

RECEIVED

Feb 26 2025

S.C. SUPREME COURT

**THE STATE OF SOUTH CAROLINA
In the Supreme Court**

**CERT - COA
APPEAL FROM GREENWOOD COUNTY
Court of General Sessions**

Honorable Donald B. Hocker, Circuit Court Judge

**Appellate Case No. 2021-000486
Lower Case Nos. 2018GS2401480, 2018GS2401481**

The State,..... Respondent,

vs.

Tremaine O. Pride,..... Petitioner

APPENDIX

**Alan McCrory Wilson
Mark Reynolds Farthing
Attorney General Office
PO Box 11549
Columbia, SC 29211-1549
SC Bar No. 76901
mfarthing@scag.gov
(803) 734-4117**

**C. RAUCH WISE
Attorney at Law
305 Main Street
Greenwood, SC 29646
Bar № 6188
rauchwise@gmail.com
(864) 229-5010**

**David Matthew Stumbo
Eighth Circuit Solicitor's Office
PO Box 516
Greenwood, SC 29648
SC Bar No. 72105
(864) 942-8802
dstumbo@greenwoodsc.gov**

Attorney for Petitioner

Attorneys for Respondent

APPENDIX INDEX

Court Records

Record on Appeal filed June 22, 2022 1
Final Brief of Appellant filed June 21, 2022 229
Final Brief of Respondent filed July 5, 2022 247
Final Reply Brief of Appellant filed June 21, 2022 270

Opinion 24-UP-389 filed November 27, 2024 279
Petition for Rehearing filed December 11, 2024 283
Order denying Petition for Rehearing filed January 30, 2025 287

RECEIVED

Jun 22 2022

SC Court of Appeals

**THE STATE OF SOUTH CAROLINA
In the Court of Appeals**

**APPEAL FROM GREENWOOD COUNTY
Court of General Sessions**

Honorable Donald B. Hocker, Circuit Court Judge

**Appellate Case No. 2021-000486
Lower Case Nos. 2018GS2401480, 2018GS2401481**

The State, Respondent,

vs.

Tremaine O. Pride, Appellant

RECORD ON APPEAL

WILLIAM M. BLITCH, Jr.
Senior Assistant Deputy
Attorney General Office
P.O. Box 11549
Columbia, SC 29211
Bar No 15608
wblitch@scag.gov
(803) 734-3727

Attorney for Respondent

C. RAUCH WISE
Attorney at Law
305 Main Street
Greenwood, SC 29646
Bar No 6188
rauchwise@gmail.com
(864) 229-5010

Attorney for Appellant

INDEX

Bond Hearing Transcript dated September 4, 2018 1

Transcript of Record
 December 10, 2022, except pages 5-36 13
 December 11-12, 2022 26

Sentencing Hearing transcript dated April 29, 2021 203

Indictment Nos 2018-GS-24-1480 and 2018-GS-24-1481, Arrest Warrant numbers
2018A2420100383 AND 2018A240100386 208

Bail Proceeding Form II dated September 5, 2018 215

Bond Order dated September 5, 2018 217

State’s Exhibit #9 (chain of custody form) 225

Notice of Intent to Appeal 226

Certificate of Counsel 227

State’s Exhibits # 5 and #6 (body camera videos) Motion to
 Transport from Greenwood County Clerk office to SC Court of Appeals

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

STATE OF SOUTH CAROLINA)	IN THE COURT OF
)	GENERAL SESSIONS
COUNTY OF GREENWOOD)	OF THE EIGHTH
)	JUDICIAL CIRCUIT
)	
STATE OF SOUTH CAROLINA,)	
Plaintiff,)	TRANSCRIPT OF RECORD
)	2018-GS-24-01481
vs.)	
TREMAINE O'KEEFE PRIDE,)	
Defendant.)	

September 4, 2018
Greenwood, South Carolina

B E F O R E :

HONORABLE DONALD B. HOCKER, Judge.

