN THE DEFENDANT?

24 MR RAY YES, SIR, YOUR HONOR THERE'S ONE THAT WE
25 DISCUSSED EARLIER WHEN I WAS ASKING FOR A CONTINUANCE THAT

1 THE STATE WAS GOING TO HAVE HERE PROVIDED FOR ME THAT'S
2 OFFICER ---

3 MS MILLICAN RAINES

4 MR RAY --- RAINES

5 THE COURT WELL, YOU MAKE SURE YOU TALK TO THE
6 DEFENDANT TONIGHT IF YOU HAVEN'T ALREADY DONE SO TODAY ABOUT
7 HIS RIGHT TO TESTIFY AND HIS RIGHT NOT TO TESTIFY WHEN WE
8 GET HERE IN THE MORNING YOU TELL ME IF HE WOULD TESTIFY,
9 WOULD YOU PUT HIM UP FIRST OR LATER IF IT'S LATER YOU CAN
10 PUT UP THE WITNESSES THAT YOU WANT TO PUT UP THAT ARE NOT
11 THE DEFENDANT AND THEN WHEN WE GET TO THE POINT WHERE YOU
12 WOULD PUT THE DEFENDANT UP JUST LET ME KNOW THAT WITHOUT
13 SAYING IT, AND WE'LL TAKE A BREAK SO THAT WE CAN HAVE A
14 DISCUSSION ABOUT IT YOU GOT ANY MOTIONS?

15 MR RAY YES, SIR I WILL IF YOU WANT TO HANDLE THOSE
16 IN THE MORNING

17 THE COURT I'LL JUST HEAR THEM RIGHT NOW

18 MR RAY YOUR HONOR, WE WOULD MAKE A MOTION FOR A
19 DIRECTED VERDICT BASED ON THE ISSUES PUT FORTH IN OUR
20 PRETRIAL MOTIONS ALSO THAT MOTION WOULD ~~BE~~ BASED ON THE
21 FACT THAT WE DON'T BELIEVE THAT THE STATE HAS -- EVEN
22 VIEWING ALL THE FACTS IN THE LIGHT MOST FAVORABLE TO THE
23 STATE, WE DON'T BELIEVE THERE'S SUBSTANTIAL EVIDENCE THAT
24 WOULD ALLOW A JURY TO CONVICT MR BURKE OF THOSE CHARGES
25 ADDITIONALLY AND SPECIFICALLY ON THE WEAPONS CHARGE,

1 YOUR HONOR, OFFICER DUNCAN ACTUALLY TESTIFIED ---

2 THE COURT HE'S NOT ON TRIAL ON THE WEAPONS CHARGE

3 MS THILL WE ONLY PUT UP THE ONE INDICTMENT

4 MR RAY YOU DIDN'T PUT UP THE ---

5 MS THILL NO

6 MR RAY I'LL WITHDRAW THAT PART OF IT, YOUR HONOR

7 THE COURT WELL, THE MOTION FOR A DIRECTED VERDICT AS

8 TO THE TRAFFICKING CRACK COCAINE CHARGE IS DENIED WE'LL

9 SEE Y'ALL IN THE MORNING

10 (WHEREUPON COURT WAS IN RECESS AT 5 49 PM)

11 THURSDAY, NOVEMBER 3, 2005

12 THE COURT ALL RIGHT WHERE ARE WE?

13 MR RAY YOUR HONOR, IF YOU'LL BEAR WITH ME, I THINK
14 MY COLD'S GETTING WORSE IF YOUR HONOR WILL RECALL, I GUESS
15 IT WAS YESTERDAY, WE DISCUSSED THE ISSUE THAT ON MONDAY MS
16 GANSS, WHO PREVIOUSLY WAS HANDLING THIS CASE FOR THE
17 SOLICITOR'S OFFICE, ADVISED ME THAT SHE HADN'T REALLY LOOKED
18 AT THE CASE MUCH AND THAT WE WOULDN'T REACH IT THIS WEEK,
19 AND SHE AND I WOULD GET TOGETHER AND TALK ABOUT NEGOTIATING
20 THE CASE LATE TUESDAY AFTERNOON I WAS ADVISED THAT THIS
21 CASE WOULD BE UP FOR TRIAL ON WEDNESDAY

22 ON WEDNESDAY WE CAME IN AND SPOKE WITH YOUR HONOR,
23 DISCUSSED THE FACT THAT IN RELYING ON WHAT MS GANSS HAD
24 TOLD ME WE -- THERE WERE SOME FOLKS THAT WE WERE TRYING TO
25 SERVE SUBPOENAS ON OR GET IN TOUCH WITH AND HAVE HERE

1 AVAILABLE, ONE OF THOSE BEING AN OFFICER RAINES OFFICER
2 RAINES HAD BEEN WORKING I CAN'T REMEMBER WHICH DEPARTMENT
3 I BELIEVE IT WAS THE CHESNEE POLICE DEPARTMENT, WAS WORKING
4 THERE HE WAS BEING CALLED UP UNDER GUARD DUTY, I BELIEVE,
5 TO GO TO KOSOVO, BUT HE HADN'T GONE YET THE DEFENSE'S
6 PERSPECTIVE IS THAT HE MAY BE AN IMPORTANT WITNESS FOR THE
7 DEFENSE HE COULD SHOW POSSIBLY CONFLICTING TESTIMONY TO
8 OTHER OFFICERS

9 YOUR HONOR, AT THAT TIME I KNOW THE STATE ADVISED YOUR
10 HONOR THAT HE WOULD BE HERE, HE WOULD BE AVAILABLE, AND HE
11 WOULD BE AVAILABLE FOR THE DEFENSE THIS MORNING SO THERE
12 WERE NO ISSUES WITH THE DEFENSE BEING ABLE TO REACH THE
13 WITNESSES THAT WE WERE INTERESTED IN CALLING

14 AS OF THIS MORNING I'VE BEEN ADVISED THAT HE HAS NOT
15 SHOWN UP THE SOLICITOR'S OFFICE HAS NOT BEEN ABLE TO
16 CONTACT HIM YOUR HONOR, IN LIGHT OF THAT, FOR NOW WE WOULD
17 ASK FOR A CONTINUANCE TO SEE IF ---

18 THE COURT WELL, NOW THAT'S ONE OF THE SILLIEST
19 REQUESTS I'VE EVER HEARD I CANNOT CONTINUE A CRIMINAL CASE
20 AFTER THE JURY HAS BEEN SWORN IT'S ABSOLUTELY -- IT'S
21 IMPOSSIBLE

22 MR RAY THEN, YOUR HONOR, ---

23 THE COURT IF I DID THAT THEN YOUR CLIENT WOULD BE --
24 COULD NEVER BE RETRIED

25 MR RAY WELL, YOUR HONOR, WITHOUT A CONTINUANCE TO

1 TRY TO FIND HIM THE DEFENSE WOULD ASK FOR A MISTRIAL ON THIS
2 CASE

3 MS MILLICAN YOUR HONOR, I BELIEVE THE STATE -- IF WE
4 COULD HAVE ---

5 THE COURT I'M GOING TO SHORTEN THIS DISCUSSION AND
6 Y'ALL CAN SIT DOWN SO LET ME SEE IF I UNDERSTAND THIS
7 CORRECTLY THIS IS AN OFFICER WHO WAS -- WHO PARTICIPATED
8 IN THE EXECUTION OF THE SEARCH WARRANT OUT AT THAT MOBILE
9 HOME ON THE DAY THAT YOUR CLIENT WAS ARRESTED?

10 MR RAY YES, SIR

11 THE COURT AND YOU DON'T KNOW -- YOU DON'T REALLY HAVE
12 ANY IDEA WHAT HE'S GOING TO SAY?

13 MR RAY I HAVE INFORMATION THAT PREVIOUSLY HE HAS
14 TESTIFIED TO PARTICULAR FACTS

15 THE COURT ALL RIGHT AND TELL ME WHAT ARE THOSE
16 PARTICULAR FACTS THAT YOU THINK HE HAS TESTIFIED TO THAT ARE
17 INCONSISTENT WITH WHAT THESE OTHER OFFICERS HAVE TESTIFIED
18 TO

19 MR RAY ONE OF THOSE FACTS ---

20 THE COURT BRIEFLY VERY BRIEFLY

21 MR RAY YES, SIR WHEN HE ARRIVED AND WAS WITH
22 OFFICER LACHICA CHASING AFTER MY CLIENT THAT THEY WERE RIGHT
23 BEHIND HIM, NOT SOME DISTANCE AS OFFICER LACHICA TESTIFIED
24 AND BEING RIGHT BEHIND HIM, THEY DIDN'T SEE HIM THROW ANY
25 DRUGS

1 THE COURT ALL RIGHT NOW IS THE PHRASE OF RIGHT
2 BEHIND HIM, DO YOU HAVE ANY WAY FROM WHAT YOU KNOW ABOUT
3 WHAT HE'S GOING TO TESTIFY TO, DO YOU HAVE ANY WAY OF
4 KNOWING WHAT THAT MEANS IN TERMS OF DISTANCE?

5 MR RAY NO, YOUR HONOR

6 THE COURT ALL RIGHT AND DO YOU -- THE OTHER
7 OFFICERS TESTIFIED THEY DIDN'T SEE HIM THROW ANYTHING,
8 CORRECT?

9 MR RAY YES, YOUR HONOR

10 THE COURT SO THE ONLY DIFFERENCE IN WHAT YOU THINK
11 THIS OFFICER'S TESTIMONY MAY BE AND WHAT THE OFFICERS WHO'VE
12 ALREADY TESTIFIED SAID WOULD BE A POSSIBLE DIFFERENCE IN THE
13 DISTANCE THAT THEY WERE BEHIND THE DEFENDANT AS THEY WERE
14 RUNNING AFTER HIM?

15 MR RAY AND OFFICER LACHICA TESTIFIED THAT DUE TO
16 THAT DISTANCE THAT MY CLIENT WAS NOT WITHIN HIS VIEW THE
17 ENTIRE TIME I BELIEVE THIS OTHER OFFICER MAY TESTIFY ---

18 THE COURT YOU -- ALL RIGHT

19 MR RAY --- HE WAS WITHIN HIS VIEW THE ENTIRE TIME

20 THE COURT BUT NOW THAT'S -- YOU'VE CHANGED THE
21 SUBJECT A LITTLE BIT YOU HEARD THAT HE MIGHT SAY THAT HE
22 WAS, QUOTE, RIGHT BEHIND THE DEFENDANT

23 MR RAY YES, SIR

24 THE COURT BUT YOU DON'T HAVE ANY IDEA WHETHER OR NOT
25 HE WOULD SAY THAT HE WAS IN HIS VIEW THE WHOLE TIME, YOU'RE

1 JUST SPECULATING ABOUT THAT, IS THAT CORRECT?

2 MR RAY YES, SIR, YOUR HONOR

3 THE COURT OKAY AND HAVE YOU TALKED TO THIS OFFICER
4 BEFORE?

5 MR RAY NO, YOUR HONOR

6 THE COURT TO YOUR KNOWLEDGE HAS ANYBODY TALKED TO HIM
7 FROM ---

8 MR RAY YOUR HONOR, MY INVESTIGATORS HAVE ATTEMPTED
9 TO REACH HIM AND THEY WERE UNABLE TO THEY SPOKE WITH THE
10 CAPTAIN OF HIS POLICE DEPARTMENT, WHO TRIED TO REACH HIM I
11 BELIEVE THEY SPOKE WITH ANOTHER OFFICER THAT WAS IN HIS UNIT
12 THERE TRYING TO REACH HIM AND NO ONE FROM MY OFFICE HAS BEEN
13 ABLE TO REACH HIM

14 THE COURT AND THAT WAS A -- ALL RIGHT NOW THIS
15 OFFICER WAS WITH THE CHESNEE POLICE DEPARTMENT AT THE TIME
16 THAT THIS OCCURRED

17 MR RAY YES, SIR

18 THE COURT AND HE IS NO LONGER WITH CHESNEE POLICE
19 DEPARTMENT, IS THAT CORRECT?

20 MR RAY I BELIEVE HE IS HE'S JUST BEEN CALLED UP
21 FOR HIS NATIONAL GUARD DUTY

22 THE COURT WELL, DIDN'T Y'ALL TELL ME BACK IN CHAMBERS
23 THAT HE LIVED IN NORTH CAROLINA AND WAS NOT SUBJECT TO THE
24 SUBPOENA POWER OF THE COURT WITHOUT GOING THROUGH THE NORTH
25 CAROLINA COURTS?

1 MR RAY YOUR HONOR, I THINK HE -- HE DOES LIVE IN
2 NORTH CAROLINA I DON'T KNOW -- I THINK HIS EMPLOYMENT IS
3 STILL THERE WITH CHESNEE POLICE DEPARTMENT, BUT I BELIEVE
4 RIGHT NOW HE MAY BE ON LEAVE FROM THERE SO I'M UNSURE WE
5 ATTEMPTED TO REACH HIM THROUGH THE CHESNEE POLICE
6 DEPARTMENT I'M UNSURE OF THE FULL STATUS OF THIS OFFICER
7 BUT HE IS IN NORTH CAROLINA NOW, I'VE BEEN INFORMED

8 THE COURT ALL RIGHT

9 MR RAY AND WE WERE ALSO INFORMED BY THE POLICE
10 DEPARTMENT IN CHESNEE THAT HE WAS IN VIRGINIA SO I ---

11 THE COURT AS OF RIGHT NOW?

12 MR RAY YES, SIR

13 THE COURT ALL RIGHT

14 MR RAY BUT THE SOLICITOR'S OFFICE ADVISED ME THAT HE
15 WAS IN NORTH CAROLINA

16 THE COURT WELL, THE -- IF IT WASN'T FOR THE FACT THAT
17 THERE WAS THIS CONVERSATION UP HERE AT THE BENCH, WHICH WAS
18 OFF THE RECORD YESTERDAY, I GUESS, ABOUT WHAT -- THAT Y'ALL
19 HAD, I THINK, I DIDN'T -- I LISTENED TO IT, BUT I DON'T
20 BELIEVE I PARTICIPATED IN THE CONVERSATION THAT Y'ALL HAD
21 ABOUT THE FACT THAT YOU WANTED TO CALL THIS WITNESS
22 REPRESENTATIVES OF THE SOLICITOR'S OFFICE SAID THAT THEY
23 THOUGHT HE WOULD BE HERE TOMORROW AND THEN SAID THAT THEY
24 WOULD GET HIM HERE TOMORROW OR SOMETHING TO THAT EFFECT
25 AND THEN SUBSEQUENT TO THAT THE CASE STARTED

1 IF IT WASN'T FOR THAT THIS WOULD BE A COMPLETE NON-
2 ISSUE BECAUSE YOU DON'T HAVE -- AS I SAID BACK IN CHAMBERS,
3 YOU'RE PILING MAYBES ON TOP OF MAYBES ON TOP OF MAYBES WE
4 DON'T HAVE ANY IDEA WHAT THIS GUY'S GOING TO SAY AND I
5 JUST, YOU KNOW, UNDER NORMAL CIRCUMSTANCES I WOULD NEVER
6 CONSIDER DELAYING A CRIMINAL TRIAL SO THAT YOU COULD GET
7 AHOLD OF A WITNESS WHOSE TESTIMONY YOU HAVE REALLY NO IDEA
8 WHAT IT IS

9 AND -- SO THEN IT BECOMES A QUESTION OF WHAT IS THE
10 EFFECT OF SOMEBODY FROM THE SOLICITOR'S OFFICE HAVING TOLD
11 YOU IN A CONVERSATION UP HERE IN FRONT OF ME TODAY,
12 YESTERDAY, THAT THEY BELIEVED THAT THEY COULD GET HIM HERE
13 AND MAY HAVE EVEN SAID, I MEAN, Y'ALL SAID BACK IN CHAMBERS,
14 I DON'T RECALL THIS, BUT Y'ALL SAID THAT SHE SAID WE WILL
15 GET HIM HERE OR MAY HAVE EVEN SAID, I GUARANTEE YOU I'LL GET
16 HIM HERE, IS THAT RIGHT?

17 MR RAY YES, SIR

18 THE COURT SO WHAT, IN YOUR VIEW, IS THE SIGNIFICANCE
19 OF THAT?

20 MR RAY YOUR HONOR, THE SIGNIFICANCE IS HOW
21 EVERYTHING TRANSPIRED, THAT THE FACT THAT THE DEFENSE WAS
22 TOLD THIS CASE WILL NOT BE CALLED SO IT WASN'T UNTIL LATE
23 TUESDAY THAT WE WERE TOLD, WE'VE CHANGED OUR MIND, WE'VE
24 DECIDED TO CALL THIS CASE, YOU NEED TO GET EVERYTHING
25 TOGETHER AND WE HAD TO SCRAMBLE TO TRY TO FIND THESE

1 WITNESSES AND GO THROUGH ALL THESE PROCESSES, WHICH WERE THE
2 BASES FOR US ASKING FOR A CONTINUANCE IN THE CASE BEFORE IT
3 EVER STARTED IN ORDER TO TRY TO GET THINGS IN LINE WITH
4 THESE WITNESSES AND WE WERE TOLD WE WERE GOING TO GO AHEAD
5 AND PROCEED

6 AND THE STATE HAD ADVISED THAT THEY WERE GOING TO MAKE
7 THIS WITNESS AVAILABLE AND IT WAS THE DEFENSE'S
8 UNDERSTANDING THAT THIS BEING A WITNESS THAT MAY BE
9 IMPORTANT TO THE DEFENSE THAT WE WERE GOING TO PROCEED ON
10 THE BASIS THAT THIS WITNESS WAS GOING TO BE PROVIDED

11 THE COURT YOU MADE THE DECISION THAT YOU WERE GOING
12 TO PROCEED?

13 MR RAY NO, YOUR HONOR YOUR HONOR SAID THAT WE --
14 LET'S GO AHEAD AND GET STARTED

15 THE COURT RIGHT BUT I DID NOT DO THAT ON THE BASIS
16 OF THERE BEING A REPRESENTATION ON THE PART OF THE STATE
17 THAT THEY WOULD HAVE THIS WITNESS HERE I DID THAT BASED ON
18 THE FACT THAT THIS CASE IS ON THE TRIAL DOCKET, AND WE
19 NEEDED A CASE TO TRY, AND THIS WAS THE CASE THAT THE
20 SOLICITOR'S OFFICE CALLED FOR TRIAL AND I DID NOT SEE IN
21 FRONT OF ME, BASED ON WHAT I HEARD BOTH ON THE RECORD AND
22 OFF THE RECORD, ANY BASIS FOR CONTINUING THE CASE NOW WHAT
23 YOU'RE SAYING IS THAT YOU WERE TOLD THE CASE WOULD NOT BE
24 CALLED FOR TRIAL

25 MR RAY YES, SIR

1 THE COURT IS THAT TRUE?

2 MS MILLICAN YOUR HONOR, I DON'T KNOW WHAT MS GANSS
3 SAID TO THE DEFENSE ATTORNEY, BUT I WILL SAY THAT HE'S HAD
4 THE BENEFIT OF HAVING THIS CASE SINCE ---

5 THE COURT I ONLY ---

6 MS MILLICAN --- EARLY THIS YEAR

7 THE COURT --- WANT TO KNOW THE ANSWER TO THE ONE
8 QUESTION I ASKED SO COULD YOU GO AND FIND OUT IF MS GANSS
9 TOLD HIM THAT THE CASE WOULD NOT BE CALLED FOR TRIAL?

10 MR RAY AND, YOUR HONOR, TO BE MORE EXACT, HER EXACT
11 WORDS WERE, THIS CASE WON'T BE REACHED I'M NOT TRYING TO
12 MISLEAD THE COURT IN WHAT I SAID, BUT SHE ADVISED ME THE
13 CASE WOULD NOT BE REACHED

14 THE COURT BUT NOW REALLY IS THAT A STATEMENT THAT YOU
15 CAN RELY ON IN NOT PREPARING TO HAVE YOUR WITNESSES HERE FOR
16 TRIAL?

17 MR RAY I BELIEVE SO, YOUR HONOR, IN LIGHT OF THE
18 FACT THAT SHE SAID SHE HADN'T LOOKED AT THE CASE AND THAT WE
19 WOULD GET TOGETHER AND DISCUSS IT

20 THE COURT ALL RIGHT WHEN SHE TELLS YOU THE CASE
21 WILL NOT BE REACHED SHE'S TELLING YOU THAT SHE DOESN'T THINK
22 SOMETHING'S GOING TO HAPPEN RATHER THAN REPRESENTING TO YOU
23 WHAT SHE'S GOING TO DO IS THAT RIGHT? I MEAN, IF SHE SAYS
24 I'M NOT GOING TO CALL THE CASE FOR TRIAL, THEN THAT'S
25 DIFFERENT FROM SAYING THE CASE ISN'T GOING TO BE REACHED,

1 ISN'T IT?

2 MR RAY I DON'T KNOW THAT IT IS THAT MUCH DIFFERENT,
3 YOUR HONOR IT'S ---

4 THE COURT ALL RIGHT

5 (WHEREUPON MS GANSS ENTERED THE COURTROOM)

6 MS GANSS GOOD MORNING, YOUR HONOR

7 THE COURT GOOD MORNING THE QUESTION BEFORE US IS
8 WHETHER OR NOT YOU HAD A CONVERSATION WITH MR RAY ABOUT
9 WHETHER OR NOT THIS CASE WOULD BE CALLED FOR TRIAL OR WOULD
10 BE REACHED FOR TRIAL AND IF SO, WHAT DID YOU TELL HIM?

11 MS GANSS I SPOKE WITH MR RAY MONDAY, AND I SAID I
12 DIDN'T THINK IT WOULD BE REACHED

13 THE COURT OKAY IS THAT WHAT SHE SAID?

14 MR RAY I DON'T REMEMBER HER SAYING I DON'T THINK IT
15 WILL BE REACHED FROM WHAT I REMEMBER THE CONVERSATION, IT
16 WAS THIS CASE WON'T BE REACHED ALSO IN LIGHT OF THE FACT
17 WE WERE SO FAR DOWN ON THE NUMBERED DOCKET, THERE'S PLENTY
18 OF CASES BEFORE US THAT WERE SKIPPED TO CALL THIS CASE

19 THE COURT IS IT POSSIBLE THAT YOU REPRESENTED TO HIM
20 THAT THE CASE WOULD NOT BE REACHED OR THAT YOU REPRESENTED
21 TO HIM THAT YOU WOULD NOT CALL THE CASE?

22 MS GANSS IT'S POSSIBLE I DID A LOT OF THINGS IT
23 WAS MONDAY MORNING, IT WAS RIGHT HERE DURING ROLE CALL AND
24 WE WENT THROUGH IT AND I SAID, THIS CASE WON'T BE REACHED
25 IT WAS DOWN THERE THAT'S HOW I SAID IT IT WASN'T THAT I

1 WASN'T CALLING IT, IT'S JUST THIS CASE WON'T BE REACHED, WE
2 CAN ---

3 THE COURT OKAY THANK YOU

4 MS GANSS THANK YOU

5 (WHEREUPON MS GANSS EXITED THE COURTROOM)

6 THE COURT HAVE YOU HEARD ANYTHING MORE ABOUT WHETHER
7 OR NOT THE WITNESS HAS BEEN LOCATED?

8 MS MILLICAN NOT YET, YOUR HONOR WHEN WE WERE IN
9 CHAMBERS THE DEPUTY WAS BEING DISPATCHED OUT TO GO TO HIS
10 HOUSE AT THAT VERY MOMENT SO I'M NOT SURE HOW FAR THEY
11 WOULD HAVE TO GO

12 THE COURT WELL, IF YOU -- IF THE SITUATION WAS THAT
13 YOU HAD BEEN MISLED, EVEN UNINTENTIONALLY, BY THE
14 SOLICITOR'S OFFICE INTO A DECISION NOT TO COMPLETE YOUR
15 TRIAL PREPARATIONS BY SUBPOENAING THIS WITNESS FOR TRIAL AND
16 THAT IF THAT DECISION THAT YOU MADE ON MONDAY IN LIGHT OF
17 WHAT WAS SAID TO YOU, IF THAT -- IN LIGHT OF BEING MISLED,
18 IF THAT DECISION HAD THE EFFECT OF PREVENTING YOU FROM
19 CALLING THIS WITNESS THEN THAT WOULD BE -- THAT'S WHAT
20 YOU'RE SAYING HAPPENED

21 MR RAY YES, SIR

22 THE COURT ALL RIGHT NOW IF THAT WERE THE SITUATION
23 THEN WE'D HAVE A PROBLEM BUT I'M GOING TO TELL YOU, THAT'S
24 NOT WHAT IT SEEMS LIKE TO ME IT SEEMS TO ME -- SEVERAL
25 THINGS IT'S NATURAL DURING THE COURSE OF A ROSTER MEETING

1 FOR LAWYERS TO HAVE THOUGHTS ABOUT AND TO HAVE DISCUSSIONS
2 ABOUT WHETHER OR NOT CASES WILL BE REACHED DURING THAT
3 PARTICULAR WEEK IT'S PARTICULARLY NATURAL FOR THAT TO
4 OCCUR IN CASES THAT ARE FAR DOWN ON THE ROSTER IT IS NOT
5 NATURAL FOR ONE LAWYER TO MAKE A PREDICTION ABOUT WHETHER A
6 CASE IS GOING TO BE REACHED AND FOR THE OTHER LAWYER TO BE
7 ABLE TO RELY ON THAT

8 IF IT IS CORRECT THAT SHE PREDICTED WHETHER OR NOT THE
9 -- THAT THE CASE WOULD NOT BE REACHED AND YOU RELIED ON
10 THAT, THEN YOU MADE A MISTAKE AND THEN THE QUESTION
11 BECOMES MORE OF A PCR TYPE QUESTION AS TO WHETHER OR NOT
12 THAT MISTAKE PREVENTED YOU FROM PRESENTING EVIDENCE THAT
13 WOULD BE HELPFUL TO YOUR CLIENT

14 AND SO AS I'M SITTING HERE LOOKING AT IT FROM THAT
15 STANDPOINT, IT DOESN'T SEEM TO ME THAT IT DID BECAUSE IF
16 THE WITNESS LIVES IN NORTH CAROLINA AND IS NOT SUBJECT TO
17 THE SUBPOENA POWER OF THE COURT, AND IF YOU HAD ATTEMPTED TO
18 GET THAT WITNESS -- AND APPARENTLY THE WITNESS IS NOT GOING
19 TO COME VOLUNTARILY, CORRECT?

20 MR RAY IT APPEARS SO, YOUR HONOR

21 THE COURT WELL, IF ON MONDAY MS GANSS HAD SAID TO
22 YOU, THIS CASE WILL DEFINITELY BE CALLED FOR TRIAL ON
23 WEDNESDAY, THERE IS NO WAY THAT YOU COULD HAVE GONE THROUGH
24 ALL OF THE MANEUVERS THAT YOU WOULD HAVE TO GO THROUGH TO
25 GET THE NORTH CAROLINA COURT INVOLVED AND GET A SUBPOENA

1 SERVED ON THAT WITNESS AND HAVE HIM DELIVERED DOWN HERE TO
2 SOUTH CAROLINA IN TIME FOR HIM TO TESTIFY THIS MORNING,
3 CORRECT?

4 MR RAY YES, SIR

5 THE COURT SO IF YOU MADE A DECISION NOT TO FOLLOW
6 THAT ROUTE IT WAS A DECISION THAT YOU WOULD HAVE, YOU KNOW,
7 THAT DECISION WOULD HAVE HAD TO HAVE BEEN MADE WEEKS AGO FOR
8 IT TO HAVE HAD AN IMPACT ON WHETHER OR NOT YOU COULD GET
9 THAT WITNESS HERE TODAY SO THAT'S ONE THING

10 IT SEEMS TO ME THAT EVEN IF MS GANSS HAD SAID NOTHING
11 TO YOU ABOUT THE STATUS OF THE CASE AND YOU HAD USED EVERY
12 EFFORT YOU COULD COME UP WITH TO GET THAT WITNESS HERE IT
13 DOESN'T SEEM TO ME THAT YOU COULD HAVE GOTTEN HIM HERF
14 WITHOUT HIS COOPERATION

15 AND THEN THE OTHER THING IS THAT IT SEEMS TO ME, BASED
16 ON EVERYTHING THAT YOU ALL HAVE TOLD ME BACK IN CHAMBERS AND
17 HERE IN THIS COURTROOM, IS THAT THE WITNESS' TESTIMONY IS
18 NOT GOING TO DIFFER -- IS PERHAPS NOT GOING TO DIFFER
19 SUBSTANTIALLY FROM THAT OF THE TESTIMONY FROM THE WITNESSES
20 WHO HAVE ALREADY TESTIFIED THE ONLY POSSIBLE DIFFERENCE
21 WOULD BE THE DISTANCE THAT HE WAS BEHIND THE DEFENDANT
22 DURING THE CHASE AND WHETHER OR NOT THAT DIFFERENCE IN
23 TESTIMONY CONCERNING THE DIFFERENCE WOULD HAVE MADE IT MORE
24 OR LESS LIKELY THAT THE OFFICERS WOULD HAVE SEEN HIM THROW
25 THAT BAG OF CRACK AND IT'S ALL JUST SPECULATION

1 SO I SEE NO REASON TO DO ANYTHING OTHER THAN BRING THE
2 JURY IN HERE AND GO FORWARD I DON'T SEE HOW -- AND I THINK
3 I UNDERSTAND YOUR ARGUMENT WELL, LET'S MAKE THIS CLEAR I
4 CAN'T CONTINUE THE CASE NOW THAT CAN'T HAPPEN THE ONLY
5 THING I CAN DO IS EITHER TO TAKE A PAUSE IN THE CASE AND
6 WAIT AND SEE WHAT HAPPENS, PROCEED, OR DECLARE A MISTRIAL
7 THERE'S NO WAY I CAN DECLARE A MISTRIAL I CAN ONLY DECLARE
8 A MISTRIAL IF THERE'S MANIFEST NECESSITY AND I CANNOT SIT
9 HERE AND SPECULATE ABOUT WHAT SOME WITNESS MIGHT TESTIFY TO
10 AND SAY THAT THAT'S MANIFEST NECESSITY FOR A MISTRIAL THAT
11 CAN'T HAPPEN SO I CAN'T DECLARE -- I CAN'T CONTINUE THE
12 CASE I CAN'T DECLARE A MISTRIAL

13 THEN THE QUESTION IS WHETHER OR NOT TO DELAY THE TRIAL
14 AND IT SEEMS TO ME THAT THE ONLY BASIS ON WHICH I COULD
15 REASONABLY DELAY THE TRIAL IS IF YOU HAD BEEN EITHER
16 INTENTIONALLY OR ACCIDENTALLY MISLED INTO NOT DOING
17 SOMETHING THAT WOULD POSSIBLY MAKE A DIFFERENCE IN THIS
18 TRIAL AND AS I HAVE ARTICULATED, I DON'T SEE HOW IT COULD
19 POSSIBLY MAKE A DIFFERENCE FOR TWO REASONS ONE, YOU
20 COULDN'T HAVE GOTTEN THE WITNESS HERE ANYWAY WITHOUT HIS
21 COOPERATION AND TWO, I DON'T SEE A MATERIAL DIFFERENCE IN
22 HIS TESTIMONY FROM THAT OF THOSE WHO HAVE ALREADY TESTIFIED
23 SO I SEE NO CHOICE I SEE NO OPTION BUT TO GO FORWARD
24 NOW IF YOU THINK THAT I HAVE MISUNDERSTOOD SOMETHING
25 THAT YOU'VE ARGUED OR IF YOU THINK I'M INCORRECT ABOUT

1 SOMETHING IN MY ANALYSIS OF WHAT MY OPTIONS ARE, PLEASE TELL
2 ME WHAT THAT IS SO THAT I CAN DECIDE NOW WHETHER OR NOT TO
3 CHOOSE A DIFFERENT COURSE OF ACTION

4 MR RAY WELL, YOUR HONOR, THERE'S JUST ONE MATTER I
5 WOULD LIKE TO CLARIFY A LITTLE BIT AS FAR AS NOTICE FOR
6 THE TRIAL, THE DOCKET IS RECEIVED SEVEN DAYS PRIOR TO TRIAL
7 WE WERE NOT AWARE THAT THIS WITNESS HAD BEEN CALLED UP FOR
8 DUTY AND WAS NO LONGER AT THE CHESNEE POLICE DEPARTMENT
9 AND WE DID -- THERE WAS NO WAY TO PREPARE FAR ENOUGH IN
10 ADVANCE AT THAT TIME WITHOUT THE KNOWLEDGE ---

11 THE COURT TO GET THAT WITNESS HERE?

12 MR RAY --- IN ORDER TO PREPARE TO GET HIM HERE ,
13 THROUGH THE NORTH CAROLINA COURTS

14 THE COURT SO YOU COULDN'T HAVE GOTTEN HIM HERE UNDER
15 ANY CIRCUMSTANCES

16 MR RAY NOT ---

17 THE COURT SO WHAT YOU'RE -- WHAT THAT MEANS IS THAT
18 WITHOUT THAT WITNESS' COOPERATION THAT WITNESS WOULD NEVER
19 HAVE BEEN HERE TO TESTIFY REGARDLESS OF WHAT HAPPENED ON
20 MONDAY

21 MR RAY NOT IMMEDIATELY BUT IF WE'D BEEN GRANTED A
22 CONTINUANCE MAYBE WE COULD HAVE GOTTEN HIM HERE THROUGH THE
23 NORTH CAROLINA COURTS OR WHEN HIS SERVICE PERIOD WAS UP HE
24 COULD HAVE BEEN BACK AND AVAILABLE

25 THE COURT YEAH SO YOU COULD HAVE -- IF YOU HAD --

1 BUT YOU GOT THE TRIAL DOCKET, AND YOU KNEW YOU WANTED THIS
2 WITNESS YOUR MOTION FOR A CONTINUANCE WOULD HAVE BEEN
3 BASED ON THE FACT THAT YOU COULDN'T GET HIM HERE AND THAT
4 MOTION WOULD HAVE BEEN MADE BEFORE TRIAL

5 MR RAY YES, SIR IN DISCUSSING THAT FACT WITH YOUR
6 HONOR THAT'S WHEN THE SOLICITOR'S OFFICE SAID THEY WOULD
7 PROVIDE HIM, HE WOULD BE HERE

8 THE COURT I DON'T SEE WHAT YOU'RE ARGUING I MEAN, I
9 DON'T SEE THAT THERE'S ANY RELIEF TO BE GRANTED BECAUSE IF
10 THE -- THE SOLICITOR'S OFFICE DIDN'T HAVE TO SAY ANYTHING
11 RIGHT THEN AND PERHAPS NEXT TIME WILL REFLECT ON THE WISDOM
12 OF HAVING SAID ANYTHING IN THE FIRST PLACE OR WE WOULDN'T BE
13 HAVING THIS DISCUSSION IF THEY HADN'T SAID, WE'LL GET HIM
14 HERE SO THE QUESTION TO ME BECOMES WHAT'S THE EFFECT OF
15 THEM HAVING SAID, WE'LL GET HIM HERE ON WHERE WE ARE RIGHT
16 NOW?

17 AND I DON'T SEE ANY BECAUSE I DON'T, I MEAN, I WOULDN'T
18 HAVE -- IF YOU HAD SAID -- NOW IF WE'D GOTTEN REALLY INTO
19 THE DISCUSSION ABOUT YOUR MOTION FOR A CONTINUANCE BASED ON
20 YOUR INABILITY TO GET THAT WITNESS HERE WE WOULD HAVE HAD
21 THE SAME DISCUSSION ABOUT WHAT HE'S GOING TO TESTIFY TO
22 AND IF YOU DIDN'T HAVE ANYMORE IDEA ABOUT WHAT HE WAS GOING
23 TO TESTIFY TO THAN WHAT YOU'VE ALREADY TOLD ME, I WOULDN'T
24 HAVE -- THERE'S NO WAY I WOULD HAVE CONTINUED THE CASE ON
25 THAT BASIS THERE'S NO WAY I WOULD CONTINUE THIS CASE BASED

1 ON THE POSSIBILITY THAT AN OFFICER MIGHT HAVE A DIFFERENT
2 VERSION OF WHAT HAPPENED TO THE EXTENT THAT HE WAS A LITTLE
3 FARTHER -- THAT HE WAS A LITTLE CLOSER TO THE DEFENDANT
4 DURING THE CHASE I WOULDN'T HAVE CONTINUED IT ON THAT
5 BASIS IT JUST WOULDN'T HAVE HAPPENED

6 SO WHERE WE ARE IS IN THE MIDDLE OF A SITUATION THAT IS
7 INSIGNIFICANT IN THE SENSE THAT IT HAS NO IMPACT ON WHERE WE
8 ARE IN THE CASE NONE OF THIS THAT HAS HAPPENED HAS ANY
9 IMPACT ON WHERE WE ARE IN THE CASE AND THE FACT THAT IT HAS
10 NO IMPACT ON THE FACT THAT WE ARE NOW AT THE POINT WHERE YOU
11 CAN CALL WITNESSES AND YOU DON'T HAVE THE WITNESS THAT YOU
12 WANT TO CALL SO I DON'T KNOW WHAT TO DO OTHER THAN JUST GO
13 FORWARD

14 MR RAY YOUR HONOR, JUST TO CLARIFY FOR THE RECORD,
15 IS THAT -- THAT'S DENYING MY MOTION FOR A MISTRIAL, CORRECT?

16 THE COURT I'M DENYING YOUR MOTION FOR A MISTRIAL I
17 DENY YOUR MOTION FOR A CONTINUANCE NOW IF YOU'RE ASKING TO
18 DELAY, I MEAN, THE ONLY THING WE COULD DO IS TO JUST TAKE A
19 BREAK OF SOME PERIOD OF TIME I MEAN, IT COULD BE A LONG
20 PERIOD OF TIME BUT ORDINARILY I WOULD NEVER CONSIDER DOING
21 THAT

22 NO JUDGE WOULD CONSIDER TAKING A BREAK IN A CRIMINAL
23 TRIAL SO THAT YOU COULD GET A WITNESS HERE WHO IS NOT
24 SUBJECT TO THE SUBPOENA POWER OF THE COURT, AND WHOSE
25 TESTIMONY YOU REALLY DON'T KNOW WHAT IT'S GOING TO BE

1 THE ONLY REASON THAT WE'RE EVEN HAVING THIS DISCUSSION
2 IS BECAUSE OF THESE TWO COMMENTS THAT WERE MADE TO YOU
3 DURING THE COURSE OF THIS WEEK, THE FIRST BY MS GANSS AND
4 THE SECOND BY MS MILLICAN AND AS I HAVE ARTICULATED I
5 DON'T REALLY SEE THE NEED TO OR I DON'T SEE YOUR RIGHT TO
6 TAKE A BREAK IN LIGHT OF THAT BUT, I MEAN, HAVE Y'ALL
7 HEARD ANYTHING MORE FROM THIS OFFICER?

8 MS MILLICAN NO, YOUR HONOR BUT I WILL SAY REGINA
9 RAY TOLD ME THAT SHE COULDN'T REMEMBER IF SHE TOLD HIM NINE
10 OR 9 30 ON THE VOICEMAIL I HAVEN'T HEARD THAT HE'S HERE
11 THOUGH AND SINCE HE HASN'T ANSWERED ANY CALLS SINCE THAT
12 HE MAY NOT SHOW BUT THERE'S STILL A POSSIBILITY HE COULD
13 SHOW UP ON HIS OWN VOLITION AND I WOULD BE HAPPY TO
14 PROVIDE MY CONTACT INFORMATION TO MR RAY IF HE WOULD LIKE
15 TO TRY TO CONTACT HIM HE'D NEVER REQUESTED THAT FROM ME
16 BEFORE

17 THE COURT WELL, WHY DON'T WE TAKE A FEW MINUTE BREAK
18 AND Y'ALL GO SEE WHAT YOU CAN DO TO FIND OUT THE CURRENT
19 STATUS OF THIS SITUATION

20 (WHEREUPON COURT WAS IN RECESS AT 9 38 AM)

21 MS MILLICAN WE CALLED THE HENDERSONVILLE POLICE
22 DEPARTMENT, THE SHERIFF'S DEPARTMENT, AND THEY IN TURN
23 CALLED THE CITY POLICE AND ASKED THEM TO DELIVER A MESSAGE
24 TO TONY RAINES' ADDRESS, 513 HIGH GATE ROAD AND THEY DID
25 THEY WENT TO HIS ADDRESS, THEY MADE CONTACT WITH HIM, ASKED

1 HIM TO GIVE ME A CALL ON MY CELL PHONE WITH REGARD TO THIS
2 CASE

3 AND HE DID CALL ME, LEFT ME A VOICEMAIL STATING THAT
4 HE'S HAVING TROUBLE WITH HIS CELL PHONE, HE'S NOT AT HOME
5 HE CALLED ME FROM A PAYPHONE I TRIED TO CALL BACK THE
6 PAYPHONE, BUT NOBODY ANSWERED AND I'VE CALLED HIM BACK ON
7 HIS CELL PHONE, AND HE'S STILL NOT ABLE TO GET IT TO WORK
8 HE ASKED ME WHEN HE CALLED, AND IT WAS ABOUT FIFTY-NINE
9 MINUTES AFTER WHEN HE CALLED AND LEFT A MESSAGE, TO TRY HIM
10 AGAIN IN FIFTEEN MINUTES, THAT HE WOULD TRY TO HAVE HIS CELL
11 PHONE WORKING BY THEN

12 THE COURT WAS HE ON HIS WAY?

13 MS MILLICAN HE DIDN'T INDICATE IF HE WAS ON HIS WAY,
14 HE WAS JUST CALLING ME BACK I'M NOT SURE WHAT MESSAGE THE
15 CITY POLICE DELIVERED 'CAUSE IT WAS FOURTH HAND BY THE TIME
16 IT GOT TO HIM THAT WAY BUT I BELIEVE ---

17 THE COURT WELL, DID YOU TALK TO HIM OR DID HE LEAVE
18 YOU A MESSAGE?

19 MS MILLICAN HE LEFT ME A MESSAGE JUST A MINUTE AGO

20 THE COURT BUT HE KNOWS THAT WE'RE WAITING ON HIM

21 MS MILLICAN HE KNOWS THAT HE WAS SUPPOSED TO CALL
22 ME I DON'T KNOW EXACTLY WHAT THE CITY OFFICER TOLD HIM,
23 BUT HE'S SUPPOSED TO CALL ME BACK I BELIEVE IF HE COULD
24 SPEAK TO MR RAY THEY MIGHT BE ABLE TO RESOLVE ANY ISSUES AS
25 TO WHETHER OR NOT THEY NEED HIM HERE WE MIGHT BE ABLE TO

1 MOVE FORWARD IN JUST A MINUTE IF HE TALKS TO HIM, I BELIEVE
2 THE COURT WELL, WHAT IF WE GO AHEAD -- YOU GOT ONE
3 OTHER WITNESS YOU'RE GOING TO CALL ANYWAY, RIGHT?

4 MR RAY YES, SIR

5 THE COURT WHAT IF WE GO AHEAD AND JUST DO THAT AND
6 YOU GET SOMEBODY FROM YOUR OFFICE TO STAND OUT THERE IN THAT
7 BACK HALL WITH YOUR CELL PHONE

8 MS MILLICAN OKAY

9 THE COURT AND IF HE CALLS ASK HIM TO JUST HOLD ON A
10 SECOND AND WE'LL TAKE A BREAK AND LET WHOEVER TALK TO HIM
11 DOES THAT SUIT YOU, MR RAY?

12 MR RAY YES, SIR THAT'LL BE FINE, YOUR HONOR

13 THE COURT BUT I CAN TELL YOU THOUGH THAT WE'RE REALLY
14 ABOUT TO THE POINT WHERE WE'RE GOING TO GO FORWARD ANYWAY
15 IF YOU GET HIM ON THE PHONE AND HE TELLS YOU SOMETHING THAT
16 YOU THINK REALLY HELPS YOU AND HE'S ON HIS WAY, THEN WE'LL
17 SEE WHAT WE CAN DO BUT I FEEL AT THIS POINT AS THOUGH I
18 HAVE BENT OVER BACKWARDS TO TRY TO GIVE YOU THE OPPORTUNITY
19 TO CALL HIM SO WE'LL SEE HOW IT SHAKES OUT BRING IN THE
20 JURY SO WHERE IS THE PERSON WITH THE PHONE? IS IT
21 JESSICA?

22 MS MILLICAN JESSICA TOOK MY PHONE OUT IN THE HALL,
23 YOUR HONOR

24 THE COURT OKAY

25 MS THILL YOUR HONOR, MAY WE HAVE A MOMENT?

1 THE COURT YES HOLD THE JURY RIGHT THERE, SIR
2 (WHEREUPON MS MILLICAN WAS TALKING TO THE OFFICER ON
3 THE PHONE)

4 (WHEREUPON MR RAY EXITED THE COURTROOM TO TALK TO THE
5 OFFICER)

6 (WHEREUPON COURT WAS IN RECESS)

7 THE COURT YES, SIR

8 MR RAY YOUR HONOR, I'VE SPOKEN WITH OFFICER RAINES
9 AND HE DOES CONFIRM SOME OF WHAT WE SUSPECTED HOWEVER,
10 THERE'S OTHER TESTIMONY HE HAS AND IN THE LIGHT OF
11 EVERYTHING WE DON'T PLAN TO CALL HIM, YOUR HONOR

12 THE COURT ALL RIGHT BRING IN THE JURY

13 MR RAY YOUR HONOR, ONE OTHER MATTER YOU WANTED US TO
14 ADDRESS IS WHETHER OR NOT MR BURKE WOULD TESTIFY

15 THE COURT WOULD HE BE YOUR NEXT WITNESS?

16 MR RAY MR MCSWAIN, OFFICER MCSWAIN WILL BE OUR
17 WITNESS AND THEN HE WON'T TESTIFY IF YOUR HONOR WANTS TO
18 INQUIRE ---

19 THE COURT WELL, LET ME JUST ASK YOU THIS IS THERE
20 ANY -- I CAN TALK TO HIM NOW WHAT I NORMALLY LIKE TO DO IS
21 TO TALK TO HIM RIGHT BEFORE HE WOULD TESTIFY IF HE CHOSE TO
22 TESTIFY IS THERE ANYTHING ABOUT WHAT OFFICER MCSWAIN MIGHT
23 TESTIFY TO THAT WOULD AFFECT YOUR CLIENT'S DECISION AS TO
24 WHETHER OR NOT HE WOULD TESTIFY?

25 MR RAY NO, YOUR HONOR

1 THE COURT SO -- OKAY WELL THEN, MR BURKE -- WELL,
2 LET ME ASK YOU THIS, MR RAY HAVE YOU TALKED BOTH TODAY
3 AND YESTERDAY AND BEFORE THIS TRIAL ABOUT HIS, TO HIM, ABOUT
4 HIS RIGHT TO REMAIN SILENT AND HIS RIGHT TO TESTIFY?

5 MR RAY YES, SIR

6 THE COURT YOU'VE EXPLAINED IT ALL TO HIM THOROUGHLY?

7 MR RAY YES, SIR

8 THE COURT AND DOES HE UNDERSTAND ALL OF IT?

9 MR RAY HE DOES, YOUR HONOR

10 THE COURT ALL RIGHT WHO'S THAT SHAKING HIS HEAD
11 BACK IN THE BACK OF THE COURTROOM?

12 SPECTATOR I'M HIS BROTHER

13 THE COURT MR RAY, DO YOU HAVE ANY HESITATION IN
14 SAYING THAT YOUR CLIENT UNDERSTANDS THE DECISION THAT HE
15 MUST MAKE ABOUT WHETHER OR NOT TO TESTIFY?

16 MR RAY NO HESITATION, YOUR HONOR

17 THE COURT ALL RIGHT MR BURKE, PLEASE STAND RAISE
18 YOUR RIGHT HAND DO YOU SWEAR THE TESTIMONY YOU'RE ABOUT TO
19 GIVE WILL BE THE TRUTH SO HELP YOU GOD?

20 MR BURKE BUT I'M NOT TESTIFYING

21 THE COURT WELL, I'M GOING TO ASK YOU SOME QUESTIONS
22 THOUGH ABOUT YOUR RIGHT TO TESTIFY AND IN THE COURSE OF MY
23 -- I JUST WANT YOU TO -- YOU'RE GOING TO HAVE TO SWEAR TO
24 TELL ME THE TRUTH WHEN YOU'RE TALKING TO ME

25 MR BURKE OKAY

1 THE COURT BUT I'M NOT GOING TO ASK YOU ABOUT WHAT
2 HAPPENED OR ANYTHING LIKE THAT I'M JUST GOING TO ASK YOU
3 QUESTIONS SO THAT I CAN VERIFY THAT YOU UNDERSTAND THAT YOU
4 HAVE THE RIGHT TO TESTIFY, AND THAT YOU HAVE THE RIGHT TO
5 REMAIN SILENT, AND THAT YOU HAVE TO CHOOSE BETWEEN ONE OF
6 THOSE TWO

7 MR BURKE YES, SIR

8 THE COURT SO THAT'S ALL I'M GOING TO ASK YOU ABOUT
9 SO I'M GOING TO SWEAR YOU IN SO THAT WE CAN HAVE THAT
10 DISCUSSION SO RAISE YOUR RIGHT HAND YOU SWEAR THE
11 TESTIMONY YOU'RE ABOUT TO GIVE WILL BE THE TRUTH SO HELP YOU
12 GOD?

13 MR BURKE YES, SIR

14 THE COURT ALL RIGHT, SIR YOU CAN PUT YOUR HAND
15 DOWN NOW YOU HEARD MR RAY AND ME DISCUSSING THE FACT THAT
16 YOU HAVE THE RIGHT TO REMAIN SILENT AS I -- I HOPE YOU
17 UNDERSTAND THAT RIGHT COMES TO YOU THROUGH THE FIFTH
18 AMENDMENT OF THE UNITED STATES CONSTITUTION WHICH PROVIDES
19 THAT NO PERSON CAN BE COMPELLED TO BE A WITNESS AGAINST
20 THEMSELF THAT MEANS THAT NOBODY CAN MAKE YOU TESTIFY YOU
21 HAVE THE RIGHT TO REMAIN SILENT YOU NEVER HAVE TO SAY
22 ANYTHING DURING THE COURSE OF THIS TRIAL EXCEPT TO TALK TO
23 ME ABOUT THIS QUESTION NOW DO YOU UNDERSTAND THAT?