A P P E A R A N C E S

M. WADE DOWTIN, ASSISTANT SOLICITOR
For The State

ANDREW M. HODGES, ESQUIRE
For The Defendant

Julie A. Cendroski,
Circuit Court Reporter
Seventh Judicial Circuit

I N D E X

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

<u>WITNESS</u>	<u>PAGE</u>
ANNOUNCEMENT OF CASE By Mr. Downtin	4
STATEMENT OF FACTS By Mr. Downtin	4
REPLY TO MOTION By Mr. Downtin	5
MOTION FOR BOND By Mr. Hodges	6
COURT TAKES UNDER ADVISEMENT	12
CERTIFICATE OF COURT REPORTER	13

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

EXHIBITS

MARKED ENTERED

NO EXHIBITS PROFFERED

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

THE STATE VERSUS TREMAINE O'KEEFE PRIDE

THE COURT: All right, Solicitor.

MR. DOWTIN: Thank you, Your Honor. Standing before you is Tremaine O'Keefe Pride. He's represented by Mr. Hodges of the Greenwood private bar. This is Mr. Hodge's -- Mr. Pride's motion to have a bond set on a trafficking crack third offense, charge 28 to 100 grams and that's why we're here.

THE COURT: Got ya. All right. Give me some of the allegations behind the charge.

MR. DOWTIN: Your Honor, on or about April 18th of 2018, the Greenwood County Drug Enforcement unit was actually looking for Mr. Pride. They received some information that he was at — Gray Street. The reason they were looking for Mr. Pride is because they had an active warrant for distribution of crack third offense.

They made contact with Mr. Pride. He was sitting in front of the residence. They notified him, hey, we have an active arrest warrant if you would come with us. At that point he ran from law enforcement, ran behind some apartments. I guess we can agree it was a couple hundred yards. He fell down a couple times.

Ultimately law enforcement was able to get Mr. Pride on body cam. Officer McClinton had his body cam on. You can actually see the entire encounter with Mr.

1 Pride.

2 He comes to a stop and he begins to reach down
3 into his sock. And at that point he pulls out what is
4 determined to be a bag of crack cocaine. And you can
5 literally see it on the video. From that point he
6 reaches into his sock, pulls it out and then proceeds to
7 hurl it like a baseball for 50 yards or so. And the
8 officer runs over, picks up the bag, shows it to you on
9 camera. It's a pretty straight forward case.

10 THE COURT: Okay.

11 MR. DOWTIN: He's got, I guess, charges pending
12 all the way back to 2015. I believe Ms. Penney in our
13 office has him on a couple DV seconds, a failure to stop
14 for blue light and also a burg first, which I will agree
15 is not the strongest case in the world.

16 As far as the ones I represent him on, though,
17 distribution of crack third offense from February of
18 2018. PWID marijuana third from March 23rd of 2018.
19 Distribution of crack third offense from April 4th of
20 '18. And then the charge we're here on today,
21 trafficking crack cocaine third offense --

22 THE COURT: Okay.

23 MR. DOWTIN: -- 28 to 100 grams April 18th, 2018.
24 He's obviously looking at a substantial amount of time.
25 Again, this incident that he's having bond set on he

1 runs from law enforcement. So I don't think -- between
2 that, him running from law enforcement and the
3 substantial amount of time he's looking at, 25 years,
4 you know, day-for-day minimum on this trafficking
5 charge, it's our position he is a flight risk.

6 THE COURT: Okay.

7 MR. DOWTIN: And I would say danger to the
8 community as well, Your Honor.

9 THE COURT: All right. Mr. Hodges, do you
10 represent him on all these pending charges?

11 MR. HODGES: Yes, Your Honor, I have been
12 appointed to represent him.

13 THE COURT: Do you know about what the bonds are
14 on these other charges off hand?

15 MR. HODGES: I don't off the top of my head,
16 Judge.

17 THE COURT: That's fine.

18 MR. HODGES: He had made bond on all those.

19 THE COURT: Right.

20 MR. HODGES: The only thing that's holding him
21 are these most recent drug charges.

22 THE COURT: The most recent charge, the
23 trafficking?

24 MR. HODGES: Correct.

25 THE COURT: Okay.

1 MR. HODGES: And distribution. But he was
2 arrested on that underlying distribution which then
3 resulted in the trafficking charge. The Summary Court
4 set bond on the distribution in the amount of \$50,000
5 but then denied bond on the trafficking.