24 MR BURKE YES, SIR

25 THE COURT NOW IF YOU CHOOSE TO REMAIN SILENT, IF YOU

1 CHOOSE NOT TO SAY ANYTHING, THEN I WILL MAKE IT CLEAR TO THE
2 JURY THAT YOU HAVE THE RIGHT TO REMAIN SILENT, THAT IT'S A
3 CONSTITUTIONAL RIGHT, AND THAT THEY CANNOT HOLD THE EXERCISE
4 OF THAT RIGHT AGAINST YOU I WON'T EVEN LET THEM DISCUSS IT
5 IN THE JURY ROOM IF YOU CHOOSE TO REMAIN SILENT

6 ON THE OTHER HAND YOU HAVE THE RIGHT TO TESTIFY IF YOU
7 CHOOSE TO TESTIFY IF YOU DO TESTIFY, THEN YOU WOULD BE
8 SUBJECT TO CROSS EXAMINATION ON ANY SUBJECT THAT MAY BE
9 RELEVANT TO THIS CASE NOW I UNDERSTAND THAT YOU HAVE A
10 CRIMINAL RECORD, IS THAT CORRECT?

11 MR RAY YES, YOUR HONOR

12 THE COURT IS THAT A FACTOR IN HIS DECISION NOT TO
13 TESTIFY?

14 MR RAY IT IS, YOUR HONOR

15 THE COURT DO YOU NEED SOME CLARIFICATION AS TO
16 WHETHER OR NOT THOSE CONVICTIONS WOULD BE ADMISSIBLE TO
17 IMPEACH HIM OR ARE YOU CERTAIN THAT THEY WOULD BE?

18 MR RAY I'M PRETTY SURE THEY WOULD BE

19 THE COURT WHAT ARE THEY? WHAT ARE THE CONVICTIONS?

20 MR RAY THERE'S -- HE'S GOT PRIOR FELONY CONVICTIONS
21 FOR, I BELIEVE IT'S -- HE'S GOT PWID HE'S GOT TWO PWIDS
22 THERE'S FIVE PRIORS, YOUR HONOR

23 THE COURT ALL RIGHT WHAT ARE THEY?

24 MR RAY PWID MARIJUANA, PWID COCAINE, PWID CRACK,
25 PWID CRACK, AND ANOTHER PWID CRACK

1 THE COURT WELL, I DON'T KNOW THAT THAT'S AN OBVIOUS
2 -- I DON'T THINK IT'S OBVIOUS THAT THOSE ARE COMING IN

3 MR RAY YES, SIR AND THAT'S NOT THE ONLY REASON
4 THOSE WERE A FACTOR IN THE DECISION THERE'S OTHER REASONS

5 THE COURT WELL, NORMALLY I HAVE TO GET INTO IT BEFORE
6 I DETERMINE FOR SURE IF THEY'RE COMING IN I'M ASSUMING
7 THAT BASED ON WHAT I ANTICIPATE HIS TESTIMONY WOULD BE --
8 DOES THE STATE HAVE ANYTHING YOU WANT TO SAY ON THE QUESTION
9 OF WHETHER OR NOT THOSE CONVICTIONS COME IN?

10 MS MILLICAN YOUR HONOR, WHILE THEY FALL IN THE TEN
11 YEAR PERIOD AND ARE FELONIES, BECAUSE THEY'RE SO MUCH LIKE
12 THIS CASE, I DON'T KNOW THAT WE WOULD BE ABLE TO GET THOSE
13 IN

14 THE COURT ALL RIGHT I WILL EXCLUDE THEM SO WE'RE
15 GOING TO TAKE A BREAK I'M GOING TO SIT HERE, BUT WE'LL BE
16 AT EASE FOR A FEW MINUTES WHILE YOU TAKE WHATEVER TIME YOU
17 NEED TO DISCUSS WITH YOUR CLIENT HOW THAT RULING MIGHT
18 AFFECT HIS DECISION AS TO WHETHER OR NOT HE WISHES TO
19 TESTIFY

20 MR RAY YES, SIR

21 THE COURT BUT BASED ON WHAT I SEE IN THE CASE SO --
22 WELL, BASED ON WHERE I SEE THE CASE IS AND UNDER RULE 609
23 (A) (1) I WOULD NOT ALLOW THOSE CONVICTIONS INTO EVIDENCE IN
24 THE TRIAL OF THIS CASE SO YOU CAN HAVE YOUR DISCUSSION
25 WITH YOUR CLIENT

1 MR RAY YES, SIR, YOUR HONOR

2 (WHEREUPON COURT WAS IN RECESS AT 10 34 AM)

3 MR RAY IS YOUR HONOR READY?

4 THE COURT YES, SIR

5 MR RAY YOUR HONOR, MR BURKE HAS DECIDED THAT HE
6 WILL TESTIFY

7 THE COURT ALL RIGHT WELL, LET ME FINISH MY
8 DISCUSSION WITH HIM BUT LET ME ASK YOU THIS QUESTION, YOU
9 NOW HAVE HAD A CHANCE TO DISCUSS WITH HIM MY RULING ABOUT
10 THE CONVICTIONS HAVE YOU HAD ALL THE TIME YOU NEED TO
11 DISCUSS WITH HIM WHAT YOU NEED TO DISCUSS IN ORDER FOR HIM
12 TO MAKE HIS DECISION?

13 MR RAY YES, SIR

14 THE COURT OKAY MR BURKE?

15 MR BURKE YES, SIR

16 THE COURT WE HAD PRETTY MUCH FINISHED DISCUSSING WHAT
17 I NEEDED TO TALK TO YOU ABOUT DO YOU UNDERSTAND EVERYTHING
18 THAT YOU AND I JUST TALKED ABOUT?

19 MR BURKE YES, SIR

20 THE COURT NOW YOU UNDERSTAND THAT EVEN THOUGH YOU
21 SHOULD LISTEN TO MR RAY'S ADVICE AND CONSIDER HIS ADVICE ON
22 WHAT ARE THE PROS AND CONS OF EACH SIDE OF THE DECISION
23 ABOUT WHETHER OR NOT TO TESTIFY, THE DECISION IS YOURS
24 YOU'RE THE ONE WHO HAS TO MAKE THE DECISION MR RAY CANNOT
25 MAKE THAT DECISION FOR YOU DO YOU UNDERSTAND THAT?

1 MR BURKE YES, SIR

2 THE COURT NOW ARE YOU READY TO MAKE YOUR DECISION?

3 MR BURKE YES, SIR

4 THE COURT AND WHAT IS THAT?

5 MR BURKE I'M GOING TO TESTIFY, SIR

6 THE COURT OKAY BRING IN THE JURY

7 MS MILLICAN YOUR HONOR, MAY I TAKE UP ONE BRIEF
8 MATTER ON THE RECORD? THE STATE MOVED YESTERDAY BEFORE WE
9 RESTED TO ADMIT STATE'S EXHIBITS 2 THROUGH 16 INTO EVIDENCE
10 AND I DON'T BELIEVE 13, FOR WHATEVER REASON, WAS MARKED AS
11 BEING MOVED INTO EVIDENCE

12 THE COURT IS THERE ANY OBJECTION TO STATE'S EXHIBIT
13 13?

14 MR RAY NO, YOUR HONOR

15 THE COURT ALL RIGHT IT'S ADMITTED

16 (WHEREUPON STATE'S EXHIBIT 13 WAS ADMITTED INTO
17 EVIDENCE)

18 MS MILLICAN THANK YOU

19 THE COURT BRING IN THE JURY

20 (WHEREUPON THE JURY ENTERED THE COURTROOM AT 10 42 AM)

21 THE COURT LADIES AND GENTLEMEN, I APOLOGIZE FOR THE
22 DELAY BUT WE ARE READY TO PROCEED MR RAY

23 MR RAY THANK YOU, YOUR HONOR YOUR HONOR, THE
24 DEFENSE WOULD CALL OFFICER MCSWAIN TO THE STAND

25 RITCHIE MCSWAIN, BEING

1 DULY SWORN TESTIFIED AS FOLLOWS

2 DIRECT EXAMINATION BY MR RAY

3 Q GOOD MORNING

4 A GOOD MORNING

5 Q WOULD YOU PLEASE STATE YOUR FULL NAME FOR THE RECORD?

6 A RITCHIE MCSWAIN

7 Q AND WHO ARE YOU EMPLOYED WITH?

8 A THE SPARTANBURG COUNTY SHERIFF'S OFFICE

9 Q WHAT IS YOUR TITLE THERE?

10 A I'M A NARCOTICS AND VICE INVESTIGATOR

11 Q NOW ON MARCH 17TH, 2005 YOU WERE INVOLVED IN THE
12 SERVICE OF THIS SEARCH WARRANT, CORRECT?

13 A YES, SIR, I WAS

14 Q AND WHAT WAS YOUR -- WHAT WERE YOUR DUTIES THERE?

15 A BASICALLY WE WERE RIDING IN WHAT WE REFER TO AS THE
16 RAID VAN I WAS ACTUALLY DRIVING THE RAID VAN AFTER WE
17 PULLED UP INTO THE FRONT YARD OF THE RESIDENCE I WAS THEN
18 PART OF THE STICK, WHICH IS BASICALLY THE OFFICERS IN A LINE
19 BASICALLY MAKING ENTRY INTO THE RESIDENCE TO SECURE THE
20 RESIDENCE

21 Q SO YOU ENTERED THROUGH THE FRONT DOOR?

22 A YES, SIR, I DID

23 Q ONCE IN THERE WE'VE HEARD TESTIMONY THAT THERE WERE
24 SEVERAL FOLKS IN THERE AND THEY WERE DETAINED DID YOU HAVE
25 AN OPPORTUNITY TO SPEAK WITH ANY OF THOSE?

1 A AT A LATER TIME I DID, YES, SIR I ACTUALLY -- ONCE
2 EVERYBODY WAS DETAINED AND THE RESIDENCE WAS SECURE AND THE
3 DEFENDANT WAS BROUGHT BACK INTO THE RESIDENCE I READ EVERY
4 PERSON THEIR MIRANDA RIGHTS FROM A MIRANDA WARNING CARD THAT
5 I WEAR WITH MY BADGE

6 Q AND DID YOU HAVE AN OPPORTUNITY TO SPEAK WITH BRADLEY
7 LOGAN?

8 A YES, SIR, I DID

9 Q WAS SOMEONE ELSE THERE WITH YOU AS YOU WERE SPEAKING
10 WITH HIM?

11 A YES, SIR IT WAS INVESTIGATOR MATT HUTCHINS HE WAS
12 PRETTY MUCH CONDUCTING THE INTERVIEW I WAS THERE MORE AS A
13 WITNESS TYPE FACTOR, I GUESS YOU WOULD SAY

14 Q AND AS THEY DISCUSSED THE DRUGS THAT WERE THERE WHAT
15 DID BRADLEY LOGAN SAY ABOUT THOSE DRUGS?

16 A THERE WERE DRUGS -- I THINK THERE WERE SOME THAT WERE
17 LOCATED ACTUALLY INSIDE THE RESIDENCE, AND THERE WERE SOME
18 THAT WERE FOUND JUST OUTSIDE THE RIGHT BEDROOM WINDOW AND
19 HE ACTUALLY CLAIMED THOSE DRUGS AND ACCORDING TO THE
20 REPORT, I'VE GOT IN QUOTATION MARKS, WHICH WOULD INDICATE TO
21 ME THAT THAT WAS A DIRECT QUOTE OF WHAT HE SAID, THAT HE --
22 TO CLAIM THE DOPE AND THAT ALSO HE THREW IT OUT THE WINDOW,
23 AND THAT, AGAIN, HE CLAIMED THE DOPE

24 Q THANK YOU, OFFICER MCSWAIN

25 MS MILLICAN NO QUESTIONS FROM THE STATE, YOUR HONOR

1 THE COURT YOU CAN STEP DOWN, SIR

2 MR RAY YOUR HONOR, WE CALL CHRISTOPHER BURKE TO THE
3 STAND

4 CHRISTOPHER BURKE, BEING
5 DULY SWORN TESTIFIED AS FOLLOWS

6 DIRECT EXAMINATION BY MR RAY

7 Q PLEASE STATE YOUR FULL NAME FOR THE RECORD PLEASE

8 A MY NAME IS CHRISTOPHER LOVETT BURKE

9 Q GOOD MORNING

10 A GOOD MORNING, SIR

11 Q ON THE DAY THIS SEARCH WARRANT WAS SERVED, MAY 17TH, I
12 BELIEVE IT WAS, JUST PRIOR TO THIS WARRANT BEING SERVED
13 WHERE WERE YOU?

14 A I WAS STANDING ON THE BACK PORCH

15 Q HAD YOU BEEN INSIDE?

16 A YES, SIR

17 Q HOW DO YOU KNOW BRADLEY LOGAN?

18 A BRADLEY LOGAN, THAT'S MY FIRST COUSIN

19 Q WHAT'S YOUR PROFESSION?

20 A WHAT'S MY PROFESSION? I'M A BARBER I'M A MASTER
21 BARBER

22 Q WHY WERE YOU AT BRADLEY LOGAN'S HOUSE?

23 A WHY I WAS AT BRADLEY LOGAN'S HOUSE? TO CUT HIS HAIR

24 Q AND DID HE PAY YOU FOR CUTTING HIS HAIR?

25 A NO, THAT'S MY COUSIN

1 Q YOU JUST CUT IT FOR FREE BUT NORMALLY YOU DO GET PAID
2 FOR THAT, CORRECT?

3 A YES, SIR YES, SIR I WORK AT A SHOP IT'S ON EAST
4 BLACKSTOCK

5 Q SO BRADLEY LOGAN BEING YOUR COUSIN, ARE YOU AWARE OF
6 THE -- ARE YOU AWARE OF BRAD LOGAN'S ILLEGAL ACTIVITIES?

7 A HUH? COULD YOU REPHRASE THE QUESTION?

8 Q ARE YOU AWARE OF BRADLEY LOGAN EVER SELLING DRUGS
9 BEFORE?

10 A HAVE I EVER SAW HIM SELL SOMEBODY SOME DRUGS?

11 Q SURE

12 A NO, SIR

13 Q WHEN YOU WERE ON THE BACK PORCH, ---

14 A YES, SIR

15 Q --- WHEN THIS WARRANT WAS SERVED, ---

16 A YES, SIR

17 Q --- AND YOU STARTED -- THE OFFICERS SAY YOU STARTED
18 RUNNING AWAY FROM THEM EXPLAIN THAT SITUATION TO ME

19 A WELL, I WAS ON THE BACK PORCH JUST THE ONLY THING I
20 HEARD, SOME SCUFFLING OR WHATEVER, SCUFFLING SO THE FIRST
21 THING THAT CAME TO MY MIND, WHAT'S GOING ON IN THERE? SO I
22 TOOK OFF RUNNING AS I WAS RUNNING THE POLICE, THEY CAUGHT
23 ME, CAUGHT ME, RIGHT THEY GOT ME ON THE GROUND, TOLD ME TO
24 PUT MY HANDS BEHIND MY BACK I PUT MY HANDS BEHIND MY BACK
25 AND I TOLD THE OFFICER, I STATED, SIR, I DON'T HAVE

1 NOTHING, SIR SO THE OFFICER SEARCHED ME HE SEARCHED ME,
2 ANOTHER OFFICER SEARCHED ME TOO THEY SEARCHED THE AREA I
3 WAS IN, SIR SO THEY TOOK ME BACK IN THE RESIDENCE

4 AS I'M SITTING IN THE RESIDENCE TWENTY-FIVE OR THIRTY
5 MINUTES LATER SOME OFFICER COME IN AND HE JUST WAS LIKE, OH,
6 WE FOUND SOME DRUGS OUTSIDE, AND THE DRUGS, THEY GOT TO BE
7 YOURS AND I'M LIKE, HUH? HOW?

8 Q SO ---

9 A HOW? BECAUSE THE OFFICER WAS LIKE, HE WAS LIKE RIGHT
10 HERE BESIDE ME RUNNING THE WHOLE TIME YOU DIDN'T -- DID
11 YOU SEE ME THROW ANY DRUGS? DID YOU SEE ME WITH ANY -- HAVE
12 I -- NO SO I WENT BACK IN THE HOUSE BRADLEY LOGAN
13 STATED, I'M CLAIMING THE DRUGS STATED, NO, WE'RE TAKING
14 EVERYBODY TO JAIL

15 Q SO YOU WERE IN THERE FOR TWENTY-FIVE TO THIRTY MINUTES
16 BEFORE THEY EVER TALKED ABOUT DRUGS OUTSIDE?

17 A YES, SIR

18 Q DID YOU HAVE DRUGS ON YOU THAT DAY?

19 A NO, SIR

20 Q DO YOU KNOW WHERE THOSE DRUGS CAME FROM?

21 A NO, SIR

22 Q DO YOU KNOW ANY OF THE OTHER FOLKS THAT WERE IN THAT
23 TRAILER AT THE TIME?

24 A YES, SIR

25 Q HOW LONG HAD YOU KNOWN THEM?

1 A SEE MY OTHER COUSIN, COREY, WAS IN THERE TOO COREY
2 LOVETT HE WAS IN THERE SO, YES THAT'S MY FIRST COUSIN
3 TOO THAT'S BRADLEY'S BROTHER

4 Q SO THESE WERE FAMILY OR ACQUAINTANCES OF YOURS?

5 A YES, SIR

6 Q THAT YOU HAD KNOWN FOR -- OR AT LEAST THE FAMILY FOR
7 PROBABLY SOME TIME?

8 A UM-HUM (AFFIRMATIVE), MY WHOLE LIFE MY FIRST COUSIN,
9 LIKE I TOLD YOU, THAT'S MY FIRST COUSIN

10 Q WHAT WAS THE WEATHER LIKE THAT DAY?

11 A IT WAS COLD, RAINY IT WAS A DREARY DAY

12 Q AND AFTER GOING THROUGH THE BRIARS AND ALL WHAT WERE
13 YOUR CLOTHES LIKE? WET, DRY?

14 A SOAKING WET 'CAUSE I GOT SCARS TO PROVE FROM THE
15 BRIARS AND EVERYTHING I'VE GOT THE SCARS RIGHT NOW

16 Q AND HOW WOULD YOU DESCRIBE THE BRIARS, AND THE
17 THICKNESS, AND ALL THAT?

18 A WELL, IT WAS THICK SAY YOU RUNNING THROUGH SOME
19 GRASS, IT'S SLIPPERY WET BUT THIS WAS BRIARS WHERE IT WAS
20 PULLING ON YOUR SKIN AND ON YOUR LEGS I COULD SHOW YOU MY
21 LEGS RIGHT NOW FROM WHERE THE BRIARS -- THEY SCRATCHED MY
22 LEGS UP AND MY ARMS

23 Q DID YOU HAVE ANY INVOLVEMENT IN THE MANUFACTURE OF
24 DRUGS IN THAT TRAILER AND THE SELL OF DRUGS IN THAT TRAILER
25 OR ANYTHING TO DO WITH ANY TYPE OF ONGOING DRUG BUSINESS IN

1 THAT TRAILER?

2 A NO, SIR

3 Q THANK YOU, CHRIS

4 CROSS EXAMINATION BY MS MILLICAN

5 Q HOW LONG WERE YOU AT 108 RAYMOND DRIVE ON THAT DAY?

6 A HOW LONG WAS I THERE? I'D SAY APPROXIMATELY -- WELL,
7 MY COUSIN CAME AND GOT ME TO CUT HIS HAIR, GOT OVER THERE, I
8 CUT HIS HAIR AND THEN I WENT AND STOOD ON THE PORCH AND
9 CALLED ME A RIDE 'CAUSE I WAS GOING TO LEAVE

10 Q SO ABOUT HOW LONG WERE YOU THERE?

11 A PROBABLY ABOUT THIRTY OR FORTY-FIVE MINUTES

12 Q AND WHEN YOU SPEAK OF THE COUSIN, WHOSE HAIR YOU WERE
13 CUTTING, YOU'RE TALKING ABOUT BRAD LOGAN, CORRECT?

14 A YES, MA'AM

15 Q YOU WERE CUTTING BRAD LOGAN'S HAIR AT 7 47 IN THE
16 MORNING?

17 A 7 47 IN THE MORNING?

18 Q YES OR ---

19 A BUT YOU GOT TO UNDERSTAND, I GO TO WORK AT 9 00 IN THE
20 MORNING TOO

21 Q THAT MEANS THAT WHEN THE POLICE ARRIVED THERE AT 7 47
22 YOU HAD BEEN THERE HALF AN HOUR SO YOU STARTED CUTTING HIS
23 HAIR APPROXIMATELY 7 17?

24 A YEAH, GIVE OR TAKE

25 Q BRAD LOGAN HAD CORNROWS, DIDN'T HE?

1 A YES, MA'AM

2 Q I WANT YOU TO TAKE A LOOK AT THIS PICTURE DO YOU
3 RECOGNIZE THE PERSON IN THAT PICTURE?

4 A YES, MA'AM

5 Q WHO IS THAT?

6 A THIS IS BRADLEY LOGAN

7 Q AND DESCRIBE HIS HAIR TO THE JURY

8 A BRADLEY LOGAN HAVE CORN ROWS GOING TO THE BACK

9 Q AND IS THAT THE WAY HIS HAIR LOOKED THE MORNING THAT
10 YOU CUT IT?

11 A NOT EXACTLY LIKE THAT 'CAUSE THE EDGES OF IT -- I JUST
12 TAKE HIM UP ON THE EDGES OF IT

13 Q ON THE EDGES OF IT?

14 A YEAH, THEY -- WELL, YOU TOUCH SOMEBODY UP ON THE EDGE,
15 RIGHT, YOU WOULD CALL THIS ONE LIKE A SHAPE-UP, A TAPE LINE
16 YEAH, IT'S A SHAPE-UP 'CAUSE YOU KNOW HE WOULDN'T WANT ME
17 TO CUT ALL HIS BRAIDS OFF

18 Q AND SO YOU SHAPED UP HIS HAIR AT 7 17 IN THE MORNING,
19 BUT YOU DIDN'T HAVE TO BE AT WORK TIL NINE?

20 A YES, MA'AM

21 Q ON A COLD, RAINY, WINTER MORNING YOU WENT OVER THERE TO
22 -- WHY WERE YOU ON THE BACK PORCH IN THE RAIN?

23 A WHY WAS I ON THE BACK PORCH? BECAUSE I STOOD ON THE
24 BACK PORCH TO USE THE CELL PHONE

25 Q IN THE RAIN?

1 A BECAUSE INSIDE THE TRAILER THE CELL PHONE WON'T WORK,
2 AND I HAD TO LEAVE LIKE I TOLD YOU, I HAD TO BE AT WORK AT
3 9 00 AND I WORK -- IT'S ON EAST BLACKSTOCK ROAD AND
4 THAT'S GOING TO TAKE YOU A MINUTE TO GET TO SPARTANBURG FROM
5 CHESNEE

6 Q BUT IT WASN'T EVEN 8 00 YET YOU DIDN'T HAVE TO BE AT
7 WORK TIL NINE

8 A LIKE I TOLD YOU, I WAS ON THE PORCH MAKING A PHONE CALL
9 TO CALL ME A RIDE

10 Q YOU STATED YOU WERE NOT AWARE OF ANY ILLEGAL ACTIVITY
11 GOING ON IN THAT TRAILER

12 A NO, MA'AM

13 Q AM I CORRECT IN THAT?

14 A MA'AM?

15 Q IS THAT CORRECT? DID YOU NOT STATE THAT YOU WERE
16 UNAWARE OF ANY ILLEGAL ACTIVITY GOING ON IN THAT TRAILER?

17 A YES, MA'AM

18 Q DID YOU NOT NOTICE THE PYREX CONTAINERS, AND THE
19 SPOONS, AND THE METAL IN THE KITCHEN ---

20 A NO, MA'AM

21 Q --- USED TO MAKE CRACK? DID YOU NOT NOTICE THE CAMERAS
22 THAT WERE OUTSIDE THE TRAILER ON TWO DIFFERENT CORNERS ON
23 THE FRONT, AND THEN ONE IN THE MIDDLE AND ON THE BACK?

24 A BUT -- WELL, CAN I ASK YOU THIS RIGHT HERE? SO YOU'RE
25 TELLING ME YOU CAN'T HAVE CAMERAS ON YOUR HOUSE?

1 Q YOU'RE NOT ASKING ME QUESTIONS, I'M ASKING YOU ANSWER
2 THE QUESTION, DID YOU NOTICE THEM OR NOT?
3 A YES, MA'AM
4 Q WHAT DID YOU THINK THEY WERE THERE FOR?
5 A I HAVE NO IDEA THAT WAS MY FIRST TIME COMING OVER
6 THERE
7 Q DO YOU HAVE CAMERAS ON YOUR HOUSE?
8 A NO, MA'AM
9 Q DID YOU SEE THE CAMERA, THE TV MONITORS INSIDE SHOWING
10 WHAT THE CAMERAS OUTSIDE WERE RECORDING?
11 A YES, MA'AM HOW COULD I NOT SEE IT?
12 Q DID YOU SEE CRACK COCAINE LYING INSIDE THAT HOUSE
13 ANYWHERE?
14 A NO, MA'AM
15 Q YOU RAN FROM THE COPS BECAUSE YOU KNEW ILLEGAL DRUG
16 ACTIVITY WAS GOING ON AT 108 RAYMOND DRIVE, DIDN'T YOU?
17 A NO, MA'AM
18 Q YOU FELL WHEN YOU WERE RUNNING AND YOU TOSSED THAT
19 CRACK OFF TO THE SIDE WHILE THE COPS WERE CHASING YOU,
20 DIDN'T YOU?
21 A NO, MA'AM
22 Q YOU SAW THE COPS COMING ON THAT TV SCREEN AND YOU RAN?
23 A NO, MA'AM
24 Q YOU STATED THERE WAS A SCUFFLE GOING ON THERE WASN'T
25 A SCUFFLE GOING ON, YOU RAN BECAUSE THE COPS WERE COMING, IS

1 THAT CORRECT?

2 A NO, MA'AM

3 Q WHEN YOU SAID YOU HAD COPS BESIDE YOU RUNNING WHY DID
4 YOU CONTINUE TO RUN THROUGH BRIARS TO TEAR UP YOUR LEGS IF
5 YOU HEARD A SCUFFLE AND THAT'S THE REASON YOU RAN FROM THAT
6 HOUSE?

7 A WHY DID I CONTINUE TO RUN?

8 Q YES

9 A BECAUSE FROM MY UNDERSTANDING AND MY PERSONAL
10 EXPERIENCE COPS WILL BEAT YOU DOWN

11 Q FOR STANDING SOME PLACE WITH NO DRUGS ON YOUR PERSON
12 COPS WILL BEAT YOU DOWN?

13 A MA'AM -- MA'AM, LISTEN, I'M STANDING ON THAT PORCH, ALL
14 I HEAR IS A LOUD SCUFFLE I TAKE OFF RUNNING THE POLICE
15 RIGHT THERE JUST LIKE THE OFFICER STATED HE SUBDUED ME,
16 GOT ME ON THE GROUND, PUT ME IN CUFFS, AND HE BRUNG ME BACK
17 IN THE TRAILER

18 Q WHY DID YOU RUN?

19 A FROM FEAR

20 Q OF THE SCUFFLE THAT WAS GOING ON INSIDE?

21 A YES, MA'AM

22 Q OR WAS IT BECAUSE YOU HAD DRUGS ON YOUR PERSON AND YOU
23 DIDN'T WANT THEM TO SEE IT?

24 A NO, MA'AM

25 Q YOU KNOW WHERE THE DRUGS CAME FROM OUTSIDE BECAUSE YOU

1 PUT THEM THERE, IS THAT CORRECT?

2 A NO, MA'AM

3 MS MILLICAN WE HAVE NO FURTHER QUESTIONS, YOUR
4 HONOR THANK YOU

5 THE COURT ANY REDIRECT?

6 MR RAY NO, YOUR HONOR

7 THE COURT ALL RIGHT, SIR, YOU CAN STEP DOWN
8 ANYTHING ELSE FROM THE DEFENDANT?

9 MR RAY NO, SIR, YOUR HONOR

10 THE COURT ANY REPLY?

11 MS MILLICAN NO, YOUR HONOR

12 THE COURT STATE READY TO CLOSE?

13 MS MILLICAN MAY WE APPROACH JUST BRIEFLY, YOUR
14 HONOR?

15 (WHEREUPON A BENCH CONFERENCE WAS HELD OFF THE RECORD
16 IN THE PRESENCE OF THE JURY, BUT OUT OF THEIR HEARING)

17 THE COURT ALL RIGHT I'M GOING TO LET YOU FOLKS STEP
18 IN THE JURY ROOM FOR A BRIEF BREAK I'M GOING TO HAVE YOU
19 RIGHT BACK OUT HERE

20 (WHEREUPON THE JURY EXITED THE COURTROOM AT 11 02 AM)

21 THE COURT OKAY

22 MR RAY YOUR HONOR, THE DEFENSE WOULD RENEW ALL
23 MOTIONS AND OBJECTIONS PREVIOUSLY RULED ADVERSELY TO THE
24 DEFENSE

25 THE COURT ALL RIGHT I DENY THOSE MOTIONS

1 MR RAY AND AGAIN, YOUR HONOR, ---

2 THE COURT NOW THE STATE WANTS TO WAIVE THEIR OPENING,
3 CORRECT?

4 MS MILLICAN YES, YOUR HONOR

5 THE COURT YOU READY TO PROCEED WITH YOUR CLOSING
6 ARGUMENT?

7 MR RAY YES, YOUR HONOR JUST THAT THE DEFENSE WOULD
8 ALSO RENEW ITS MOTION FOR A DIRECTED VERDICT BASED ON THE
9 SAME GROUNDS AS PREVIOUSLY STATED

10 THE COURT I DENY THAT MOTION ALL RIGHT BRING THE
11 JURY IN

12 MR RAY WOULD YOUR HONOR LIKE US TO SUBMIT REQUESTS
13 TO JURY -- REQUESTS ---

14 THE COURT IF YOU HAVE THEM YEAH, I'M DONE WITH THE
15 CHARGE, BUT I'LL LOOK AT YOUR REQUEST BRING THEM IN

16 (WHEREUPON THE JURY ENTERED THE COURTROOM AT 11 03 AM)

17 THE COURT LADIES AND GENTLEMEN, NOW THAT YOU HAVE
18 HEARD ALL OF THE TESTIMONY AND EVIDENCE THAT YOU WILL HEAR
19 IN THIS CASE WE'RE READY FOR THE CLOSING ARGUMENTS MR
20 RAY

21 MR RAY THANK YOU, YOUR HONOR GOOD MORNING I'M
22 GOING TO TRY NOT TO TAKE UP TOO MUCH OF YOUR TIME I KNOW
23 YOU'VE BEEN WAITING AROUND A LOT HERE THESE TWO COUPLE OF
24 DAYS AND I'LL TRY TO KEEP THIS BRIEF BUT THERE'S JUST A
25 LOT I WANT TO TOUCH ON SO I JUST HOPE YOU'LL BEAR WITH ME

1 EXCUSE MY VOICE, THIS COLD'S CATCHING UP TO ME A LITTLE BIT
2 NOW

3 WHEN WE FIRST STARTED I ASKED FOR YOU TO LOOK AT THINGS
4 YOU DON'T SEE IN THIS CASE THE STATE WANTS YOU TO THINK
5 CHRIS WAS INVOLVED IN MAKING AND SELLING CRACK BUT HAVE
6 THEY PUT FORTH EVIDENCE NECESSARY TO CONVINCE YOU OF THAT?
7 AGAIN, THE BURDEN OF THE STATE IS THEY HAVE TO CONVINCE ALL
8 OF YOU BEYOND A REASONABLE DOUBT THAT CHRIS IS GUILTY
9 REASONABLE DOUBT, WHAT IS THAT? IT'S INTERESTING SINCE IT'S
10 -- IT CAN BE COMPLEX I'LL COME BACK TO THAT LATER

11 FIRST, LET'S TALK ABOUT THE PRIOR POLICE INVESTIGATION
12 OF THIS CASE WE'VE HEARD TESTIMONY THERE WAS SURVEILLANCE
13 IN THE DAYS PRECEDING THE SERVICE OF THIS SEARCH WARRANT AND
14 THAT CHRIS WAS NEVER SEEN AT THE HOUSE ON THOSE DAYS CHRIS
15 TESTIFIED THAT THIS WAS THE FIRST TIME HE'D ACTUALLY BEEN TO
16 THIS TRAILER THAT BRAD LOGAN WAS LIVING IN

17 WE WERE TOLD THAT THIS WAS A PLACE WHERE SOME PEOPLE
18 WOULD COME AND BUY DRUGS AND THERE WERE DRUGS SOLD OUT OF
19 THE TRAILER AND THERE WERE FIVE PEOPLE THERE WHEN THIS
20 SEARCH WARRANT WAS SERVED THE WARRANT WAS FOR THE HOUSE,
21 THE OUTBUILDINGS, THE CURTILAGE, WHICH IS THE AREA RIGHT
22 AROUND THE HOUSE, AND THE PERSON OF BRAD LOGAN HE WAS
23 SPECIFICALLY MENTIONED

24 WHEN THE POLICE WENT THROUGH THE FRONT DOOR BRAD LOGAN
25 WAS IN THE BEDROOM THERE -- WHEN THE POLICE WENT THROUGH

1 THE BEDROOM DOOR BRAD LOGAN FOUGHT -- HE -- IT APPARENTLY
2 TOOK A LITTLE BIT OF TIME TO SUBDUE BRAD LOGAN ONCE THEY
3 DID WHEN THEY WENT INSIDE THEY FOUND MONEY IN THE ROOM,
4 FAIRLY LARGE AMOUNTS OF MONEY, DRUGS IN BRAD LOGAN'S POCKET,
5 LOTS OF DRUGS OUTSIDE THE TRAILER AND BELOW THE WINDOW OF
6 THE BEDROOM

7 THERE WAS TESTIMONY THAT THE WINDOW WAS OPEN, OPEN ON
8 THE COLD, RAINY MORNING, FREEZING RAIN, THE WINDOW WAS OPEN
9 MAYBE IT WAS OPEN FOR A PARTICULAR REASON NEVERTHELESS, WE
10 HEARD TESTIMONY EVERYBODY WAS CHARGED WITH THE DRUGS THAT
11 WERE FOUND OUTSIDE THAT WINDOW THOSE DRUGS WEREN'T
12 FINGERPRINTED THEY DIDN'T BOTHER

13 WE'VE HEARD TESTIMONY OF INVESTIGATOR HUTCHINS THAT
14 MAYBE THEY WERE FINGERPRINTED, MAYBE NOT, MAYBE IT WAS
15 BECAUSE THE BAGS WERE WET ONE OR TWO OF THE OFFICERS TOLD
16 US THE DRUGS THEY SAY THEY FOUND NEAR CHRIS WERE DRY
17 THERE'S TESTIMONY THAT IT MIGHT HAVE TAKEN SOME TIME FOR
18 THOSE TO BE FOUND

19 OFFICER DUNCAN'S THE ONE THAT FOUND THOSE DRUGS HE
20 WAS INVOLVED IN GOING THROUGH THE FRONT DOOR OF THAT TRAILER
21 FIGHTING WITH BRAD LOGAN, GOING THROUGH THE BEDROOM WHERE
22 BRAD LOGAN WAS THEN HE GOES OUTSIDE AND SEARCHES AROUND,
23 THEY FIND DRUGS OUTSIDE THE BEDROOM WINDOW AND THEY SAY THEY
24 FIND DRUGS NEAR WHERE CHRIS BURKE WAS FOR SOME REASON THE
25 DRUGS NEAR CHRIS BURKE WERE DRY ON A COLD, RAINY MORNING

1 THE OTHERS WEREN'T FINGERPRINTED BECAUSE THEY WERE WET
2 THINGS DON'T MAKE SENSE

3 THE BAG THEY SAY THAT WAS FOUND NEAR WHERE CHRIS WAS OR
4 WAS NEAR AN OUTBUILDING -- WE DIDN'T HEAR ANY TESTIMONY IF
5 THE OUTBUILDING WAS SEARCHED I DON'T KNOW WE ALSO HEARD
6 OFFICER LACHICA SAY THAT HE DIDN'T SEE CHRIS THROW ANY
7 DRUGS, THAT WHEN HE CAME AROUND THE SIDE OF THE HOUSE CHRIS
8 WAS COMING OFF THE STEPS TO THE BACK PORCH AND WAS RUNNING
9 HE DIDN'T SEE CHRIS THROW IT HOW COULD THEY HAVE GOTTEN
10 HERE? THERE'S ANY NUMBER OF DIFFERENT WAYS THEY COULD HAVE
11 GOTTEN THERE NO ONE CAN TELL US -- NO ONE KNOWS HOW THEY
12 GOT THERE COULD THERE HAVE BEEN SOMEONE ELSE OUT THERE
13 STANDING FARTHER AWAY? I DON'T KNOW

14 OFFICERS STATED THAT -- I BELIEVE IT WAS OFFICER
15 HUTCHINS, AS HE WENT THROUGH THE HOUSE, WENT TO THE LEFT
16 WHERE THE KITCHEN WAS AND THERE WAS THE BACK DOOR, THE BACK
17 DOOR WAS OPEN THERE WAS SEVERAL OTHER PEOPLE AROUND THAT
18 AREA COULD ONE OF THEM HAVE STEPPED OVER AND THROWN SOME
19 DRUGS OUT? WE DON'T KNOW WE DON'T KNOW WHERE THOSE DRUGS
20 CAME FROM

21 IF CHRIS HAD DRUGS ON HIM AND HE WERE RUNNING AWAY IS
22 HE GOING TO THROW THE DRUGS OUT INTO A CLEAR AREA OR ARE YOU
23 GOING TO THROW THEM DEEPER IN THIS THICKET OF BRIARS WHERE
24 NOBODY WANTS TO GO? ARE YOU GOING TO THROW IT OUT WHERE IT
25 COULD EASILY BE FOUND OR ARE YOU GOING TO GET RID OF IT

1 WHERE IT'S GOING TO BE MORE DIFFICULT TO FIND?

2 COULD BRAD LOGAN HAVE THROWN IT OUT THE BACK WINDOW?

3 COULD THAT BE SOMETHING THAT HE -- HE CLAIMED THROWING DRUGS
4 OUT THE BACK WINDOW COULD THAT BE SOMETHING THAT HE THREW?

5 WHAT'S MOST INTERESTING TO ME IN THIS CASE, AND THIS
6 PHRASE STICKS OUT IN MY MIND, WHEN I WAS A KID, A TEENAGER A
7 MOVIE CAME OUT IT'S ONE OF THOSE STUPID MOVIES AND IT'S
8 KIND OF EMBARRASSING TO SAY YOU EVEN WATCHED IT, BUT BILL
9 AND TED'S EXCELLENT ADVENTURE AND I REMEMBER WATCHING THAT
10 MOVIE THERE'S THIS ONE PHRASE AND BILL AND TED ARE
11 STANDING THERE AND THERE'S THIS CIRCLE K MINI-MART THERE
12 AND THE WHOLE PREMISE OF THIS MOVIE IS THERE'S THESE
13 TELEPHONE BOOTHS THAT THEY ACTUALLY TRAVEL THROUGH TIME IN,
14 BUT THEY'RE SITTING THERE

15 AND WHEN THESE THINGS START GOING AND ELECTRICITY'S
16 FLYING AND THEN THEY DISAPPEAR AND BILL AND TED ARE
17 STANDING THERE AND ONE LOOKS AT THE OTHER AND THEY SAY
18 SOMETHING LIKE STRANGE THINGS ARE AFOOT AT THE CIRCLE K
19 WELL, I THINK STRANGE THINGS ARE AFOOT HERE WE HAVE A BAG
20 THAT WAS TESTED FOR FINGERPRINTS AND NOBODY SEEMS TO KNOW
21 THE RESULTS NOBODY KNOWS WHERE A REPORT IS SAYING THAT
22 THESE ARE -- WHOSE FINGERPRINTS THEY ARE OR EVEN TO SAY WE
23 COULDN'T GET ANY FINGERPRINTS WHERE IS THAT? THE POLICE
24 HAD IT WE HAVEN'T BEEN SHOWN IT CONVENIENTLY, NO ONE
25 KNOWS WHERE IT IS NOBODY EVEN KNOWS WHO WOULD HAVE IT

1 IT'S JUST DISAPPEARED NOW

2 WOULDND'T IT HAVE BEEN NICE TO KNOW THE RESULTS OF THAT
3 FINGERPRINT TEST? MAYBE IT'S NOT CONVENIENT FOR US TO KNOW
4 WHY DID THEY ONLY TRY TO GET FINGERPRINTS FROM THAT ONE BAG?
5 WELL, WE'VE HEARD THAT BRAD LOGAN CLAIMED SOME OF THE DRUGS
6 WE'VE HEARD THAT SOME OF THE BAGS WERE MYSTERIOUSLY WET
7 WHILE THIS ONE WASN'T WE ALSO KNOW EVERYBODY WAS CHARGED
8 FOR THOSE OTHER DRUGS MAYBE FINGERPRINTS ON THOSE DRUGS
9 WOULDND'T HAVE BEEN VERY USEFUL EITHER, AT LEAST USEFUL TO
10 THE STATE

11 THE PROBLEM WITH THE BAG THAT WAS OUT, THEY SAY NEAR
12 WHERE CHRIS WAS, IS THAT THEY HAVE TO FIND SOMEBODY TO PIN
13 IT ON AND SINCE THEY SAY CHRIS WAS THE CLOSEST ONE TO IT
14 THEY'RE GOING TO PIN IT ON HIM FINGERPRINTS, IF TESTED,
15 HAD COME BACK THAT THEY WERE CHRIS' FINGERPRINTS, THAT WOULD
16 HAVE MADE A GREAT CASE FOR THE STATE BECAUSE THEN YOU CAN
17 PUT HIS HANDS ON THOSE DRUGS BUT AGAIN, MYSTERIOUSLY, WE
18 DON'T KNOW WHERE THOSE FINGERPRINTS ARE WE DON'T KNOW THE
19 RESULTS OF THAT TEST SHOULDN'T WE ALL KNOW?

20 THE STATE EXPECTS YOU TO SIT HERE AND GO BACK AND
21 DELIBERATE AND MAKE DECISIONS ABOUT THE FREEDOM OF CHRIS
22 BURKE SHOULDN'T YOU KNOW WHAT HAPPENED TO THE FINGERPRINTS
23 IF YOU'RE GOING TO MAKE THAT DECISION?

24 THE STATE'S TRYING TO CONVINCE YOU THAT CHRIS WAS PART
25 OF SOME CRIMINAL ENTERPRISE THAT WAS GOING ON THEY'RE

1 THROWING EVERYTHING THEY CAN AT YOU THEY'RE USING THE
2 DRUGS THAT WERE FOUND IN BRADLEY LOGAN'S POCKET THEY'RE
3 USING THE DRUGS THAT WERE OUTSIDE THIS WINDOW THAT EVERYBODY
4 WAS CHARGED WITH

5 GUILT BY ASSOCIATION IS WHAT THE STATE IS DOING HERE
6 GUILT BY ASSOCIATION IS NOT THE WAY WE DO THINGS IN THIS
7 COUNTRY GUILT BY MERELY BEING PRESENT WHERE DRUGS ARE
8 FOUND IS NOT THE WAY WE DO THINGS IN THIS COUNTRY INSTEAD
9 THE STATE HAS TO PROVE TO YOU BEYOND A REASONABLE DOUBT THAT
10 CHRIS WAS PART OF THIS CRIMINAL ENTERPRISE OR THAT HE WAS
11 POSSESSING THESE DRUGS AND THAT HE HAD DOMINION AND CONTROL
12 OVER THESE DRUGS

13 NOW WE'VE TALKED ABOUT REASONABLE DOUBT I'VE HEARD
14 REASONABLE DOUBT BEST DESCRIBED AS DOUBT THAT WOULD MAKE A
15 PERSON HESITATE TO ACT WHAT I ASK OF ALL OF Y'ALL IS WHEN
16 YOU GO BACK AND DELIBERATE THINK ABOUT ALL THE QUESTIONS
17 THAT HAVEN'T BEEN ANSWERED IN THIS CASE THINK ABOUT THE
18 INCOMPLETE INVESTIGATION THINK ABOUT THE UNDISCLOSED
19 FINGERPRINT RESULTS

20 THEN, IF YOU HESITATE TO ACT, IF YOU HESITATE TO
21 SACRIFICE A MAN'S FREEDOM, AND I SUBMIT TO YOU THAT YOU
22 SHOULD, THAT YOU HAVE AN OBLIGATION TO THIS COUNTRY, YOU
23 HAVE AN OBLIGATION OF OUR SYSTEM OF JUSTICE, THAT YOU SHOULD
24 FIND CHRIS NOT GUILTY OF THESE CHARGES THANK YOU

25 MS MILLICAN THIS IS A SIMPLE CASE OF A DRUG DEALER

1 TRYING TO DITCH HIS STASH OF CRACK COCAINE BEFORE THE COPS
2 CATCH HIM LIEUTENANT DUNCAN TESTIFIED YESTERDAY THAT
3 HAPPENS ALL THE TIME

4 ON MARCH 17TH OF THIS YEAR AT 7 47 IN THE MORNING THE
5 DEFENDANT WAS AT 108 RAYMOND ROAD, AND HE SAW ALL THOSE
6 CAMERAS IN THIS PLACE WITH A SOPHISTICATED SURVEILLANCE
7 SYSTEM SET AND CRACK COCAINE COOKING IN THE KITCHEN HE SAW
8 THE COPS WERE COMING ON THE CAMERAS AND HE GRABBED HIS
9 CRACK COCAINE AND RAN OUT THE BACK DOOR, OUT THE BACK DOOR
10 BECAUSE THEY WERE COMING IN THE FRONT DOOR THEY WERE
11 COMING THROUGH THE FRONT DOOR

12 HE RAN AS FAST AS HE COULD WHEN HE SAW THE DEPUTIES
13 COMING AFTER HIM FROM AROUND THE CORNER HE KEPT GOING
14 THROUGH THE BRIARS TORE HIS LEGS UP, ACCORDING TO HIS
15 TESTIMONY, BUT HE KEPT RUNNING HE SLIPPED ON AN ICY GROUND
16 AND TOSSED THE CRACK OFF TO THE SIDE BECAUSE NO ONE ELSE WAS
17 OUT THERE HE WAS APPROXIMATELY THIRTY TO FIFTY YARDS AWAY
18 FROM THE BACK DOOR OF THAT TRAILER HE WAS THE ONLY ONE
19 OVER THERE THERE WAS A THICKET PAST THE GRASS, AND A SHED,
20 AND A TREE AND THIS BAG OF DOPE MADE IT ALL THE WAY OUT
21 THERE

22 IT WEIGHED TWELVE POINT EIGHT THREE GRAMS IT'S A
23 BUNDLE OF FEATHERS THROW A BUNDLE OF FEATHERS THIRTY TO
24 FIFTY YARDS AWAY IN THE RAIN AND ENDED UP THERE DRY
25 BECAUSE THE DEFENDANT WAS RUNNING THROUGH THERE AND TOSSED

1 IT, PITCHED IT OFF TO THE SIDE SO THAT THE COPS WHEN THEY
2 CAUGHT HIM, BECAUSE HE FELL, AND IT WAS PROBABLY IMMINENT TO
3 HIM THEY WERE GOING TO BE CATCHING UP TO HIM, HE DIDN'T WANT
4 IT ON HIM THOUGHT MAYBE IF HE'D THREW IT OVER IN A TRASH
5 PILE OVER BY THAT SHED THEY WOULDN'T SEE IT

6 LOOK AT THE PHOTOS YOU CAN SEE THE TRASH PILE THIS
7 DOPE WAS IN IT WAS OVER BY THE EDGE OF IT WHERE HE PITCHED
8 IT OFF BY IT MAYBE THEY WOULDN'T SEE IT THERE MAYBE IT
9 WOULD NEVER GET RECOVERED BUT WHO WOULD JUST LEAVE TWELVE
10 POINT EIGHT THREE GRAMS OF CRACK COCAINE, WHICH IS WORTH,
11 ACCORDING TO MATT HUTCHINS' TESTIMONY, APPROXIMATELY TWELVE
12 TO THIRTEEN HUNDRED DOLLARS OUT IN THE RAIN? WHO WOULD
13 LEAVE THAT LAYING OUT IN THE RAIN?