6 THE COURT: Okay.

7 MR. HODGES: Which is ---

8 THE COURT: The relief you're seeking today is
9 for bond to be, initial bond setting on the trafficking?

10 MR. HODGES: Correct.

11 THE COURT: Okay. All right. Be glad to hear
12 from you.

13 MR. HODGES: Thank you, Your Honor. And as I was
14 saying, that the Summary Court set a \$50,000 bond on the
15 distribution. And what we're asking for today is for
16 the Court to set a concurrent bond on the trafficking in
17 the same, same amount. I would suggest as well that the
18 Court could add as a condition that he be under house
19 arrest and wear an ankle monitor. He feels he could
20 afford to pay for an ankle monitor.

21 He indicates that he's got a job waiting for him
22 at the packing plant. He lives on Taggart Avenue, which
23 is right behind the packaging plant so it would be
24 within walking distance of his job. So there wouldn't
25 really be reason for him to be any farther behind that

1 particular area.

2 I would point out that he does have a prior
3 record but it's about nine years old and the most recent
4 significant conviction. And, Judge, since, since he's
5 been locked up for -- he's been in jail about five
6 months and this is, this is his first motion in Circuit
7 Court. I mean, the denial was in a Summary Court
8 setting. Since his arrest he has had a grandchild that
9 he has not gotten to see or hold. He certainly is
10 anxious to do that.

11 One issue that's kind of a big issue that's
12 hanging out there, and the Court may be somewhat aware
13 of it, the officer who was involved in the distribution
14 case was fired. And I have been asking since June for
15 the information surrounding the circumstances of that.
16 We had an *in camera* review by Judge Addy of the
17 personnel file and there was really nothing much in the
18 personnel file.

19 Apparently we have now found out there is another
20 file that was kept separate from the personnel file.
21 And what the solicitor's office has indicated, their
22 intent is to provide that file to Judge Addy for a
23 subsequent *in camera* review, which I guess will happen
24 in October when Judge Addy is back here in the circuit.

25 So, you know, we were a little bit hamstrung

1 under these circumstances not knowing what's in those
2 files or whether it's exculpatory. And meanwhile he's
3 been sitting for five months without any bond at all.

4 And I ---

5 THE COURT: I think I've been involved in that as
6 far as ---

7 MR. HODGES: I think a different individual
8 maybe.

9 THE COURT: Oh, maybe it's different?

10 MR. HODGES: I think a different individual had
11 the same issue because that officer, I think, is
12 involved in quite a few cases.

13 THE COURT: Right.

14 MR. HODGES: But what was initially provided, I
15 would assume to you and to Judge Addy, was --

16 THE COURT: Right.

17 MR. HODGES: -- just the personnel file. It
18 really didn't have anything in it.

19 THE COURT: Right. That's what I reviewed was an
20 initial file that I deemed it not to be very helpful.

21 MR. HODGES: Right. Well, apparently there is a,
22 a separate --

23 THE COURT: Okay.

24 MR. HODGES: -- investigative file just
25 pertaining to this incident that was kept that was not

1 provided initially that a subsequent review will need to
2 be made on it.

3 MR. DOWTIN: Which, Your Honor, I understand that
4 Judge Addy has not seen that and made a ruling on what
5 may or may not be admissible.

6 THE COURT: Right.

7 MR. DOWTIN: But I have read it. Demetri Andrews
8 in our office has read it. A couple other prosecutors
9 have. I'll let Mr. Andrews know of everything -- not
10 Mr. Andrews, Mr. Hodges know of everything I could
11 potentially see maybe --

12 THE COURT: Right.

13 MR. DOWTIN: -- but ultimately, you know, unless
14 Judge Addy is willing to just throw the charges out,
15 it's my position that nothing in there is gonna change
16 my mind on how it affects any of his cases.