14 IF THAT BAG HAD BEEN THERE LONGER THAN JUST A FEW
15 MINUTES IT WOULD HAVE -- IT WOULD HAVE HAD WATER PUDDLED UP
16 IN IT WHERE IT WAS CREASED UP THERE WAS NO PUDDLE OF WATER
17 IN IT YOU CAN LOOK AT THE PHOTOGRAPH OF THE BAG HOW THEY
18 FOUND IT YOU CAN SEE THAT THE GRASS AROUND IT WAS WET
19 YOU CAN SEE EVERYTHING AROUND IT IS SHINY AND WET BUT
20 THERE'S NO PUDDLE OF WATER ON THAT BAG IT'S BECAUSE IT WAS
21 EITHER IN THE DEFENDANT'S HAND OR IN HIS POCKET MOMENTS
22 BEFORE IT WAS THROWN DOWN, SECONDS BEFORE IT WAS FOUND

23 THE SIZE, SHAPE, AND CONSISTENCY OF THE CRACK IN THE
24 BAG MATCHED THE SIZE, SHAPE, AND CONSISTENCY OF ALL THE
25 CRACK FOUND INSIDE THAT HOUSE AND AROUND THAT HOUSE AND

1 RIGHT OUTSIDE THE WINDOW ON THE GROUND WHERE BRAD LOGAN
2 APPARENTLY PITCHED IT OUT BRAD LOGAN DIDN'T PITCH THESE
3 DRUGS FROM THAT WINDOW FIFTY YARDS OVER BEHIND THE BUILDING
4 THROUGH THE THICKET THAT WEIGHED ABOUT AS MUCH OF A BUNDLE
5 OF FEATHERS HE DIDN'T PITCH THAT, THE DEFENDANT DID BUT
6 THEY MATCHED THEY WERE EVEN IN THE SAME TYPE OF BAGGY, THE
7 SAME KIND OF GLAD BAGGIES, THE DRUGS WERE THEY WERE INSIDE
8 THE HOUSE THERE'S A WHOLE BOX OF THEM FOUND IN THE
9 KITCHEN

10 YOUR COMMON SENSE THAT I ASKED YOU TO APPLY AT THE
11 BEGINNING OF THIS TRIAL AND YOUR LOGIC AND LIFE-TIME
12 EXPERIENCES APPLIED TO THE FACTS IN THIS CASE SHOWED THE
13 DEFENDANT DISCARDED THOSE DRUGS MOMENTS BEFORE THE COPS
14 FOUND HIM THE COPS WERE SATURATED CHASING THE DEFENDANT
15 THROUGH THE RAIN THEY WERE IN A PATROL CAR, JUMPED OUT,
16 STARTED RUNNING BY THE TIME THEY CAUGHT HIM THEY WERE
17 SOAKING WET THOSE DRUGS WEREN'T LAYING THERE LONG, WITHIN
18 THAT PERIOD OF TIME WHEN THEY SAW NOBODY ELSE OVER THERE
19 NOBODY

20 WE KNOW THAT THIS WAS DEFINITELY CRACK COCAINE WE
21 KNOW THAT'S DEFINITELY WHAT THIS IS BECAUSE BETH VAUGHN, THE
22 FORENSIC CHEMIST, TESTIFIED THAT THIS IS CRACK COCAINE AND
23 SHE TESTIFIED THAT IT WEIGHS TWELVE POINT EIGHT THREE GRAMS
24 AND UNDER SOUTH CAROLINA LAW TEN GRAMS OF CRACK COCAINE IS
25 ENOUGH FOR TRAFFICKING SO THIS IS WELL OVER THE STATUTORY

1 LIMIT

2 THE DEFENDANT HAD A ROLL OF CASH IN HIS POCKETS HAD A
3 ROLL OF CASH IN ONE POCKET AND SOME CASH IN ANOTHER POCKET
4 HE HAD SMALL DENOMINATIONS WE HEARD TESTIMONY THAT THAT'S
5 COMMON FOR DRUG DEALERS TO HAVE SMALL DENOMINATIONS OF A LOT
6 OF CASH ON THEM THEY HAVE TO DO BUSINESS, HAVE TO HAVE A
7 CASH REGISTER SOMEWHERE

8 THE DEFENDANT WAS RUNNING FROM A HOUSE WHERE CRACK
9 COCAINE WAS BEING MADE RIGHT THERE IN THE MIDDLE OF THE
10 KITCHEN THERE WERE SURVEILLANCE CAMERAS THIS WAS A
11 PRETTY SOPHISTICATED SETUP THESE WERE ENTERPRISING YOUNG
12 MEN THEY HAD CRACK IN VARIOUS PLACES IN THIS HOUSE, PILLS,
13 DRUGS THEY HAD PYREX COOKWARE SET UP IN THE KITCHEN WITH
14 METAL AND ZIPLOC BAGS TO PACKAGE IT

15 AND THIS WAS NOT A SMALL EASY TO OVERLOOK SETUP
16 NOBODY WAS REALLY LIVING IN THIS PLACE MAYBE BRAD LOGAN
17 WAS SPENDING SOME TIME THERE, BUT ACCORDING TO THE
18 INVESTIGATORS, THERE WEREN'T REALLY ANY CLOTHES THERE IT
19 DIDN'T APPEAR ANYBODY WAS INHABITING THIS TRAILER IT WAS A
20 CRACK HOUSE

21 THE DEFENDANT WAS CONSPIRING WITH THESE OTHER GENTLEMEN
22 TO SELL CRACK OUT OF THIS HOUSE MAYBE HE DIDN'T KNOW HOW
23 TO MAKE IT HIMSELF, BUT SOMEBODY THERE MADE IT AND HE HAD
24 IT HE GOT IT, AND HE WAS GOING TO TAKE IT OUT AND SELL IT
25 ACCORDING TO MATT HUTCHINS, A CRACK ROCK GENERALLY ON

1 THE STREET WEIGHS ABOUT POINT TWO GRAMS, POINT TWO GRAMS
2 IF THAT TWELVE POINT EIGHT THREE GRAMS IS BROKEN UP INTO
3 POINT TWO GRAMS OF ROCKS WE'RE TALKING ABOUT APPROXIMATELY
4 SIXTY-FOUR CRACK ROCKS AT TWENTY DOLLARS A ROCK STREET
5 VALUE, THAT'S OVER TWELVE HUNDRED DOLLARS SIXTY-FOUR
6 ROCKS IF THE DEPUTIES HAD NOT GONE TO 108 RAYMOND DRIVE
7 AND CAUGHT THE DEFENDANT RUNNING OUT THAT BACK DOOR AND
8 FOUND THOSE DRUGS WHERE WOULD THOSE TWELVE POINT EIGHT THREE
9 GRAMS OF CRACK COCAINE HAVE ENDED UP? WHERE WOULD THEY HAVE
10 GONE? THE DEFENDANT WAS GOING TO SELL THEM

11 FINGERPRINTS NOW I ASKED YOU TO BRING YOUR COMMON
12 SENSE TO THIS CASE AND APPLY YOUR LOGIC TO THIS AND WHILE
13 FINGERPRINTS WOULD BE FANTASTIC TO HAVE, AND THE DEPUTIES
14 TRIED, BUT IT WAS HUMID OUT, FINGERPRINTS ARE FRAGILE, THEY
15 WEREN'T ABLE TO GET ANY THEY WANTED TO BRING YOU THE BEST
16 EVIDENCE THEY COULD, BUT SOMETIMES THEY JUST CAN'T GET
17 FINGERPRINTS AND THAT'S NOT UNCOMMON ON PLASTIC BAGS THAT
18 DRUGS COME IN

19 BUT IF I WAS TO SUBMIT THIS BAG AND MY FINGERPRINTS
20 COULDN'T BE LIFTED DOES THAT MEAN I DIDN'T STAND HERE AND
21 HOLD IT THE WHOLE TIME I'VE BEEN TALKING? YOU SAW ME
22 HOLDING IT IT DOESN'T MEAN I DIDN'T IF MY FINGERPRINTS
23 DON'T COME OFF IT SO YOU DON'T NEED FINGERPRINTS TO TELL
24 YOU THAT SOMEBODY WAS HOLDING A BAG YOU DON'T NEED IT

25 I APPRECIATE YOUR TIME IN THIS CASE I KNOW IT'S BEEN

1 TECHNICAL IT'S BEEN SOMEWHAT LONG, STOPPING, AND STARTING,
2 AND WAITING AND I REALLY APPRECIATE YOUR COMMITTING
3 YOURSELVES TO YOUR CIVIC DUTY LIKE YOU HAVE AND THIS IS A
4 VERY IMPORTANT CASE THIS IS A GREAT DEAL OF CRACK COCAINE
5 AND I ASK THAT TAKING ALL THIS EVIDENCE INTO CONSIDERATION
6 YOU'LL GO BACK IN THAT JURY ROOM AND FIND THE DEFENDANT
7 GUILTY OF TRAFFICKING CRACK COCAINE GREATER THAN TEN GRAMS
8 THANK YOU

9 THE COURT LADIES AND GENTLEMEN, NOW THAT YOU HAVE
10 HEARD ALL OF THE EVIDENCE AND THE ARGUMENTS OF THE LAWYERS
11 IT BECOMES MY RESPONSIBILITY TO EXPLAIN TO YOU THE LAW THAT
12 IS APPLICABLE TO THIS CASE

13 UNDER OUR CONSTITUTION AND CODE OF LAWS HERE IN SOUTH
14 CAROLINA ONLY THE JURY CAN MAKE THE FINDINGS OF FACT IN THIS
15 CASE AND I AM NOT PERMITTED TO INDICATE TO YOU HOW I MIGHT
16 FEEL ABOUT THE FACTS SO IF I HAVE SAID ANYTHING OR DONE
17 ANYTHING DURING THE COURSE OF THIS TRIAL THAT MIGHT LEAD YOU
18 TO BELIEVE THAT I HAVE AN OPINION ABOUT THE FACTS, THEN YOU
19 MUST DISREGARD THAT BECAUSE THIS JURY MUST INDEPENDENTLY
20 WEIGH THE TESTIMONY AND EVIDENCE THAT HAS BEEN PRESENTED
21 BEFORE YOU AND RENDER A VERDICT THAT IS BASED SOLELY ON THAT
22 TESTIMONY AND EVIDENCE IN LIGHT OF THE LAW AS I NOW EXPLAIN
23 IT TO YOU

24 NOW THE SAME CONSTITUTION AND CODE OF LAWS THAT MAKE
25 YOU THE EXCLUSIVE JUDGES OF THE FACTS ALSO MAKE ME THE

1 EXCLUSIVE JUDGE OF THE LAW AND SO IF YOU HAVE SOME IDEA AS
2 TO WHAT THE LAW IS OR WHAT THE LAW SHOULD BE, AND IF THAT
3 DIFFERS FROM WHAT I NOW TELL YOU THE LAW IS, THEN YOU ARE
4 OBLIGATED UNDER THE OATH THAT YOU HAVE JUST -- THAT YOU HAVE
5 TAKEN AS JURORS AND SET YOUR NOTIONS OF THE LAW ASIDE AND TO
6 ACCEPT AND APPLY THE LAW PRECISELY AS I NOW EXPLAIN IT TO
7 YOU

8 THE FACT THAT THE DEFENDANT WAS ARRESTED AND CHARGED
9 AND INDICTED IN THIS CASE IS NOT EVIDENCE IT CANNOT BE
10 CONSIDERED BY YOU IN ANY WAY AS EVIDENCE OF THE DEFENDANT'S
11 GUILT NOR DOES IT CREATE ANY PRESUMPTION OR INFERENCE OF
12 GUILT THE INDICTMENT IS SIMPLY THE FORMAL WRITTEN
13 INSTRUMENT THAT CONTAINS THE ALLEGATIONS THAT HAVE BEEN MADE
14 AGAINST THE DEFENDANT, AND IT SERVES TO PROCESS THIS CASE
15 AND BRING IT INTO THIS COURT FOR TRIAL

16 THE DEFENDANT HAS PLED NOT GUILTY TO THIS INDICTMENT
17 AND THE PLEA OF NOT GUILTY CASTS THE BURDEN ON THE STATE TO
18 PROVE THE DEFENDANT GUILTY BEYOND A REASONABLE DOUBT A
19 PERSON CHARGED WITH COMMITTING A CRIME IN SOUTH CAROLINA IS
20 NEVER REQUIRED TO PROVE THEMSELVES INNOCENT

21 NOW IT IS A VERY IMPORTANT RULE OF LAW IN OUR COUNTRY
22 THAT A PERSON CHARGED WITH A CRIME WILL ALWAYS BE PRESUMED
23 TO BE INNOCENT OF THE CRIME WITH WHICH HE HAS BEEN CHARGED
24 UNLESS AND UNTIL HIS GUILT HAS BEEN PROVEN BY EVIDENCE THAT
25 SATISFIES YOU OF THAT GUILT BEYOND A REASONABLE DOUBT NOW

1 THIS IS WHAT WE CALL THE PRESUMPTION OF INNOCENCE AND IT'S
2 NOT JUST A LEGAL PHRASE THAT WE USE IT IS A SUBSTANTIAL,
3 CONSTITUTIONAL RIGHT TO WHICH EVERY DEFENDANT IS ENTITLED
4 THE PRESUMPTION OF INNOCENCE ACCOMPANIES THE DEFENDANT FROM
5 THE TIME HE IS CHARGED THROUGHOUT THE TRIAL AND INTO THE
6 JURY ROOM UNTIL YOU REACH A VERDICT OF GUILT THAT'S BASED ON
7 EVIDENCE THAT SATISFIES YOU OF THAT GUILT BEYOND A
8 REASONABLE DOUBT

9 A REASONABLE DOUBT IS A DOUBT WHICH MAKES AN HONEST,
10 SINCERE, CONSCIENTIOUS JUROR IN SEARCH OF THE TRUTH IN THE
11 CASE TO HESITATE TO ACT PROOF BEYOND A REASONABLE DOUBT
12 MUST THEREFORE BE PROOF OF SUCH A CONVINCING CHARACTER THAT
13 A REASONABLE PERSON WOULD NOT HESITATE TO RELY ON IT AND ACT
14 ON IT IN THE MOST IMPORTANT OF HIS OR HER OWN AFFAIRS
15 PROOF BEYOND A REASONABLE DOUBT CAN ALSO BE DESCRIBED AS
16 PROOF THAT LEAVES YOU FIRMLY CONVINCED OF THE DEFENDANT'S
17 GUILT NOW THERE ARE VERY FEW THINGS THAT WE KNOW IN THIS
18 WORLD WITH ABSOLUTE CERTAINTY AND IN CRIMINAL CASES THE
19 LAW DOES NOT REQUIRE PROOF THAT OVERCOMES EVERY POSSIBLE
20 DOUBT

21 IF, BASED ON YOUR CONSIDERATION OF THE EVIDENCE, YOU
22 ARE FIRMLY CONVINCED THAT THE DEFENDANT IS GUILTY OF THE
23 CRIME CHARGED, THEN YOU MUST FIND HIM GUILTY BUT ON THE
24 OTHER HAND, IF YOU THINK THAT THERE IS A REAL POSSIBILITY
25 THAT THE DEFENDANT IS NOT GUILTY, THEN YOU MUST GIVE HIM THE

1 BENEFIT OF THE DOUBT AND FIND HIM NOT GUILTY

2 THE DEFENDANT IS CHARGED WITH TRAFFICKING IN CRACK
3 COCAINE IN ORDER TO CONVICT THE DEFENDANT OF TRAFFICKING
4 IN CRACK COCAINE THE STATE MUST PROVE THREE ESSENTIAL
5 ELEMENTS SET FORTH IN THE STATUTE AND I'M GOING TO GO OVER
6 THOSE ELEMENTS WITH YOU NOW

7 THE STATUTE READS, A PERSON WHO KNOWINGLY SELLS,
8 MANUFACTURES, DELIVERS, PURCHASES, OR BRINGS INTO THIS STATE
9 OR WHO PROVIDES FINANCIAL ASSISTANCE OR OTHERWISE AIDES,
10 ABETS, ATTEMPTS, OR CONSPIRES TO SELL, MANUFACTURE, DELIVER,
11 PURCHASE, OR BRING INTO THIS STATE OR IS IN ACTUAL OR
12 CONSTRUCTIVE POSSESSION OR ATTEMPTS TO BECOME IN ACTUAL OR
13 CONSTRUCTIVE POSSESSION OF TEN GRAMS OR MORE OF CRACK
14 COCAINE IS GUILTY OF TRAFFICKING IN CRACK COCAINE

15 NOW THERE ARE THREE ELEMENTS THAT I WENT OVER WITH YOU,
16 THAT I JUST READ TO YOU AND I'M GOING TO GO OVER THOSE
17 ELEMENTS WITH YOU ONE AT A TIME THE FIRST ELEMENT IS THE
18 STATE MUST PROVE THAT THE DEFENDANT ACTED KNOWINGLY,
19 MEANING, OF COURSE, THAT HE DID SO WITH KNOWLEDGE AS TO WHAT
20 HE WAS DOING NOT THAT HE ACTED ACCIDENTALLY, BUT THAT HE
21 ACTED CONSCIOUSLY

22 THE SECOND ELEMENT, THE STATE HAS FOUR ALTERNATIVE WAYS
23 OF PROVING THE SECOND ELEMENT AND YOU RECALL THAT I KEPT
24 SAYING, OR THE FIRST OF THOSE ALTERNATIVE WAYS IS TO PROVE
25 THAT THE DEFENDANT SOLD, MANUFACTURED, DELIVERED, PURCHASED,

1 OR BROUGHT INTO THIS STATE A QUANTITY OF CRACK COCAINE

2 THE SECOND ALTERNATIVE IS TO PROVE THAT THE DEFENDANT
3 PROVIDED FINANCIAL ASSISTANCE OR OTHERWISE AIDED, ABETTED,
4 ATTEMPTED, OR CONSPIRED TO SELL, MANUFACTURE, DELIVER,
5 PURCHASE, OR BRING INTO THIS STATE

6 AND THE THIRD ALTERNATIVE WAY OF PROVING THE SECOND
7 ELEMENT IS TO PROVE THAT THE DEFENDANT WAS IN ACTUAL OR
8 CONSTRUCTIVE POSSESSION OF THE CRACK COCAINE

9 AND THE FOURTH ALTERNATIVE WAY IS TO PROVE THAT THE
10 DEFENDANT ATTEMPTED TO BECOME IN ACTUAL OR CONSTRUCTIVE
11 POSSESSION OF THE CRACK COCAINE

12 NOW THE THIRD ELEMENT RELATES TO THE WEIGHT OF THE
13 CRACK COCAINE AND THE STATE MUST HAVE PROVEN THAT THE
14 WEIGHT OF THE CRACK COCAINE WAS TEN GRAMS OR MORE

15 THE SECOND ELEMENT INVOLVES THE CONCEPT OF POSSESSION
16 A PERSON HAS POSSESSION OF A SUBSTANCE WITHIN THE MEANING OF
17 THE STATUTE WHEN HE HAS BOTH THE POWER AND THE INTENT TO
18 CONTROL ITS DISPOSITION OR ITS USE POSSESSION MAY BE
19 EITHER ACTUAL OR CONSTRUCTIVE

20 ACTUAL POSSESSION OCCURS WHEN THE SUBSTANCE OR OBJECT
21 IS FOUND TO BE IN THE ACTUAL, PHYSICAL CUSTODY OF THE PERSON
22 CHARGED WITH POSSESSION CONSTRUCTIVE POSSESSION OCCURS
23 WHEN A PERSON HAS DOMINION AND CONTROL OVER EITHER THE
24 SUBSTANCE OR THE OBJECT ITSELF OR THE PROPERTY OR THE
25 PREMISE ON WHICH IT IS LOCATED

1 WHEN A SUBSTANCE OR OBJECT IS FOUND ON THE PREMISES
2 UNDER THE CONTROL OF A PERSON AN INFERENCE MAY ARISE THAT
3 THE PERSON KNOWINGLY POSSESSED THE SUBSTANCE OR THE OBJECT
4 IF FACTS ARE PROVEN BEYOND A REASONABLE DOUBT SUFFICIENT TO
5 RAISE SUCH AN INFERENCE OF KNOWING POSSESSION TO YOUR
6 SATISFACTION, THEN THIS INFERENCE WOULD SIMPLY BE ONE
7 EVIDENTIARY FACT TO BE TAKEN INTO CONSIDERATION BY YOU ALONG
8 WITH ALL OF THE OTHER EVIDENCE IN THE CASE AND YOU MAY
9 GIVE IT SUCH WEIGHT AS YOU BELIEVE IT SHOULD RECEIVE YOU
10 ARE FREE TO ACCEPT OR REJECT THIS INFERENCE, THIS PERMISSIVE
11 INFERENCE OF KNOWLEDGE AND POSSESSION DEPENDING ON YOUR VIEW
12 OF THE EVIDENCE

13 NOW PROOF OF POSSESSION REQUIRES MORE THAN TO PROVE THE
14 MERE PRESENCE OF THE DEFENDANT AT THE ALLEGED SCENE OF THE
15 CRIME BUT EXCLUSIVE POSSESSION IS NOT REQUIRED AS TWO OR
16 MORE PERSONS MAY HAVE JOINT POSSESSION OF THE SAME DRUG, OR
17 OBJECT, OR SUBSTANCE

18 NOW, LADIES AND GENTLEMEN, YOUR VERDICT IN THIS CASE
19 MUST BE UNANIMOUS ALL TWELVE OF YOU MUST AGREE BEFORE YOU
20 CAN WRITE A VERDICT IN JUST A SECOND I'M GOING TO SEND YOU
21 BACK INTO THE JURY ROOM, BUT I'M GOING TO ASK YOU NOT YET TO
22 BEGIN YOUR DELIBERATIONS BECAUSE I MAY HAVE SOME MATTERS OF
23 LAW THAT I NEED TO TAKE UP WITH THE LAWYERS

24 WHILE I'M DOING THAT I WOULD LIKE FOR YOU ALL TO SELECT
25 A FOREPERSON TO SERVE THIS JURY THE JOB OF THE FOREPERSON

1 IS TO PRESIDE OVER THE DELIBERATIONS AND WHEN IT BECOMES
2 NECESSARY, TO COMMUNICATE WITH THE COURT AND THOSE
3 COMMUNICATIONS WILL HAVE TO BE IN WRITING

4 NOW ONE OF THE TIMES WHEN YOU WILL HAVE TO COMMUNICATE
5 WITH ME IS WHEN YOU'RE WRITING OUT A VERDICT AND YOU WILL
6 HAVE WITH YOU IN THE JURY ROOM THE INDICTMENT AND ON THE
7 BACK OF THE INDICTMENT IN THE LOWER LEFT HAND CORNER YOU'LL
8 SEE THE WORD VERDICT AND BELOW THAT WORD THERE ARE FOUR
9 BLANK LINES WHEN THE JURY HAS UNANIMOUSLY REACHED A
10 VERDICT THE FOREPERSON WOULD WRITE ON ONE OF THOSE BLANK
11 LINES THE VERDICT OF THE JURY AND THE FOREPERSON WOULD
12 SIGN IT, AND DATE IT, AND NOTIFY THE BAILIFF THAT YOU HAVE
13 REACHED A VERDICT AND WE'LL GET YOU BACK OUT HERE INTO THE
14 COURTROOM TO RECEIVE THAT VERDICT

15 YOU WILL ALSO NOTICE ON THE INDICTMENT THAT THERE'S A
16 LOT OF OTHER INFORMATION WRITTEN BACK HERE THERE'S A STAMP
17 THAT SAYS TRUE BILL THERE'S A SIGNATURE OF THE FOREPERSON
18 OF THE GRAND JURY THERE'S SOME NAMES AND SOME OTHER
19 INFORMATION, A FILE STAMP NONE OF THAT HAS ANYTHING TO DO
20 WITH WHAT YOU ARE DOING IN THIS CASE THE INDICTMENT
21 CONTAINS THE ALLEGATIONS THAT HAVE BEEN MADE AGAINST THE
22 DEFENDANT IT HAS A PLACE FOR THE VERDICT FORM NONE OF
23 THAT OTHER INFORMATION ON THE INDICTMENT IS RELATED TO WHAT
24 YOU ARE DOING, WHICH IS TO DETERMINE WHETHER OR NOT THE
25 STATE HAS MET ITS BURDEN OF PROVING THE DEFENDANT GUILTY

1 BEYOND A REASONABLE DOUBT

2 NOW, LADIES AND GENTLEMEN, YOU WILL HAVE WITH YOU ALSO
3 IN THE JURY ROOM THE EXHIBITS IN THIS CASE AND THOSE
4 EXHIBITS INCLUDE, I BELIEVE IT'S STATE'S 2, 3 AND 4 THAT ARE
5 ALLEGED TO BE NARCOTIC DRUGS ALL OF THOSE DRUGS ARE
6 CONTAINED WITHIN A SEALED PACKAGE AND THOSE DRUGS MUST
7 REMAIN INSIDE THAT SEALED PACKAGE IF THERE'S ANY MEMBER OF
8 THE JURY WHO FEELS IT NECESSARY TO OPEN THOSE PACKAGES TO
9 EXAMINE WHAT'S INSIDE, THEN YOU LET US KNOW THAT AND WE'LL
10 GET YOU BACK OUT HERE INTO THE COURTROOM SO THAT YOU CAN DO
11 THAT UNDER MY SUPERVISION

12 NOW IT IS A LOT LATER THAN I HAD HOPED IT WOULD BE WHEN
13 WE GOT TO THIS POINT AND AGAIN, I APOLOGIZE FOR THAT I
14 TAKE RESPONSIBILITY FOR IT IT'S GETTING CLOSE TO LUNCH
15 IT TAKES US ABOUT AN HOUR TO GET YOU SOME LUNCH HERE IF
16 YOU ALL FEEL THAT YOU WOULD LIKE TO BE FED LUNCH, THEN
17 PLEASE LET US KNOW THAT AT LEAST AN HOUR BEFORE YOU WOULD
18 LIKE TO EAT, WHICH IS PROBABLY ABOUT RIGHT NOW SO IF Y'ALL
19 WANT TO EAT LUNCH JUST KNOCK ON THE DOOR AND TELL THE
20 BAILIFF THAT YOU WANT TO, WE'LL GET YOU SOME MENUS, AND YOU
21 CAN ORDER

22 AND SO NOW, YOU CAN GO BACK INTO THE JURY ROOM MS
23 DRUMMOND, YOU REMAIN IN YOUR SEAT PLEASE, MA'AM THE REST
24 OF YOU, GO BACK IN THE JURY ROOM AND THEN LET US KNOW AS
25 SOON AS YOU HAVE SELECTED A FOREPERSON

1 (WHEREUPON THE JURY EXITED THE COURTROOM AT 11 37 AM)

2 THE COURT ANY EXCEPTIONS TO THE CHARGE?

3 MS MILLICAN NONE FROM THE STATE, YOUR HONOR

4 MR RAY YOUR HONOR, WE WOULD JUST ASK THAT THE -- AT

5 LEAST THE SECOND PARAGRAPH ON MERE PRESENCE, THAT I

6 SUBMITTED TO THE COURT, WE WOULD ASK THAT THAT PARAGRAPH BE

7 CHARGED I BELIEVE WHAT YOUR HONOR SAID PROBABLY COVERED

8 SOME OF THE FIRST PARAGRAPH, BUT I BELIEVE IF WE -- IF THEY

9 WERE CHARGED WITH THE SECOND PARAGRAPH THE DEFENSE WOULD BE

10 SATISFIED WITH THE MERE PRESENCE CHARGE

11 THE COURT I THINK MY CHARGE COVERS THE CONCEPT OF

12 MERE PRESENCE I DON'T BELIEVE THIS IS VERY MUCH AN

13 ACCURATE STATEMENT OF WHAT THE LAW IS ANYTHING ELSE?

14 MR RAY NO, YOUR HONOR

15 THE COURT ALL RIGHT THEN Y'ALL COME UP AND MAKE

16 SURE YOU AGREE ON WHAT'S THE PROPER SET OF EXHIBITS, AND

17 WE'LL SEND THEM BACK INTO THE JURY ROOM AND THEY CAN BEGIN

18 THEIR DELIBERATIONS

19 MS DRUMMOND, YOU'RE WELCOME TO STICK AROUND IF YOU

20 WOULD LIKE TO, BUT WE'RE DONE WITH THE JURY FOR THE WEEK

21 SO IF YOU WOULD LIKE TO LEAVE, THEN YOU MAY DO SO AND

22 THANK YOU FOR YOUR SERVICE

23 THE BAILIFF JIMMY BIGGERSTAFF IS THE FOREPERSON AND

24 THEY DO WANT TO ORDER LUNCH

25 THE COURT ALL RIGHT GET THEM SOME MENUS

1 (WHEREUPON THE JURY BEGAN DELIBERATING AT 11 41 AM)

2 (WHEREUPON COURT WAS IN RECESS)

3 THE COURT BRING THE JURY IN

4 (WHEREUPON THE JURY ENTERED THE COURTROOM AT 1 03 PM)

5 THE COURT MR FOREMAN, HAS THE JURY REACHED A
6 VERDICT?

7 MR FOREMAN YES, YOUR HONOR

8 THE COURT PASS IT TO THE BAILIFF PLEASE CHARLENE,
9 YOU GOING TO PUBLISH IT?

10 MADAME CLERK YES, YOUR HONOR IN THE GENERAL
11 SESSIONS COURT, CASE NUMBER 2005-GS-42-3166, THE STATE
12 VERSUS CHRISTOPHER LOVETT BURKE INDICTMENT FOR TRAFFICKING
13 IN CRACK COCAINE, THE VERDICT IS GUILTY THIS IS SIGNED BY
14 THE FOREPERSON AND DATED TODAY'S DATE LADIES AND GENTLEMEN
15 OF THE JURY, IF THIS IS YOUR VERDICT AND STILL YOUR VERDICT
16 PLEASE RAISE YOUR RIGHT HAND

17 (WHEREUPON ALL JURORS RAISED THEIR RIGHT HAND)

18 MADAME CLERK SO SAY YOU ALL

19 THE COURT MR RAY, IS THERE ANYTHING BEFORE WE MOVE
20 INTO SENTENCING?

21 MR RAY YOUR HONOR, WE WOULD JUST RENEW ALL MOTIONS
22 AND OBJECTIONS PREVIOUSLY RULED ADVERSELY TO THE DEFENSE AND
23 MAKE A MOTION FOR A NEW TRIAL

24 THE COURT ALL RIGHT THE MOTION FOR A NEW TRIAL IS
25 DENIED AND YOUR OTHER GROUNDS OF ERROR ARE PRESERVED, I

1 SUPPOSE ALL RIGHT, BRING HIM AROUND

2 MS THILL DO YOU HAVE THE INDICTMENT, YOUR HONOR?

3 THE COURT YES, I DO

4 MS THILL MAY I APPROACH?

5 THE COURT YES, MA'AM TELL ME HIS PRIOR RECORD

6 PLEASE

7 MS MILLICAN YOUR HONOR, IN 1999 THE DEFENDANT WAS
8 CONVICTED OF POSSESSION WITH INTENT TO DISTRIBUTE CRACK
9 COCAINE, POSSESSION WITH INTENT TO DISTRIBUTE COCAINE, AND
10 POSSESSION WITH INTENT TO DISTRIBUTE CRACK COCAINE

11 THE COURT TWO CHARGES OF CRACK IN '99?

12 MS MILLICAN YES, YOUR HONOR

13 THE COURT ALL RIGHT

14 MS MILLICAN IN 2000 THE DEFENDANT WAS CONVICTED OF
15 FAILURE TO APPEAR, MANUFACTURE WITH INTENT TO DISTRIBUTE
16 CRACK COCAINE IN 2000, POSSESSION WITH INTENT TO
17 DISTRIBUTE CRACK COCAINE AND THAT'S THE EXTENT OF HIS
18 RECORD, YOUR HONOR

19 THE COURT WAS HE GIVEN -- WAS HE NOT GIVEN ANY TIME
20 IN '99?

21 MR RAY I BELIEVE HE WAS, YOUR HONOR

22 MS MILLICAN FIFTEEN YEARS, YOUR HONOR

23 THE COURT NO HE DIDN'T GET FIFTEEN YEARS IN '99

24 MS MILLICAN YOUR HONOR, I HAVE THE CERTIFIED
25 CONVICTIONS IF I MAY HAND THOSE UP TO THE COURT

1 THE COURT YOU'RE NOT READING THAT RAP SHEET RIGHT, I
2 DON'T THINK OR MAYBE IT'S WRONG

3 MS THILL YES, SIR, YOUR HONOR

4 THE COURT ALL RIGHT HE GOT TWO PWID -- THREE PWID
5 CRACKS, AND A PWID POWDER, AND A PWID MARIJUANA, SECOND,
6 THAT HE PLED TO ON THE SAME DATE IN 2001 SO HE HAD TO HAVE
7 HAD SOME DRUG CONVICTION PRIOR TO THAT IT DOESN'T MAKE
8 MUCH DIFFERENCE

9 MS MILLICAN THE NCIC JUST DOESN'T SHOW ANY
10 CONVICTIONS ---

11 THE COURT ALL RIGHT ANYTHING ELSE FROM THE STATE?

12 MS MILLICAN NOTHING, YOUR HONOR

13 THE COURT MR RAY?

14 MR RAY THANK YOU, YOUR HONOR YOUR HONOR, I WOULD
15 JUST SAY IN SPEAKING WITH CHRIS, HE'S GOT A TRADE THAT HE'S
16 BEEN DOING HE'S BEEN CUTTING HAIR HE'S A YOUNG MAN I
17 KNOW HIS -- HE HAD SOME ERRANT WAYS IN THE PAST AND I KNOW
18 THERE'S, DUE TO THE STATUTE THERE'S LIMITATIONS ON HOW
19 LENIENT YOUR HONOR CAN BE IN THIS SITUATION HE'S YOUNG
20 HE'S GOT A LOT OF LIFE IN FRONT OF HIM YOUR HONOR, WE
21 WOULD JUST RESPECTFULLY REQUEST YOUR HONOR TO BE AS LENIENT
22 AS POSSIBLE IN THIS MATTER

23 THE COURT THE STATUTE NO LONGER CARRIES A MANDATORY
24 FINE, IS THAT CORRECT?

25 MS THILL UNDER THE TRAFFICKING STATUTE, YOUR HONOR,

1 IT DOES STILL CARRY A MANDATORY FINE OF FIFTY THOUSAND
2 DOLLARS

3 THE COURT ALL RIGHT THE SENTENCE IS TWENTY-FIVE
4 YEARS AND A FIFTY THOUSAND DOLLAR FINE

5 MR RAY THANK YOU, YOUR HONOR

6 MS THILL THANK YOU, YOUR HONOR

7 THE COURT ALL RIGHT LADIES AND GENTLEMEN, THAT IS
8 THE END OF OUR WORK WEEK I'M GOING TO PROBABLY BE RACING
9 Y'ALL OUT OF THE COURTHOUSE HERE IN JUST A MINUTE BUT I'M
10 GOING TO ASK YOU TO GO BACK INTO THE JURY ROOM FOR JUST A
11 SECOND, AND I'M GOING TO COME BACK THERE AND SPEAK TO YOU
12 YOUR LUNCH IS THERE OKAY, GOOD

13 (WHEREUPON THE JURY EXITED THE COURTROOM AT 1 12 PM)

14 THE COURT DO YOU WANT THESE BACK?

15 MS THILL NO I THINK WE SHOULD PUT THEM IN AS COURT
16 EXHIBITS

17 THE COURT OKAY

18 (WHEREUPON COURT'S EXHIBITS 1 - 5 WERE MARKED)

19 THE COURT ALL RIGHT

20 (WHEREUPON COURT WAS IN RECESS)

21 (HEARING ENDED AT 1 12 PM)

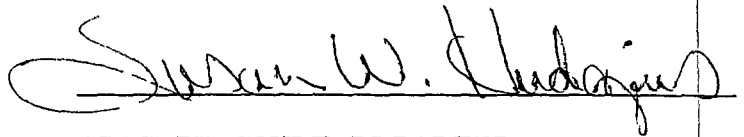
22 (END OF REQUESTED TRANSCRIPT OF RECORD)

1 CERTIFICATE OF REPORTER

2 I, THE UNDERSIGNED, SUSAN W HUDGINS, OFFICIAL COURT
3 REPORTER FOR THE THIRTEENTH JUDICIAL CIRCUIT OF THE STATE OF
4 SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A
5 TRUE, ACCURATE, AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE
6 PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE TRIAL/HEARING
7 OF THE CAPTIONED CASE, RELATIVE TO APPEAL, IN THE CIRCUIT
8 COURT FOR SPARTANBURG COUNTY, SOUTH CAROLINA, ON THE 2ND -
9 3RD DAY OF NOVEMBER 2005

10 I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL,
11 NOR INTEREST TO ANY PARTY HERETO

12 MARCH 13, 2006

13
14 

15 CIRCUIT COURT REPORTER



HENRY McMASTER
ATTORNEY GENERAL

January 10, 2008

Honorable Harold W. Gowdy III
Solicitor, Seventh Judicial Circuit
County Courthouse
180 Magnolia Street, 3rd Floor
Spartanburg, S.C. 29306-2355

RF State v. Christopher Lockett Burke
2005 GS-42-03166

Dear Solicitor Gowdy:

In its Opinion No. 07 UP-550, filed January 2, 2008, the South Carolina Court of Appeals affirmed the above appeal. The Remittitur was subsequently sent to the Spartanburg County Clerk of Court. Therefore, with this letter, we are closing our direct appeal file in this matter.

This Office has verified through the South Carolina Department of Corrections' computer that Mr. Burke is presently incarcerated.

Please ensure that the conviction and sentence have been carried out.

Sincerely,

Norman Muk Rapoport
Senior Assistant Attorney General

THIS OPINION HAS NO PRECEDENTIAL VALUE IT SHOULD
NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY
PROCEEDING EXCEPT AS PROVIDED BY RULE 239(d)(2), SCACR

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State

Respondent

v

Christopher Lovett Burke,

Appellant

Appeal From Spartanburg County
John C. Few, Circuit Court Judge

Unpublished Opinion No 2007-UP-550
Submitted November 1, 2007 – Filed December 14, 2007

AFFIRMED

Chief Attorney Joseph L. Savitz, III, South Carolina
Commission of Indigent Defense of Columbia for

Senior Asst. Attorney General Norman Mark
 Rapoport, Office of the Attorney General of
 Columbia and Solicitor Harold W. Gowdy, III of
 Spartanburg, for Respondent

PER CURIAM We affirm¹ pursuant to Rule 220(b)(2), SCACR, and the following authorities: State v. Floyd, 205 S.C. 518, 520, 369 S.E.2d 842, 843 (1988) (noting a ruling on a motion in limine is not the ultimate disposition on the admissibility of evidence, but remains subject to change based upon developments during the trial); State v. Smith, 337 S.C. 27, 32, 522 S.E.2d 598, 600 (1999) (‘A ruling in limine is not final unless an objection is made at the time the evidence is offered and a final ruling procured, the issue is not preserved for review.’)

AFFIRMED

HUFF and PIEPER, JJ., and CURETON, AJ., concur



The South Carolina Court of Appeals

KENNETH A. RICHSTAD
CLERK

CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 111
COLUMBIA, SOUTH CAROLINA 29201-0111
111 EAST STREET
COLUMBIA, SOUTH CAROLINA 29201-0111
TELEPHONE (803) 412-1111
FAX (803) 412-1111
WWW.SCCUSC.COM

January 2, 2008

REMITTITUR

The Honorable Marcus W. Kitchens
180 Magnolia Street
PO Box 3483
Spartanburg, SC 29304-3483

Re: The State v. Burke, Christopher Lovett
2005-GS-42-03166

Dear Mr. Kitchens:

The above referenced matter is hereby remitted to the lower court. A copy of the judgment of this Court is attached.

Sincerely,

Kenneth A. Richstad
Clerk of Court

ESAR 11

STATE OF SOUTH CAROLINA)

In the Court of Common Pleas

County of Spartanburg)

CCDC#272240
Christopher Lostr Burke)

Full name and prison number if any of applicant)

v)

State of South Carolina)

Name of Respondent)

2005-GP-42-1844

APPLICATION FOR

POST CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten, or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make it clear to which question any such continued answer refers.

Since every application must be sworn to under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicant should, therefore, exercise care to assure that all answers are true and correct.

If the applicant is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which applicant was convicted.

1 Place of detention Perry Correctional Institution, 430 Oaklawn Road, Pelzer, SC 29669

2 Name and location of Court which imposed sentence Spartanburg County General Sessions Court, 180 Magnolia Street, Spartanburg, SC 29309

3 The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed

(a) Indictment #2005-GS-42-3166, "Trafficking In Crack Cocaine"

(b) 29 grams or more

(c) _____

4 The date upon which sentence was imposed and the terms of the sentence

(a) November 3, 2005

(b) _____

(c) _____

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5 Check whether a finding of guilty was made

(a) after a plea of guilty _____

(b) after a plea of not guilty XX

(c) after a plea of nolo contendere _____

6 Did you appeal from the judgment of conviction or the imposition of sentence? Yes

7 If you answered 'yes' to (6), list

(a) the name of each Court to which you appealed

i The South Carolina Court Of Appeals

ii _____

iii _____

(b) the result in each such Court to which you appealed

i AFFIRMED

ii _____

iii _____

(c) the date of each such result

i December 14, 2007

ii _____

iii _____

(d) if known, citations of any written opinion or orders entered pursuant to such results

i Unpublished Opinion No 2007-UP-550

ii _____

iii _____

8 If you answered "no" to (6), state your reasons for not so appealing

(a) N/A

(b) _____

(c) _____

9 State concisely the grounds on which you base your allegation that you are being held in custody unlawfully

(a) Please see Memorandum Of Law Attached

(b) " " " " " "

(c) " " " " " "

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10 State concisely and in the same order the facts which support each of the grounds set out in (9)

(a) Please See Memorandum Of Law Attached

(b) " " " " " "

(c) " " " " " "

11 Prior to this application have you filed with respect to this conviction

(a) any petition in a State Court under South Carolina Law ?

NO

(b) any petitions in State or Federal Courts for habeas corpus or post conviction relief?

NO

(c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7) NO

(d) any other petitions, motions or applications in this or any other Court?

NO

12 If you answered "yes" to any part of (11), list with respect to each petition, motion or application

(a) the specific nature thereof

I N/A

II

III

IV

(b) the name and location of the Court in which each was filed

I N/A

II

III

IV

(c) the disposition thereof

I N/A

II

III

IV

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(d) the date of each such disposition

i N/A

ii

iii

iv

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition

i N/A

ii

iii

iv

13 Has any ground set forth in (9) been previously presented to this or any other Court State or Federal, in any petition, motion or application which you have filed? NO

14 If you answered "yes" to (13), identify
(a) which grounds have been presented

i N/A

ii

iii

(b) the proceedings in which each ground was raised

i N/A

ii

iii

15 If any ground set forth in (9) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented

(a) Grounds raised are issues for Post Conviction Relief

(b)

(c)

16 Were you represented by an attorney at any time during the course of

(a) your arraignment and plea?

(b) your trial, if any? YES

(c) your sentencing? YES

(d) your appeal, if any from the judgment of conviction or the imposition of sentence?

YES

(e) preparation presentation or consideration of any petitions motions or application with respect to this conviction, which you filed? NO

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17 If you answered "yes" to one or more parts of (16), list

(a) the name and address of each attorney who represented you

i Timothy M Ray, Spartanburg County Public Defenders

ii Office

iii Joseph I Savitz, III, South Carolina Commission Of
Indigent Defense

(b) the proceedings at which each such attorney represented you

i Ray, "Jury Trial"

ii Savitz, "Direct Appeal"

iii _____

18 State clearly the relief you seek in filing this application

"Reversal Of Conviction and Sentence"

19 Are you now under sentence from any other court that you have not challenged?

NO

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STATE OF SOUTH CAROLINA)

) VERIFICATION

COUNTY OF Spartanburg)

I, Christopher Lovett Burke, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application that I know the contents thereof, that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application, and that the matters and allegations therein set forth are true

Christopher Burke

Sworn to and subscribed before me

This 25th day of March, 2008

Brigitte Gernie

L S

Notary Public for South Carolina

My Commission Expires 11/02/2014

**APPLICATION TO PROCEED WITHOUT PREPAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, Christopher Lovett Burke, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true

- (1) I am the applicant in this action and I believe I am entitled to redress
- (2) Because of my poverty I am unable to pay the costs of proceeding or give security therefor

Christopher Burke

Applicant

Sworn to and subscribed before me

This 25th day of March, 2008

Brigitte Gernie

L S

Notary Public for South Carolina

My Commission Expires May 12th, 2014

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STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS

Christopher Lovett Burke,
Applicant,

Case No

2008 P 42-2844

v.

MEMORANDUM OF LAW IN SUPPORT
OF APPLICATION FOR POST CON-
VICTION RELIEF

State Of South Carolina,
Respondent

COMES NOW, the above-named Applicant presents his Memorandum
Of Law In Support Of Application For Post-Conviction Relief and would show
unto this Honorable Court the following

STATEMENT OF THE CASE

The Applicant was arrested by The Spartanburg County Sheriff Department
on March 17, 2005 for the offense(s) of Trafficking In Ice, Crank or Crack
(10-28 grams) warrant # H-947038, Trafficking Cocaine (28 to 100g), warrant
H-947043 Possession with Intent To Distribute Alprazolam, warrant # H-
947049, Possession of a weapon while committing crime of violence, warrant
H-947053, following a search warrant of the resident of a co-defendant
based off an alleged distribution to an confidential informant

the Spartanburg County Grand Jury indicted the Applicant for the offense

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Com-

of "Trafficking In Crack Cocaine" 28 grams or more (Indictment # 2005-GS-42-3166). A jury trial proceeded and the applicant as convicted and sentenced to 25 years and 50,000 dollars fine. The applicant was represented by trial counsel Timothy M Ray. A timely appeal was filed. On appeal, Applicant was represented by Joseph L Savitz, Esq. of The S C Office Of Appellate defense. On December 14, 2007, The S C Court of Appeals denied the appeal in Opinion No 2007-UP-550. This PCR Application Follows

ARGUMENT

~~I. . . .~~ ~~APPLICANT ALLEGES THAT TRIAL COUNSEL WAS~~
INEFFECTIVE BY FAILING TO OBJECT TO SOLI-
CITOR IMPROPER CLOSING ARGUMENT

In order to establish ineffective assistance of counsel, a PRC Applicant must establish trial counsel's performance fell below an objective standard of reasonableness and, the deficient performance prejudiced the [applicant] to the extent that 'there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceedings would have been different. Cherry v State, 300 S C 115,117, 389 S E 2d 624,625(1989), quoting Strickland v Washington, 466 U S 668,694, 104 S Ct 2052,2068, 80 L Ed 2d 674,698(1984). "Reasonable probability is a probability sufficient to undermine confidence in the outcome of trial " Id

The Applicant hereby alleges that trial counsel's performance fell below an reasonable expectation of competency, when he failed to object to the solicitors' improper closing argument which was outside the record of evidence presented at trial. During the closing arguments, the solicitor made the following statements without objection from trial counsel

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"On March 17th of this year at 7 47 in the morning the defendant was at 108 Paymond Road, and he saw all those cameras in this place with a sophisticated surveillance system set and 'crack cocaine cooking in the kitchen" (Tr pg 166,ln 4-7)

"The defendant was running from a house where crack cocaine was being made right in the middle of the kitchen "(Tr pg 169, ln 8-10) "The defendant was conspiring with these other gentlemen to sell crack out of this house Maybe he didn't know how to make it himself, but somebody there made it" (Tr pg 169,ln 21-24)

The applicant hereby contends that the solicitors' statement was prejudicial and could have influenced the jury to convict applicant due to false information "A prosecutor should not portray as fact matters that are not in evidence, and should not misstate the facts or the law" U.S. v Ollivierre, 378 F 3d 412(C A 4, 2004)

In the present case, Inv Hutchins testified that the arrest location had been under surveillance on previous days prior to the execution of the search warrant and that at no time had the applicant ever been seen there (Tr pg 57,ln 16-24) The applicant testified that the ^{day} of the issuance of the search warrant was the first time he had visited the resident (Tr pg 156,ln 5-6), in which he was only there to cut the hair of codefendant Bra Logan (Tr pg 149,ln 23-25) Furthermore, the applicant testified that he had no involvement in the manufacturing , selling or any ongoing drug business at the said location

However, although there was no evidence presented to corroborate the remarks of the solicitors' closing argument, she specifically told the jury that the applicant was involved in a "conspiracy to sell crack cocaine" although he was the only person charged for possessing exhibit 2 of the evidence. Furthermore without corroboration the solicitor argued outside

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the record of the evidence presented by telling the jury that crack cocaine [was] cooking in the kitchen(Tr pg 169,ln 4-7), right in the middle of the kitchen(Tr pg 169,ln 8-10), and he (applicant) made it(Tr pg,169,ln 21-24)" The applicant hereby alleges that the solicitor misstated the facts in order to influence the jury to convict him in an otherwise circumstantial case and had counsel interpose an timely objection, there is a reasonable expectation that the outcome would have been different "The prosecution's closing argument must be confined to evidence in the record and the reasonable inferences that may be drawn from the evidence" State v Crosby, 348 S C 387 559 S E 2d 352(2001) Solicitors closing argument may not be calculated to arouse juror's passion or prejudices, and its contents should stay within record and reasonable inferences to it State v Copeland, 321 S C 318, 468 S E 2d 620 (1996) "Proper course to be pursued when solicitor make improper argument is for opposing counsel to immediately object, have record made of statement complained of and ask court for distinct ruling thereon" State v Black,319 S C 515, 462 S E 2d 311(1995)

II APPLICANT ALLEGES THAT TRIAL COUNSEL WAS INEFFECTIVE BY FAILING TO REQUEST A DIRECTED VERDICT DUE TO THE VARIANCE IN THE ALLEGATION(S) OF THE CHARGE AND THE PROOF PRESENTED

In South Carolina, "it is a rule of universal observance in administering the criminal law that a defendant must be convicted, if convicted at all, of the particular offense charge in the bill of indictment" State v Coody, 180 S C 417, 186 S E 2d 163(1981) A material variance between the charge and proof entitles the defendant to a directed verdict, such a variance is not material if it "is not an element of the offense." State v Hoitt, 276 S C 72, 276 S.E 2d 163(1981)

Here, in the present case, the applicant was indicted for the offense

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of "Trafficking In Crack Cocaine (28 grams or more) However, the State failed to prove that allegation and instead put up evidence that the weight of the alleged drug was actually 12 83 grams Chemist Beth Vaugh testified that the substance weighed 12 83 grams(Tr pg 111,ln 24-25) The States Attorney, Melissa Millican, stated to the jury in closing arguments that the alleged weight of the substance was 12 83 grams(Tr pg 166,ln 22)

The applicant hereby alleges that the weight of a controlled substance is a material element of the offense of "Trafficking" which must be listed in the indictment and submitted to the jury "It is the amount of [the controlled substance at issue] which triggers the trafficking statute, and distinguishes trafficking from the offense(s) of possession and [possession with intent to distribute] " State v Taylor, 323 S C 162, 473 S E 2d 817 (1996) State v Raffaldt, 318 S C 110, 456 S E 2d 390(1995) The applicant contends that, while the offense of trafficking in the amount of 28 grams or more can include trafficking in a lesser amount, the facts of the case must support a charge on the lesser offense For example, the court of appeals held in State v Gosnell.