17 THE COURT: Right. Okay.

18 MR. HODGES: Not having seen it, I have no way of
19 knowing.

20 THE COURT: Sure.

21 MR. HODGES: I mean, the Solicitor's office has
22 said they don't see it as a problem, but I mean, I...

23 MR. DOWTIN: I gave you a chance to review it in
24 the office when you came by.

25 MR. HODGES: Well, I've never seen it.

1 MR. DOWTIN: Okay.

2 MR. HODGES: Okay.

3 THE COURT: Well, I'm sure that Judge Addy will
4 do whatever is necessary related to that and certainly
5 defer to his -- the judgment. The -- if I were to, to
6 set bond, Mr. Hodges, you said Taggart Avenue is --

7 MR. HODGES: Taggart Avenue, that's correct.

8 THE COURT: -- where he would -- what's the house
9 number?

10 THE DEFENDANT: 920 Taggart Avenue.

11 THE COURT: 920. Who resides there?

12 THE DEFENDANT: My wife and kids.

13 THE COURT: Your wife and kids?

14 THE DEFENDANT: (Nods head up and down.)

15 THE COURT: Okay. And, Mr. Hodges, you referred
16 to a packing plant?

17 MR. HODGES: Right. The Carolina Pride.

18 THE COURT: Carolina Pride?

19 MR. HODGES: Yes, sir. And that's on New Market,
20 which is very close to Taggart Street.

21 THE COURT: Okay. All right, I'll take this
22 under advisement and let, let the lawyers know something
23 as soon as possible.

24 MR. HODGES: Thank you, Your Honor.

25 MR. DOWTIN: Your Honor, and I just wanted to

1 make Mr. Hodges -- he's aware his offer expires the term
2 of court the end of October and, I mean, he's going on
3 the trial docket pretty quick. I understand he's been
4 in there for five months, but he is a problem in
5 Greenwood.

6 THE COURT: Right. I understand. Okay, very
7 good. I'll let y'all know something as soon as
8 possible.

9 MR. HODGES: Thank you, Your Honor.

10 MR. DOWTIN: Thank you, Your Honor.

11 THE COURT: Thank you.

12 (Whereupon, hearing concluded at 3:08 p.m.)

13

14 --- THIS ENDS REQUESTED TRANSCRIPT ---

15

16

17

18

19

20

21

22

23

24

25

State of South Carolina)
County of Greenwood) Court of General Sessions

2018-GS-24-01480, 01481

State of South Carolina)
vs.) Transcript of Record
Tremaine O. Pride)
Defendant)

December 10, 2018
Greenwood, South Carolina

B E F O R E:

Honorable Donald B. Hocker, Judge

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

Wade Downtin, Assistant Solicitor
Demetri Andrews, Deputy Solicitor
Attorneys for the State

Andrew Hodges, Esq.
Attorney for the Defendant

Joy E. Holston
Official Court Reporter

EXHIBITS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Court's

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>	<u>PAGE#</u>
1	Screen Shot	X		29
2	Personal File	X		34
3	Bond Paperwork	X		34
4	Notice of Bond Violation	X		34
5	Transcript	X		34
6	Arrest Warrants	X		34

1 THE COURT: Andrew wants to put something on the
2 record, Joy, whenever you are ready.

3 COURT REPORTER: Okay. Go ahead.

4 MR. HODGES: I am objecting to a trial in absence.
5 We had a pretrial conference and we will take that issue
6 up later but just put that issue up now. Thank you, Your
7 Honor.

8 THE COURT: Okay. All right, everybody be at ease.

9 (Whereupon, a short break was taken.)

10 (Whereupon, the jury panel came into the courtroom at
11 approximately 11:00 a.m.)