Conspiracy to traffick in an amount of cocaine contained within a lesser sentencing level than that alleged in the indictment may be proper where the amount involved in the objection of the conspiracy is in controversy In such circumstances, the lesser charge would be an appropriate consideration in defining the scope or object of the conspiracy, and it would apply to each alleged conspirator Factually, that was not the case here Though the individual amount which [the defendant] allegedly handled was 252 grams, the evidence clearly established that the amount trafficked by the conspiracy far exceeded 400 grams Consequently, [the defendant] was convicted for an offense not contained within the indictment, and his conviction cannot stand State v Gosnell, 341 S C 627, 635, 535 S.E 2d 453, 458(2000)

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Likewise, the applicants' conviction in the present case cannot ' because the state failed to prove the allegations in the indictment which stated 28 grams or more, varying from the 12 83 grams proven at trial. Therefore, trial counsel was ineffective by failing to request a directed verdict. "A defendant is entitled to a directed verdict when the State fails to prove evidence of the offense charged "State v. McHoney, 344 S C 85, 97, 544 S E.2d 30,36(2001) Where the facts of the case, even if proved, does not constitute the alleged criminal conduct, a directed verdict must be granted ' State v Parris, 353 S C 583, 578 S E 2d 736(2003)

III

TRIAL COUNSEL WAS INEFFECTIVE BY FAILING TO OBJECT TO THE RELEVANCE OF EVIDENCE PRESENTED, AND BY FAILING TO REQUIRE THAT TRIAL COURT DETERMINES THE PROBATIVE VALUE OF EVIDENCE

The Applicant was arrested fleeing from his cousins' resident after hearing a scuffle taking place inside the home(Tr pg 150,ln 18-24) After the arrest, applicant was led back inside of the resident(Tr.pg 70,ln 10) were the police had arrested other defendants for drug evidence found inside the trailer. Officer Duncan went back to the location of applicant's arrest and found a baggy of crack(Tr pg 71,ln 20-21) which the applicant was the only person charged with(Tr pg 101,ln 5-7) The state moved to admit into evidence exhibit 2 through 16(Tr pg 116,ln 9-11) without objection (Tr pg 117,ln 9-10) However, counsel did object to the introduction of exhibit 4 as relevance(Tr pg. 114,ln 25- pg. 115ln.1-5), but failed to renew his objection when exhibit 4 was introduced(Tg pg 118,ln 2-16) The applicant alleges that trial counsel was ineffective by failing to object to evidence of other crimes in which the applicant was not on trial for

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To prove ineffective assistance of counsel, defendant must establish that counsel's performance was deficient and that deficient performance prejudiced defense. Battle v State, 305 S C 460, 409 S E 2d 400(1991). Here, the applicant alleges that counsel failed to object to exhibit 3-16 all of which was irrelevant to his case and evidence to crimes which he was not charged with. The applicant alleges that the state introduced evidence of crimes for which he was not charged with as an attempt to arouse and prejudice the jury in an otherwise circumstantial case and had counsel interpose an objection, there is a reasonable probability the outcome would have been different. "Evidence should be excluded if it is calculated to arouse the sympathy or prejudice of the jury or is irrelevant or unnecessary to substantiate the facts", State v Stokes, 339 S C 154, 528 S E 2d 430 (2000). Although counsel failed to object to exhibits 3-16, he did make a timely objection to exhibit 4 and its relevance (Tr pg 114, ln 25 through pg 115, ln 1-5). The trial court admitted exhibit 4 into evidence ruling that applicants' fleeing from the house ties him in with [the business of selling crack cocaine (Tr pg. 118, ln 2-16)]. However, trial counsel failed to object and require that the court make a determination of the probative value of the evidence and its prejudicial effect.

Even if evidence is relevant under the theory of res gestae, prior to admission the trial court should determine whether its probative value clearly outweighs any unfair prejudice, State v Owens, 346 S C 637, 552 S E 2d 745(2001). "Unfair prejudice", in context of rule allowing exclusion of relevant evidence whose probative value is substantially outweighed by danger of unfair prejudice, means a undue tendency to suggest decision on an improper basis, such as an emotional one" State v Saltz, 346 S C. 114, 551 S E 2d 240 (2001). "Trial court must balance probative value of evidence

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of other crimes against its prejudicial effect, and where evidence is of such close similarity to charge offense that previous act enhances probative value of evidence so as to overrule prejudicial effect, it is admissible" State v Raffaldt, 318 S C 110, 456 S E 2d 390(1995)

In the present case, it was unnecessary for the state to introduce evidence of other crimes in order to substantiate the facts. The applicant was charged in a single persons indictment for the trafficking of crack cocaine found in an area allegedly that no one else had traveled except applicant. On the contrary, the evidence only served "to arouse the sympathy or prejudice of jury. In State v Langley, 334 S C 643, 515 S E 2d 98,100 (1999), a photograph should be excluded if it is calculated to arouse the sympathy or prejudice of the jury or is irrelevant or unnecessary to substantiate facts. Here, the applicant alleges that the evidence of crimes for which he was not charged with should have been excluded had counsel objected and require the court to evaluate the probative value of the evidence verses its prejudicial effect of admitting it in

IV

TRIAL COUNSEL WAS INEFFECTIVE BY FAILING TO OBJECT
TO HEARSAY TESTIMONY PRESENTED DURING HEARING TO
SUPPRESS EVIDENCE.

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The applicant moved before The Honorable Court in a pretrial motion to suppress the evidence(Tr pg. 26,ln 15 through Pg 40,ln 1-8) During the suppression hearing, without objection from the defense, the State moved to put forth testimony by Investigator Hutchins that a confidential informant (CI) gave information that Brad Logan was selling crack from the resident

(Tr pg 35,ln 1-5) and that on March 11, 2005, CI purchased a quantity of crack cocaine from Brad Logan using funds provided by The Spartanburg County Sheriff Office(Tr pg 35,ln 17-24), and that CI was equipped with video camera and video of buy was obtained(Tr pg 36,ln 8-9) The applicant alleges tht this was error and trial counsel was ineffective by failing to object to hearsay testimony of an alleged CI

"Hearsay' is an out of court statement, offered in court to prove the truth of the matter asserted State v Roach, 364 S C 422, 613 S E 2d 791 (2005)" "The rule against hearsay prohibits the admission of an out-of-court statement to prove the truth of the matter asserted unless an exception to the rule applies" Dawkins v State, 346 S C 151, 551 S E 2d 260(2001) In the present case the state failed to produce the CI to verify the veracity of the information provided, denying the applicant the opportunity to cross-examine the witness "Where testimonial statements are at issue, the only indicium of reliability sufficient to satisfy constitutional demands is the one the constitution actually prescribes Confrontation" State v Staten, 364 S C 7, 610 S E 2d 823(2005) "The confrontation clause guarantees the accused the right to confront those testifying against him in court and further defines the scope of admissibility of statements against him made by witnesses out-of-court" State v Staten, Id

Here, the CI was a material witness and a participant in the alleged crime and therefore was required to be present to refute or agree with the states allegations "Informant is an actual participant, particularly where he sets up the criminal transaction, and is a material witness" State v Diamond, 280 S C. 296, 312 S E 2d 550(1984) "Where confidential informant is active participant in criminal act and/or material witness on issue of guilt or innocence, disclosure of identity of informant may be required, particularly where, in drug-related crime, informant is only witness to

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transaction other than buyer and defendant" State v Wright, 472 S E 2d 642 (1996) The applicant hereby contends that had counsel objected to the hearsay evidence and the absence of the confidential informant there is a reasonable probability the outcome would have been different. "To establish claim of ineffective assistance of counsel, defendant must show that counsel's representation fell below objective standards of reasonableness, and that, but for counsel's errors, there is reasonable probability that result would have been different" Bozeman v State, 307 S C 172, 414 S E 2d 144 (1992)

CONCLUSION

—
— The Applicant hereby alleges that he is entitled to a Reversal of his conviction and sentence or any other relief that this Honorable Court deems necessary and just

Christopher Barker
Applicant

MARC KITCHENS

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Sworn To And Subscribed Before Me

This 24th day of March 2003

Penelope L. Borman
Notary Public Of SC

My Commission Expires May 17th, 2014

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG	)	
Christopher Lovett Burke, 272240,	)	2008 CP 42 2844
	)	
Applicant,	)	
	)	
v	)	RETURN
	)	
State of South Carolina	)	
	)	
Respondent	)	

The Respondent, making its Return to the Application for Post-Conviction Relief (APCR) filed April 17, 2008, would respectfully show this Court

I

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Spartanburg County. The Applicant was indicted at the July 2005 term of the Spartanburg County Grand Jury for trafficking in crack cocaine (2005-GS-42-3166). He was represented by Timothy M. Ray, Esquire. On November 2, 2005, the Applicant proceeded to trial after which he was found guilty as indicted. On November 3, 2005, the Applicant was sentenced by the Honorable John C. Few, to confinement for a period of twenty-five (25) years.¹

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Christopher Lovett Burke, Op. No. 2007 UP-550 (S.C. Ct. App. filed December 14, 2007).

¹In addition to the above conviction, the Applicant is currently serving sentences for convictions in 2001 for PWID marijuana (99-GS-42-6350), PWID cocaine (99-GS-42-6351), and three counts of PWID crack cocaine (99-GS-42-6352, 00-GS-42-4282, 01-GS-42-0123). Those convictions were the subject of a prior PCR and are not a part of the current PCR.

Attached herewith and incorporated herein by reference are the records of the Spartanburg County Clerk of Court regarding the subject conviction(s), the Applicant's records from the Department of Corrections, the Applicant's trial transcript, and the Applicant's direct appeal records

II

In his Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons **Ineffective Assistance of Trial Counsel**

III

The Respondent contends the allegation that trial counsel was ineffective is without merit. The Applicant's trial counsel rendered adequate assistance and provided representation within the range of competence required by attorneys in criminal cases. See Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

In a post conviction relief proceeding, the Applicant bears the burden of proving the allegations in their application. Butler, Id. Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984), Butler, Id.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, Id. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117,

336 S E 2d at 625, ~~at~~Strickland Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S C at 117-18, 386 S E 2d at 625

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S C 264, 305 S E 2d 247 (1983)

IV

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

V

WHEREFORE, having made its Return, the Respondent requests that a hearing be held

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November 5, 2008

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

Christopher Lovett Burke,

2008 CP 42-2844

Applicant,

VS

State of South Carolina,

Respondent

CERTIFICATE OF SERVICE BY MAIL

- 1 I am an employee of the Respondent in the above-captioned action
- 2 Regular communication by mail exists throughout the State of South Carolina and that this is
a proper circumstance of service by mail
- 3 I have this day served a copy of the Return of the Respondent in the above-captioned matter
on the following person(s) by depositing same in the United States mail, postage prepaid

Caroline M. Horlbeck, Esquire
Law Offices of Lawrence W Crane
101 Whitsett Street
Greenville, South Carolina 29601

Anne Mueller
Anne A. Mueller
Legal Assistant for the Respondent

DATED this 5th day of November, 2008

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG) 7TH JUDICIAL CIRCUIT

CHRISTOPHER LOVETT BURKE,)
 APPLICANT, TRANSCRIPT OF RECORD
 V 08-CP-42-2844
STATE OF SOUTH CAROLINA,)
 RESPONDENT)

MAY 29, 2009

SPARTANBURG, SOUTH CAROLINA

B E F O R E

THE HONORABLE J MARK HAYES, II, JUDGE

A P P E A R A N C E S

CAROLINE M W HORLBECK, ESQUIRE

ATTORNEY FOR THE APPLICANT

ASHLEY A MCMAHAN, ASSISTANT ATTORNEY GENERAL

ATTORNEY FOR THE STATE

SHARON L VIZER-HANKS

CIRCUIT COURT REPORTER

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NO EXHIBITS WERE INTRODUCED

1 Friday, May 29, 2009

2 MS MCMAHAN Your Honor, this is Christopher Lovett
3 Burke, case number 2008-CP-42-2844 At this time, I'll turn
4 it over to Caroline Horlbeck

5 THE COURT Yes, ma'am?

6 MS HORLBECK And, Your Honor, petitioner would
7 call Mr Ray to the stand

8 THE COURT Come around, sir Just come up here

9 TIMOTHY RAY, after having been duly sworn,
10 testified as follows

11 THE COURT Thank you, sir Please have a seat in
12 the chair, and pull yourself up to the microphone and speak up
13 loud enough so everyone can hear you

14 DIRECT EXAMINATION

15 BY MS HORLBECK

16 Q Mr Ray, do you recall representing Christopher
17 Lovett Burke?

18 A Yes, ma'am

19 Q Was he a privately -- I guess, was he a retained
20 client or was he an appointed client?

21 A No, ma'am At the time, I was working for the
22 public defender's office

23 Q So he would have been appointed Do you know how
24 long you represented Mr Burke?

25 A I don't remember how long I know it was for some

TIMOTHY RAY - DIRECT BY MS WORLBECK

1 months

2 Q Was Mr Burke incarcerated the entire time that you
3 represented him?

4 A No, ma'am I don't believe he was

5 Q Okay And what were the charges that you
6 represented Mr Burke on?

7 A Mainly a trafficking charge There were other
8 charges with that If you'll give me a moment I'll let you
9 know

10 Q All right

11 A I think when we went to trial it was only the
12 trafficking charge, when we went to trial I think there was
13 a possession of a weapon during the commission of a violent
14 crime and some other drug charges with it but the only one
15 that went to trial was the trafficking

16 Q Okay And I think you've already indicated, this
17 case was scheduled for trial Was the trafficking case, was
18 that always a trial or was that something that just
19 inadvertently ended up on the trial docket because of a
20 fall-through in plea negotiations?

21 A There really hadn't been any plea negotiations I
22 attempted and never heard anything from the solicitor Even
23 as of the Monday when the -- Judge Few held a status
24 conference that Monday Even during that time I approached
25 the solicitor, who was Ms Ganes, and tried to negotiate the

1 case, and basically at that time she admitted that she hadn't
2 even opened the file to look at the case yet

3 Q What did she tell you or what was her position on
4 the status of the case for trial?

5 A She told me that we would -- she would look at the
6 case She would make me an offer in the case and negotiate
7 the case, and for the purpose of the status conference we were
8 third from the end of all the trials on the docket For the
9 purpose of the status conference we could call it out as a
10 trial, the case would not be reached and she would make me an
11 offer in the case

12 Q Do you recall approximately how many cases were on
13 the docket for trial that week?

14 A Sixty-two

15 Q Does the position of the case on the list, is that
16 indicative of whether or not your case will be reached?

17 A You would like to think so On the new system of
18 our new docketing system that we use it pretty much goes in
19 order of the cases At the time you always hoped the
20 solicitor would go by the order because it actually gave you a
21 reasonable idea of which of your cases were going to come up,
22 especially when you work at the public defender's office and I
23 had several cases on the docket, unless they gave you advance
24 notice that we're actually going to skip to number 50, or
25 whatever, then you would hope that they would go in the order

1 that your cases were

2 Q Were you given advance notice that the prosecutor's
3 office would skip to Mr Burke's case and call it that week?

4 A No, ma'am I was given notice late in the afternoon
5 before the morning it was called for trial

6 Q Okay So let me just backtrack On Monday the
7 prosecutor's office told you that Mr Burke's case would not
8 be reached --

9 A Yes, ma'am

10 Q -- for trial? Okay And that status changed on
11 Tuesday afternoon?

12 A I believe it was Tuesday afternoon

13 Q Do you recall what time you were notified that
14 Mr Burke's case was actually going to be tried that week?

15 A I remember I believe I was notified by e-mail late
16 in the afternoon at 3 30, 4 00 in the afternoon maybe

17 Q All right Had you received any sort of plea
18 negotiation from the prosecutor's office --

19 A No, ma'am

20 Q -- at that point? Okay All right And how many
21 other cases did you have on the trial docket that week?

22 A I had -- well, there was a case that was number 26
23 that I had prepared for trial fairly extensively that was a
24 trial up until I believe that Monday We worked that out to a
25 plea Then I began working on another trafficking case that I

1 had put some work into already and I needed to get it ready
2 for trial That case was number 58 Mr Burke's case was
3 number 60 There was an earlier case, number 49 on the
4 docket, that the solicitor ended up dismissing that week So
5 this other case was number 58 That was Deatha Smith, and it
6 was a trafficking cocaine and distribution of cocaine that I
7 began preparing for

8 Q Okay So you actually had 3 other cases on the
9 trial docket that were subject to being called to trial ahead
10 of Mr Burke's case?

11 A Yes, ma'am

12 Q Now, were you able to make a motion before the Court
13 regarding the unfairness of calling Mr Burke's case to trial?

14 A What I did was immediately after I got the e-mail I
15 tried to call the solicitor's office and actually went over to
16 the solicitor's office I was fairly upset over this And in
17 fact, Ms Ganes wasn't even handling the case It had been
18 handed off to 2 other prosecutors to try So I went to talk
19 to them to tell them what was going on, and to no avail the
20 case was still going to be called

21 So at that time I went -- I believe it was that
22 afternoon we went in and found the judge before he left for
23 the day in chambers I talked to him about the problem, and
24 he told me that there was not going to be a continuance They
25 told me there was actually 2 cases ahead of mine to go the

TI-MOTH- RA- - DIRECT BY S HORIBICK

1 next morning, but I was informed that if those cases pled or
2 did not go forward then this one was going forward the next
3 morning

4 Q All right How much time did you actually have to
5 prepare Mr Burke's case for trial?

6 A I had spoken with him previously just to get an idea
7 of the case before but as the case was coming up I didn't get
8 a chance to speak to him before Monday, and on Monday when I
9 was informed that the case wasn't coming up that week I kept
10 preparing for the other cases that I knew were going to be
11 trials

12 Q How many times in total did you speak to Mr Burke
13 about his case? Just to the best of your recollection

14 A Maybe twice prior to that week and then as much as I
15 could when I found out the case was going to trial I tried
16 to talk to him more extensively then

17 Q All right Did you have the opportunity to review
18 discovery with Mr Burke?

19 A I did I think the problem with a case like his is
20 I think it required a lot of research on the law, and I began
21 performing all the research and trying to piece the case
22 together as best I could I believe that -- I guess the
23 strategy of the case was the part that was going to take the
24 most work, putting together and preparing for the
25 cross-examination of the State's witnesses So I worked

1 extensively late on that Tuesday and all the way through until
2 the end of trial working on the case as best I could get it
3 together then

4 Q All right At the time you found out late Tuesday
5 that Mr Burke's case was going to trial did you have an
6 opening statement and cross-examination questions prepared?

7 A When I found out it was going to trial, no

8 Q Yes

9 A No, I did not at that point

10 Q So you had basically the entire trial to prepare?

11 A To prepare

12 Q Okay Including a closing argument?

13 A Yes, ma'am

14 Q And the research?

15 A Yes, ma'am

16 Q Do you recall, were you able to complete the
17 research that you felt that was needed to adequately represent
18 Mr Burke at the trial?

19 A I feel like I completed the research There were
20 things that I wasn't able to do like go and view the evidence
21 that they had in the case So I know that came up as an issue
22 with some fingerprints in the case and the officers that were
23 there had -- they had sent one of the, I believe it was a
24 baggie off for fingerprints, the one that they allege
25 Mr Burke had in his possession, and no one knew the result of

TIMOTHY RAE - DIRECT BY MS MORIBECK

1 that Things like that I felt like there was more that needed
2 to be done to determine what had happened with those
3 fingerprints

4 Q And if you'd had more time to prepare the case and
5 if Mr Burke's case had not been called for trial do you think
6 you would have considered calling a fingerprint expert?

7 A Yes, ma'am, when I would have discovered that issue
8 At that point, I wasn't aware of all the matters with the
9 fingerprints I believe that upon viewing some of the
10 evidence I might have been able to determine that some of
11 those things were done

12 Q All right And do you think that not knowing about
13 the fingerprint issue and not having the time to call a
14 fingerprint expert, do you think that prejudiced Mr Burke's
15 chances at trial?

16 A If, according to Mr Burke, he was not in possession
17 of those drugs, and I believe if there were fingerprint
18 analysis done, and if Mr Burke was telling me the truth then
19 any fingerprints on it should not have been his

20 Q Right

21 A I think that would have made a difference

22 Q Was this a case where Mr Burke was found in direct
23 possession of the drug or was this a case where Mr Burke --
24 or drugs were found in the vicinity of Mr Burke?

25 A Drugs were found in the vicinity of where he was

1 arrested

2 Q Okay But not on his immediate possession?

3 A Correct

4 Q Okay All right What other research did you feel
5 -- well, let me back up What other research or issues did
6 you feel like you needed more time to prepare?

7 A Mainly in preparation for handling the witnesses,
8 the State's witnesses I believe I got enough of the legal
9 research done I believe that -- I know we had planned going
10 into the trial that Mr Burke was not going to testify and
11 that changed later in the trial So I don't know that we
12 could have planned -- I don't think we would have had any more
13 time to plan his testimony seeing as how it changed in the
14 course of trial as to whether or not he would testify But
15 with that being a possibility if he was considering it, it
16 would have been good to have more time to prepare that --

17 Q Okay

18 A -- as well

19 Q All right Is there anything else, anything that
20 Mr Burke wanted you to do that you simply just didn't have
21 time to get done before the trial?

22 A No, ma'am Not that I can recall

23 Q And do you recall whether or not you made a motion
24 before the Court to continue the matter, do you recall that?

25 A I can't remember if I made the motion on the record

1 I know in chambers I did I believe at a later time in the
2 record we discussed what had happened in chambers

3 MS HORLBECK All right That's all I have
4 Please answer any questions that the attorney general has

5 CROSS-EXAMINATION

6 BY MS MCMAHAN

7 Q On the issues with the solicitor calling the case at
8 the last minute and all that stuff, that was actually brought
9 out at the trial, wasn't it?

10 A Yes, ma'am

11 Q And Ms Ganes was actually brought in to discuss
12 what she had told you?

13 A Yes, ma'am

14 Q And did you prepare and request any jury
15 instructions?

16 A Yes, ma'am, I did

17 Q And were those instructions granted, do you recall?

18 A In part I believe the part that was not I took
19 exception to on the record

20 Q And there was also an issue with a witness that you
21 wanted that the judge made the solicitors basically track down
22 for you?

23 A Yes, ma'am

24 Q And ultimately you decided you didn't require him

25 A Yes, ma'am They had promised when we were in

1 chambers that they would have him there for me and ultimately
2 they did not but they placed a phone call and allowed me to
3 speak with him on phone, and after speaking with him I
4 determined that he would not be a witness that I wanted to
5 call for the case

6 Q And what changed over the course of during the phone
7 call and you wanting to have him?

8 A My concern was as to what his testimony would be
9 concerning the arrest of Mr Burke and the possession of the
10 drugs

11 Q So you essentially decided that he would not be
12 beneficial to your client?

13 A Yes, ma'am

14 Q And did you discuss that with Mr Burke?

15 A I believe that I did We were in the -- court was
16 -- we were in court at the time and we took a brief recess for
17 me to talk with the witness, and I believe after I spoke with
18 him that I told Mr Burke that we didn't want to call him as a
19 witness

20 Q And then ultimately because of that, is that when
21 Mr Burke changed his mind about testifying?

22 A No, ma'am I don't think that was the reason --

23 Q Okay

24 A -- why he changed his mind I don't actually recall
25 the reason why It may have been that, as best I can recall,

TIMOTHY RAY - CROSS BY MS MCNAHAN

1 just the testimony at trial I think it was -- it may have
2 been important to him to let the jury know why he was at the
3 location when the raid occurred I believe that might have
4 been the main reason for him choosing to testify

5 Q Was that because he testified that he was a barber
6 and there to cut his cousin's hair?

7 A Yes, ma'am

8 Q And did Mr Burke ever indicate that he wanted to
9 plead guilty when you first talked to him or was it always
10 more of a trial?

11 A He was interested in seeing what we could negotiate
12 I don't know that I would say he was ready to plead to
13 anything but I believe he was interested in seeing what type
14 of negotiations could bring forward

15 Q And did you request a suppression hearing or was
16 that just done out of precaution?

17 A I don't recall what we did as far as suppression
18 hearing I don't believe we did I think our position was
19 that yes, drugs were there but they weren't his I believe
20 that was our strategy for the trial I don't think there was
21 an issue as to whether or not drugs were found or whether the
22 warrant was valid Our position was that drugs were there,
23 they belonged to the other people who were there

24 Q And that's why you requested a mere presence charge?

25 A Yes, ma'am

1 Q And one of the police officers did testify that the
2 fingerprinting had been done on the baggie but they were also
3 not aware of what the results were?

4 A Yes, ma'am

5 MS MCMAHAN Nothing further, Your Honor

6 THE COURT Any redirect limited to what the State
7 went into?

8 MS HORLBECK No, Your Honor

9 THE COURT Thank you, sir You may step down

10 MR RAY Thank you, Your Honor

11 THE COURT Does the applicant wish to call another
12 witness?

13 MS HORLBECK Yes, Your Honor We call Christopher
14 Burke to the stand

15 THE COURT Sir, if you would, please come right up
16 here

17 CHRISTOPHER LOVETT BURKE, after having been
18 duly sworn, testified as follows

19 THE COURT Thank you, sir You may have a seat in
20 that chair, and just slide the chair up to the microphone and
21 speak up loud enough so that the lawyers and I can hear you,
22 sir

23 DIRECT EXAMINATION

24 BY MS HORLBECK

25 Q Mr Burke, where are you currently incarcerated?

CHRISTOPHER LOVETT BURKE - DIRECT BY MS WORLBECK

1 A Perry Correctional Institution

2 Q Did your case -- you went to trial on your case,
3 correct?

4 A Yes, ma'am

5 Q And what sentence did you receive?

6 A Twenty-five years

7 Q Who represented you at your trial?

8 A Timothy Ray

9 Q Was your case always going to trial or was this
10 something that you were considering pleading guilty to? Tell
11 me about that

12 A I was going to always go to trial

13 Q All right Had there been any plea negotiations
14 between your attorney and the prosecutor's office?

15 A Well, see, Mr Ray, he was telling me something
16 about 18 years so

17 Q All right How many times did you and Mr Ray meet
18 about your case?

19 A Well, we met -- see, that Monday morning, see, when
20 I first came up there, the Monday morning

21 Q The Monday morning of the week of your trial?

22 A Yes, ma'am

23 Q Okay Go ahead

24 A And then -- then he tell me to come back Tuesday
25 So when I came back the following Tuesday, that's when my

1 trial started

2 Q Did you and Mr Ray meet any other times?

3 A No, ma'am

4 Q When you did meet did you and Mr Ray, were you all
5 able to go over the discovery?

6 A No, ma'am

7 Q Have you ever been able to go over the reports in
8 your case, the discovery, the police reports, any statements?

9 A No, ma'am

10 Q All right Now, what did your attorney tell you
11 about whether or not your case was going to trial that week?

12 A Well, he just called me, say, like on a spur of the
13 moment, and it was like -- said the solicitor's office was
14 going to call your case for trial So I was -- so I was like,
15 how because we haven't --

16 Q When did you receive the phone call from your
17 attorney telling you that your case was going to trial?

18 A Monday

19 Q Okay Monday afternoon or Tuesday morning?

20 A Monday morning

21 Q Okay When you came -- and you were summoned to
22 come to court on Monday morning?

23 A Yes, ma'am

24 Q Okay Did you go home Monday afternoon?

25 A Yes, ma'am

1 Q When did your trial ultimately begin?

2 A Tuesday

3 Q Tuesday afternoon?

4 A Tuesday morning

5 Q Okay All right Now, at your trial did your
6 attorney make any objections to the solicitor's closing
7 arguments?

8 A No, ma'am

9 Q All right What do you believe your attorney should
10 have objected to?

11 A See, the solicitor -- all right She made a
12 statement, her closing argument, she say me, said the
13 defendant was conspiring with these gentlemen to sell
14 narcotics out of the residence, crack cocaine was cooking in
15 the middle of the living room, it's a highly surveillanced
16 operation But I'm like, I ain't got nothing to do with that
17 because I testified to that at trial

18 Q Okay Whose house were you at?

19 A Brad Logan

20 Q Was it a house or a trailer?

21 A A trailer

22 Q Were you living there?

23 A No, ma'am

24 Q And the residence belonged to Mr Logan, you said?

25 A Yes, ma'am

1 Q Now, did you go to trial on a conspiracy case? Was
2 your case a trafficking charge?

3 A Yes, ma'am

4 Q Okay And the allegation you're complaining about
5 the solicitor argued is that she argued you were conspiring
6 with Mr Logan and others in the trailer?

7 A (Nodded)

8 Q Okay And there was no objection, that you recall?

9 A Yes, ma'am See, my case was a circumstantial case
10 Like, see, they introduced -- see, the drug evidence, like --
11 okay See, the solicitor, she was like, see this gentleman,
12 he was conspiring with these other fellows to sell drugs out
13 of the residence

14 See, my case, they charged me with constructive
15 possession because they found some drugs in my vicinity So
16 she added all of the other drug evidence to the jury because
17 you know -- see, when the jury see me at my trial I'm the only
18 defendant there, right, and they got all these drug evidence,
19 see, and I feel like that really did prejudice me

20 Q All right Did you have time to prepare your case
21 with your attorney before it went to trial?

22 A No, ma'am

23 Q All right If you would have had more time what do
24 you think you would have done -- what would you have asked
25 Mr Ray to do if you and he had more time to prepare your

CHRISTOPHER LOUIE BURKE - DIRECT BY MS FORBES

1 case?

2 A Now, if we would have had more time, like, see, we
3 could have looked into my indictment See, I was indicted --
4 see my charge was trafficking 10 to 28 grams but I was
5 indicted for trafficking 28 to a hundred grams

6 O Okay

7 A So we could have looked into that plus plus, all
8 right, he had mentioned something about -- about the witness,
9 the Officer Rayne See, when I first got the call from
10 Mr Ray he initially told me the solicitor's office was
11 calling my case because Officer Rayne, he was fixing to go on
12 guards duty So he was like, so that's the reason why they
13 moved your case up So I was like, so they just moved my case
14 up when me and you haven't discussed anything about my case?
15 See, we haven't really just --just talked about it

16 Q Okay Did you and Mr Ray discuss the drugs and the
17 baggie containing the drugs, whether or not you touched that?

18 A No, ma'am

19 Q Did you and Mr Ray discuss a fingerprint?

20 A He said something about it at my trial

21 Q Okay

22 A See, what the officer said -- see, they never --

23 Q But did you discuss with Mr Ray before your trial?

24 A No, ma'am

25 Q Okay You got to answer out loud

1 Did you and Mr Ray discuss hiring an expert to
2 analyze the baggie for fingerprints and whether or not those
3 prints belonged to you?

4 A No, ma'am

5 Q Okay And do you think that that would have changed
6 the outcome of your case, if there had been evidence from an
7 expert saying that that print did not belong to you?

8 A Yes, ma'am, because -- I'm thinking the officer's
9 name was Lieutenant Duncan He testified at my trial that he
10 went back outside, he found some drugs that was in a said
11 location, that the drugs could have been mine But, like,
12 see, my case was circumstantial All right See, the
13 circumstantial part come in, Duncan say he found the drugs in
14 a said location

15 First he said the bag was dry, because they say it
16 was raining that morning, which it was He said the bag was
17 dry So my lawyer asked about the fingerprints They said
18 they couldn't get any fingerprints because they say the bag
19 was wet So I'm like, if we would have called some kind of
20 fingerprint expert somebody would have got some fingerprints
21 if my fingerprints was on them See, but they said they never
22 had any fingerprints

23 Q All right Now, there was some evidence presented
24 that information was provided to the officers by a
25 confidential informant?

1 A Yes, ma'am

2 Q Did your attorney object to the presentation of that
3 evidence?

4 A No ma'am

5 Q And how do you think that that prejudiced your
6 chances at trial?

7 A Give me one moment

8 Q Sure

9 A See, my argument on trial counsel ineffective, see,
10 for the hearsay because before my trial started, right, see,
11 my suppression hearing, Investigator Hudgins, he testified --
12 he said that on March the 11th, 2005 a confidential informant
13 came to the residence, made a controlled buy from Brad Logan
14 using funds provided by Spartanburg County

15 So, see, it goes on to say, see, when the C I came
16 to the residence had on some kind of camera, video and all
17 this, but I'm like how did that have anything to do with me?
18 See, but I'm guessing that set the idea up that I were
19 conspiring with those fellows to sell drugs out of the
20 residence, so like I knew anything about that

21 Then -- see, but I'm thinking if my trial attorney
22 would have objected to that, see, that would have made a
23 difference in my case because, so what about this confidential
24 informant? All right I never saw him, confronted him or
25 nothing That was just said for what reason I don't know

1 Q All right Is there anything else that you believe
2 that Mr Ray should have done that he didn't do?

3 A Well, I'm thinking, see, I should have been granted
4 a motion for continuance

5 Q Was that motion made by your attorney?

6 A See, it wasn't necessarily made See, what the
7 judge --

8 Q Just, I mean, was it made before the Court?

9 A Yes, ma'am

10 Q Okay Was it denied?

11 A Yes, ma'am

12 Q All right And as a result of the denial of the
13 motion for continuance you had to go to trial that day?

14 A (Nodded)

15 Q Were you prepared to go to trial that day?

16 A No, ma'am

17 Q Were you prepared with your attorney to go to trial
18 that day?

19 A No, ma'am

20 Q And do you think the lack of preparation on
21 everybody's part, did that prejudice the outcome of your case?

22 A Yes, ma'am

23 Q All right Now, do you understand that the Court
24 can do one of two things today, the Court can either grant
25 your petition or the Court can deny your petition?

CHRISTOPHER LOVETT BJRLE - CROSS BY S MCMAHAN

1 A Uh-huh

2 Q Do you understand if the Court grants your petition
3 that your charges are not dismissed and you face
4 re-prosecution all over again, from square one?

5 A Yes, ma'am

6 Q All right And you understand that the Court cannot
7 decrease your sentence in any way today?

8 A Yes, ma'am

9 MS HORLBECK Now, please answer any questions that
10 the attorney general may have for you

11 CROSS-EXAMINATION

12 BY MS MCMAHAN

13 Q When the officers were testifying about the buy from
14 the C I they didn't actually testify that they made the buy
15 from you, did they?

16 A No, ma'am

17 Q It was Mr Logan, correct?

18 A Yes, ma'am

19 Q And it was Mr Logan's house that you were at?

20 A Yes, ma'am

21 Q And it was also Mr Logan's house where you were
22 caught running out the back door, correct?

23 A Yes, ma'am

24 Q And that's what the officers testified to, right?

25 A No, ma'am

1 Q They didn't testify that they caught you running out
2 the back door?

3 A He testified to me being on the back porch

4 Q And that they eventually caught you in the woods
5 correct?

6 A Yes, ma'am

7 Q After you had run off the porch?

8 A Yes, ma'am

9 Q And the first -- your attorney did make a
10 continuance request about halfway through the trial, didn't
11 he?

12 A Yes, ma'am

13 Q On the record?

14 A Yes, ma'am

15 Q But his first continuance request was not made on
16 the record, it was rather in the judge's office, correct?

17 A Yes, ma'am

18 MS MCMAHAN No further questions, Your Honor

19 THE COURT Any redirect limited to what the State
20 went into?

21 MS HORLBECK No, Your Honor

22 THE COURT Thank you, sir You may step down

23 MS HORLBECK That's all the from petitioner

24 MS MCMAHAN Nothing from the State, Your Honor

25 THE COURT Mr Burke, your lawyer has asked you

1 most of the questions that I usually ask someone in your
2 situation Just real quickly You do understand that my role
3 today is to determine whether or not you've met your burden of
4 proof?

5 THE APPLICANT Yes, sir

6 THE COURT And the burden of proof, as to what I
7 have to address today, are as to the issues that have been
8 raised as part of your application and does not go to whether
9 or not there's guilt, there's innocence, or involving the
10 sentence of the charge, do you understand that?

11 THE APPLICANT Yes, sir

12 THE COURT And as your lawyer has asked you, in the
13 event that I find that you have met your burden of proof I
14 cannot issue a new sentence I would simply send the case
15 back to the State of South Carolina to either be retried, have
16 you plead to it, dismiss it or have them do something else
17 with those charges, do you understand that?

18 THE APPLICANT Yes, sir

19 THE COURT And I need to let you know, frequently
20 it is not uncommon then for a person who is successful at a
21 PCR then to actually have criminal exposure of a much more
22 severe sentence, you understand that as well?

23 THE APPLICANT Yes, sir

24 THE COURT And so you still wish for me to review
25 the issues that involve your application for post-conviction

1 relief?

2 THE APPLICANT Yes, sir

3 THE COURT Sir, I would suggest that you stay in
4 touch with your attorney I will review the transcripts of
5 the prior proceedings, the documents that have been presented
6 to me, as well as consider the testimony that's been presented
7 here I'll make a decision as soon as I can Stay in touch
8 with your lawyer and she will let you know, okay?

9 THE APPLICANT Yes, sir

10 THE COURT Thank you for coming, sir

11 THE APPLICANT All right

12 (WHEREUPON, the hearing was concluded)

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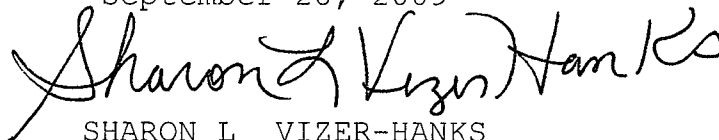
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C E R T I F I C A T E

I, Sharon L Vizer-Hanks, Official Court Reporter
for the 7th Judicial Circuit of the State of South Carolina,
do hereby certify that the foregoing is a true, accurate and
complete transcript of record of all the proceedings had and
the evidence introduced in the hearing of the captioned case
in Circuit Court on the 29th day of May 2009

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

September 28, 2009



SHARON L VIZER-HANKS

CIRCUIT COURT REPORTER

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
) FOR THE 7TH JUDICIAL CIRCUIT
 COUNTY OF SPARTANBURG) Case No 2008 CP 42 2844

Christopher Lovett Buike, #272240,)

Applicant,)

v)

State of South Carolina,)

Respondent)

ORDER OF DISMISSAL

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 SPARTANBURG COUNTY
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 MARC KITCHENS

This matter comes before the Court by way of an Application for Post Conviction Relief filed April 17, 2008. The Respondent made its Return on or about May 17, 2006. An evidentiary hearing into the matter was convened on May 29, 2009 at the Spartanburg County Courthouse. The Applicant was present at the hearing and was represented by Caroline M. W. Horlbeck, Esquire. Ashley A. McMahan, Esquire, of the South Carolina Attorney General's Office, represented the Respondent.

At the hearing, the Applicant testified on his own behalf. Also testifying was Timothy M. Ray, Esquire. This Court has before it the records of the Spartanburg County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the appellate court records, and the trial transcript.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Spartanburg

County The Applicant was indicted at the July 2005 term of the Spartanburg County Grand Jury for trafficking in crack cocaine (2005 GS 42 3166) He was represented by Timothy M Ray, Esquire On November 2 2005, the Applicant proceeded to trial after which he was found guilty as indicted On November 3, 2005, the Applicant was sentenced by the Honorable John C Few, to confinement for a period of twenty-five (25) years ¹

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected The South Carolina Court of Appeals affirmed Applicant's conviction and sentence State v Burke, Op No 2007 UP 550 (S C Ct App filed December 14, 2007) The Remittitur was sent on January 8, 2008

ALLEGATIONS

In his application, the Applicant alleges he is being held in custody unlawfully for the following reasons

- 1 Ineffective assistance of trial counsel
 - a Trial counsel failed to object to solicitor's improper closing argument,
 - b Trial counsel failed to request a directed verdict,
 - c Trial counsel failed to object to the relevance of evidence presented,
 - d Trial counsel failed to require the court to determine the probative value of evidence, and
 - e Trial counsel failed to object to hearsay testimony during the suppression hearing

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FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and

¹In addition to the above conviction the Applicant is currently serving sentences for convictions in 2001 for PWID marijuana (99 GS 42 6350) PWID cocaine (99 GS 42 6351) and three counts of PWID crack cocaine (99 GS 42 6352 00 GS 42 4282 01 GS 42 0123) Those convictions were the subject of a prior PCR and are not a part of the current PCR

has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the Applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71-1(e), SCRPC). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984), Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

First, the Applicant must prove that counsel's performance was deficient.

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Under this prong, attorney performance is measured by its "reasonableness under professional norms " Cherry, 300 S C at 117 385 S E 2d at 625, *citing Strickland*

Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different " Cherry, 300 S C at 117 18, 386 S E 2d at 625 A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial " Johnson v State, 325 S C 182, 186, 480 S E 2d 733, 735 (1997) (citing Strickland)

The Applicant testified that trial counsel informed him he would only be sentenced to about eighteen years for his conviction In addition, the Applicant claimed trial counsel never went over discovery with him and only told him the date of his trial one day before it began The Applicant also testified that although the incident took place at Brad Logan's house, where he did not live, and the solicitor argued that the Applicant was conspiring with others trial counsel did not object Last, the Applicant stated trial counsel did not have time to prepare his case This, he claims, is indicated by trial counsel's failure to put a bag found at the scene, allegedly with fingerprints on it, into evidence Also, the Applicant stated that an officer testified that a confidential informant made the controlled buy from Brad Logan rather than the Applicant, but trial counsel failed to present this information during trial

Trial Counsel testified that he represented the Applicant for a number of months, and he never received any plea negotiations from the solicitor

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Furthermore, trial counsel claimed that at the status conference he approached the solicitor to negotiate, but she had not yet looked at the Applicant's file. Trial counsel stated that the solicitor indicated she would look at the file and get back to him, but she said it may be some time away as the Applicant's case was third from last out of sixty two cases. However, under the system at the time, there was no guarantee that cases would be called in order. Trial counsel testified that he was not given notice that the Applicant's case was to appear until the afternoon before the trial. Even at this point, trial counsel alleged that no plea negotiations had been offered by the solicitor.

After trial counsel received notice of the date of the trial, he claims he immediately called the solicitor's office. Nonetheless, he testified that his attempts to negotiate were unsuccessful. In addition, he testified that he talked to the judge in his chambers before trial, but the judge would not agree to a continuance. Trial counsel claimed that he did do as much preparation on the Applicant's case as possible. But, due to such short notice of the Applicant's trial date, he was unable to view certain pieces of evidence. In particular, no one had determined the results of the fingerprint test done on the bag found at the scene. In addition, trial counsel claimed he probably needed more time to handle the state's witness.

The testimony and record establishes that this was a quickly called case due to the docketing system used at the time. The calling of the case seems to have caught the State and the defense by surprise from a timing and trial preparation standpoint. From an evidentiary position, the record at trial and the testimony

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presented during the hearing establishes that the drug charge against the Applicant was driven by circumstantial evidence since this is a so called "throw down" case. The State's case did rely upon the criminal activity of a non party in arguing criminal responsibility of the applicant. He was caught running from a house where drugs were being sold. Additionally, the State argued that the drugs that were thrown down by the Applicant were part of a larger criminal activity which involved not just the thrown down drugs, which led to the charges of the Applicant, but also criminal activity being conducted by the third party pertaining to the drugs in the house. No one asserted that the house belonged to the applicant.

This Court finds that when the record of the trial is viewed as a whole and testimony presented during the hearing is considered, this court does have some concern if the Applicant was prejudiced in the trial to the extent that this Court lacks confidence in the result. However, in a PCR application, the Applicant must prove ineffective assistance of counsel before the issue of prejudice resulting from the ineffectiveness is measured. This Court cannot find that the Applicant has met his burden of proof by establishing ineffectiveness of his trial attorney as alleged in his application. His attorney did not control the calling of the case to trial. Once he was placed on notice, he raised his concern to the trial judge in chambers and on the record. The judge attempted to lessen the burden of suddenly calling the case by requiring the State to produce a witness with which the trial attorney spoke and decided not to use at trial. Although the State made a significant argument to link the Applicant to criminal activity for which he was not on trial, the applicant's

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attorney raised the same type of argument in his closing. Thus failure to object to an argument made by the solicitor in her closing, assuming it was improper, was in response to a prior argument made by the Applicant's attorney.

Last, the failure to obtain a fingerprint analysis was cited as an error by the trial attorney, but the record below indicated that no fingerprints could be found on the bag. Nevertheless, for this court to go beyond speculating as to the existence of fingerprints, the better approach would have been to have the fingerprint analysis performed as presented as part of the PCR case.

Summary

This Court finds in regards to the allegation of ineffective assistance of counsel, the Applicant's testimony is not credible, while also finding trial counsel's testimony is credible. This Court further finds trial counsel adequately conferred with the Applicant, conducted a proper investigation, was thoroughly competent in their representation, and that trial counsel's conduct does not fall below the objective standard of reasonableness.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that trial counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that trial counsel committed either errors or omissions in his representation of the Applicant.

This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by trial counsel's performance. This Court

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concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. See Frasier *supra*. Therefore, this allegation is denied.

Other Allegations

As to the allegations of Failure to Request a Directed Verdict, Failure to Request the Court to Determine the Probative Value of the Evidence, and Failure to Object to the Relevance of the Evidence, which were raised in the application but not at the hearing in this matter, and were not specifically addressed in this Order, this Court finds that the Applicant failed to present any probative evidence regarding such allegations. Accordingly, this Court finds that the Applicant waived such allegations and failed to meet his burden of proof regarding them. Accordingly, they are denied and dismissed with prejudice.

CONCLUSION

Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

This Court cautions the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, S.C.A.R. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g),

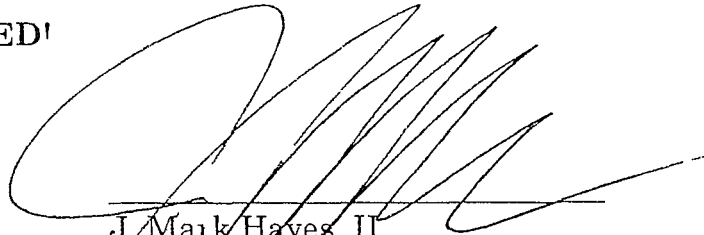
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SCRCF, provides that if the Applicant wishes to seek appellate review PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal

IT IS THEREFORE ORDERED

- 1 That the Application for Post Conviction Relief must be denied and dismissed with prejudice and
- 2 The Applicant must be remanded to the custody of the Respondent

AND IT IS SO ORDERED



J. Mark Hayes, II
Presiding Circuit Court Judge

7/7, 2009

Spawtonburg, South Carolina

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WITNESSES

DOCKET NO

3166

The State of South Carolina

County of Spartanburg

Trey Gowdy, Solicitor

COURT OF GENERAL SESSIONS

TERM

THE STATE

VS

ACTION OF GRAND JURY

CHRISTOHPER LOVETT BURKE

Foreperson of Grand Jury

Date 7-21-05

VERDICT

Indictment for

TRAFFICKING IN CRACK COCAINE

SC Code 44 53 375

Jimmie M. BULLERSTAFF, Jr.

Foreperson of (Petit) Jury

Date 11/3/2005

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)

INDICTMENT

At a Court of General Sessions convened on JUL 2 2008 the
 Grand Jurors of Spartanburg County present upon their oath

TRAFFICKING IN CRACK COCAINE

That Christopher Lovett Burke did in Spartanburg County on or about March 17 2005 knowingly sell manufacture deliver purchase or bring into this State or did provide financial assistance or did otherwise aid abet attempt or conspire to sell manufacture deliver purchase or bring into this State or did knowingly actually or constructively possess, or did knowingly attempt to actually or constructively possess more than (10) ten grams of Crack Cocaine a schedule II controlled substance in violation of §44-53-375, *THE 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


 ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF GENERAL SESSIONS
SEVENTH JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA

vs

STATE'S REQUESTED VOIR DIRE

CHRISTOPHER LOVETT BURKE

2005-GS-42-3166

DEFENDANT

- 1 Have you or any member of your immediate family ever been represented by Timothy Ray or any other attorney associated with his law office?
- 2 Have you or any member of your immediate family ever been prosecuted by Melissa Millican or the Seventh Circuit Solicitor's Office or are you or any member of your immediate family currently being prosecuted by Melissa Millican or the Seventh Circuit Solicitor's Office?
- 3 Have you or any member of your immediate family ever been charged with Possession Distribution or Trafficking a Schedule I II or III drug or any other similar crime involving illegal drugs?
- 4 Have you or any member of your immediate family ever been charged with a crime by the Spartanburg County Sheriff's Department?
- 5 Have you or any member of your immediate family ever filed a lawsuit against the Spartanburg County Sheriff's Department?
- 6 Do you have any religious or moral views that would prevent you from making a judgment as to the guilt or innocence of someone charged with a crime?

Respectfully submitted

Melissa M. Millican
Assistant Solicitor

Spartanburg, South Carolina
_____, 2005

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

STATE OF SOUTH CAROLINA

vs

CHRISTOPHER LOVETT BURKE

DEFENDANT

IN THE COURT OF GENERAL SESSIONS

SEVENTH JUDICIAL CIRCUIT

STATE'S POTENTIAL WITNESSES

2005-GS-42-3166

- 1 Matt Hutchins – SCSO
- 2 Josh Kelly – SCSO
- 3 Beth Vaughn – SCSO Chemist
- 4 Deputy Lachica – SCSO
- 5 Officer Raines – Chesnee PD
- 6 Brian Duncan – SCSO
- 7 Ritchie McSwain – SCSO
- 8 Margaret Greer – SCSO

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG	)	
State of South Carolina	)	
vs	)	DEFENSE'S REQUESTED JURY CHARGES
	)	AND INSTRUCTIONS
Christopher Burke,	)	Charge Trafficking Crack, Trafficking
	)	Crack, Trafficking Cocaine,
	)	Possession of a Firearm During
	)	Commission of a Violent Crime
	)	
	)	Indictments 05-GS 42 2899, 3166, 3178
Defendant	)	
	)	
	)	

The Defendant respectfully requests that the Court give the following charges and instructions to the jury at the close of the case

Charge on Mere Presence or Knowledge

Suggested charge

If you find from all the evidence that the defendant was merely present at or near the scene of this alleged crime on the date in question, you are instructed that such presence at or near the scene of a crime will not support a finding of guilty. Mere presence can only create a suspicion, and you cannot find the defendant guilty because of suspicion.

Mere presence at or near the scene of a crime does not of itself permit an inference to be drawn by you that the defendant had knowledge of any criminal plan which might have been formed. Nor does mere presence support an inference of intent to engage in or to aid criminal conduct. Suspicious circumstances like mere presence are not sufficient for a finding of guilt against any defendant—*State v Green* 261 S C 366 200 S E 2d 74 (1973), *State v Hyder* 242 S C 372 131 S E 2d 96 (1963), *State v Leonard* 292 S C 133, 355 S E 2d 270 (1987) *State v Johnson*, 291 S C 127 352 S E 2d 486 (1987)

Charge on Definition of Possession

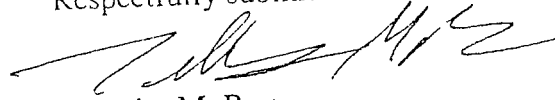
Suggested charge

Proof of possession of an item requires that the State show more than proof of control over the premises where the item was found or control over the vehicle in which the item was found. It is also necessary to show that the defendant knew of the item and that the defendant had dominion and control over the item or had the right to exercise dominion and

control over it and show that the defendant had the intent to control the disposition and use of the item - *State v Hudson* 277 S C 200 284 S E 2d 773 (1981), *State v Ellis* 263 S C 12 207 S E 2d 408 (1974)

Date 11/2/05

Respectfully submitted



Timothy M Ray
Attorney for Defendant