12 THE COURT: All right, ladies and gentlemen, the
13 first case that is being called for trial is the State of
14 South Carolina versus Tremaine O'Keefe Pride. Mr. Pride
15 has been indicted with two offenses and I am going to
16 publish or read the indictments to you in just a second.
17 But let me explain to you what an indictment is and what
18 it is not. An indictment serves basically, serves two
19 purposes. One, it puts the Defendant on notice of the
20 charge or the charges that he is being tried on. And
21 secondly, it is the mechanism to get the case into trial,
22 into court where we are today. The indictment serves no
23 other purpose. It is not proof of any of the allegations
24 that the indictment contains. It is not evidence of any
25 guilt on the Defendant's part. He has been indicted with

1 two offenses, trafficking in crack cocaine and resisting
2 arrest. And I will read the allegations in the
3 indictments to you. On the trafficking crack cocaine
4 which is indictment 2018-GS-24-1481 reads as follows. The
5 Defendant, Tremaine O'Keefe Pride did on or about April
6 18th, 2018 in Greenwood County, South Carolina, knowingly
7 sell, manufacture, deliver, purchase or bring into this
8 State or did provide financial assistance or otherwise
9 aid, abet, attempt or conspire to sell, manufacture,
10 deliver, purchase or bring into this State or was
11 knowingly and actual in constructive possession; or
12 knowingly attempted to become in actual or constructive
13 possession of 28 grams or more of crack cocaine in
14 violation of section 44-53-375, subsection C, of the code
15 of laws of South Carolina.

16 The resisting arrest indictment which is
17 2018-GS-24-1480 reads as follows. The Defendant, Tremaine
18 O'Keefe Pride, did in Greenwood County on or about April
19 18th, 2018 knowingly, willfully and unlawfully oppose a
20 Wesley McClinton while serving, executing or attempting to
21 serve or execute a legal writ for process or did resist an
22 arrest made by Wesley McClinton with the Greenwood Police
23 Department whom he knew or reasonably should have known
24 was a law enforcement officer in violation of section
25 16-9-320, subsection A, code of laws for South Carolina.

1 enough. You can tell a difference between cocaine or
2 crack, Your Honor. And to be honest with you, they are
3 basically the same thing, it is just in a different form.
4 I mean, it is my understanding that at one point crack
5 cocaine carried more time as far as sentencing. And that
6 is no longer the case. Each of the charges carries the
7 exact same amount of time, Your Honor. So it is our
8 position that was a scrivener's error on the warrant. It
9 was made abundantly clear to him, between the warrant,
10 between the paperwork he signed regarding his bond, Your
11 Honor, the bond hearing where all the facts were on the
12 record about what he was charged with, where he was when
13 this incident occurred, went above and beyond there, more
14 facts that are typically in a warrant. He basically had
15 an arraignment when he had his bond hearing is the State's
16 position. I mean, and again, at the end of the day,
17 that's not, it's just a, it is basically our position that
18 the formal arraignment process is not required, Your
19 Honor. It comes down to notice, was he on notice. He was
20 no notice from the warrant, all, the bond hearing, the
21 bond paperwork. And as far as how did he know to be
22 present, again, your bond paperwork says to stay in
23 contact with his attorney. Mr. Hodges has been notified
24 of his client being on the trial docket for crack cocaine,
25 trafficking in crack cocaine in October and November and

1 in December. All three of the times the trial docket that
2 Mr. Andrews was sent from Solicitor Yates Brown said crack
3 cocaine. So the State is just having a hard time seeing
4 how Mr. Pride is saying he was not on notice for what he
5 was charged with. And there is also a resisting arrest
6 charge, Your Honor, I really didn't feel the need to bring
7 that up. But he should be here regardless. He knew to be
8 here. He cut his ankle monitor off on December 1st. He
9 is not here. It is the State's position we should move
10 forward, Your Honor.

11 THE COURT: Okay. Let me, I just want to review the
12 transcript for just a second.

13 (Whereupon, a short break was taken while Judge
14 Hocker reads a transcript.)

15 THE COURT: Okay, Mr. Hodges, anything in response?

16 MR. HODGES: Just a couple of things, Your Honor. I
17 know you were looking at the bond paperwork. I would just
18 point to the Court that the caption on both the original
19 bond paperwork and your order, those reference the warrant
20 number which is that 218383, not an indictment number.
21 That one is correct, the warrant itself is sort of
22 internally inconsistent because on the left column area it
23 had, drugs, trafficking cocaine, 28 less than a 100, as
24 the CDR code, 0148 for cocaine. And then as the statute
25 code, 44-53-370. All of that is cocaine statute language.

1 In the second column in the description of offense, it
2 says drugs, trafficking cocaine. And then in the body it
3 talks about crack cocaine. So he is correct that it's
4 internally inconsistent. What I was saying about
5 discovery in this last week, is that it was the first time
6 I became aware that there was a direct indictment. It is
7 the first time I knew there was a direct indictment.

8 THE COURT: Was when?

9 MR. HODGES: Was last week when I pulled the
10 indictments and then I, it made me wonder, why is there a
11 direct indictment, why didn't they indict him on the
12 warrant which is when I started comparing the indictment
13 to the warrant trying to figure out why they did a direct
14 indictment. And that is when I discovered my client was
15 actually notice for trafficking in cocaine, not
16 trafficking in crack cocaine. So that was the discovery I
17 made last week about this direct indictment and this
18 inconsistency between it and the warrant. I guess the
19 only other thing, Judge, clearly I am on notice and I am
20 here. But I don't know that the State can rely on the
21 existence or non-existence of any privileged communication
22 between me and my client. They have an obligation to
23 provide notice, whether it be through a summons or publish
24 it on their website, whatever the case may be.

25 THE COURT: All right. Your argument, Mr. Hodges,

1 that your client, notwithstanding the bond hearing and the
2 bond orders, he was only put on notice of -- well, let me
3 phrase it another way. Your client, by virtue of the CDR
4 code and the statute on the warrants, was put on notice
5 that he had been charged with trafficking in cocaine and
6 not crack cocaine, notwithstanding the narrative in the
7 warrant; notwithstanding what was stated at the bond
8 hearing; notwithstanding the bond order itself.

9 MR. HODGES: That's correct, Your Honor. Because he
10 has never been arraigned or bonded on that indictment.
11 The State is seeking to move forward on the indictment for
12 which he had never been arraigned or bonded. But he has
13 no notice of that indictment. The only notice he has is
14 for trafficking cocaine on a different statute.

15 THE COURT: Isn't what is important is notice of the
16 charge as opposed to statute numbers, CDR code numbers. I
17 mean CDR codes and statute numbers should be totally
18 irrelevant to a Defendant. What is important to a
19 Defendant is the actual charge it seems like to me. Just
20 trying to play a little devil's advocate here, Mr. Hodges.
21 Are you able to tell the Court when you last communicated
22 with your client?

23 MR. HODGES: Would that not get into attorney/client
24 privilege?

25 THE COURT: If you are saying I am unable to say

1 that, Judge, then I am not going to force the issue. I
2 just didn't know what you were going to say.

3 MR. HODGES: I think I would be unable to reveal
4 that, Your Honor. And not only this notice issue on the
5 indictment but I still think there is just a notice of the
6 trial, date issue as well.

7 THE COURT: Well, to be quite candid with everybody,
8 that is what I am more concerned about. What I am going
9 to look at, notice of trial date I am more concerned, or I
10 am going to look at that harder than necessarily this
11 notice of the charge. I think, quite frankly I see where
12 he has received notice of the charge but, you know, notice
13 of the trial date, you know, the bond order says stay in
14 touch with the attorney. Is that sufficient notice or
15 not. I don't know. Y'all hold your thoughts for just a
16 second.

17 There are a couple of cases and I, of course, the
18 Wrapp case which I think originated in, here in Greenwood
19 that Judge Russo heard. I don't know if any of y'all were
20 involved in that case or not.

21 COURT REPORTER: Judge, what was that?

22 THE COURT: Wrapp, that's W-R-A-P-P. That came out
23 this year.

24 MR. DOWTIN: I believe that was Solicitor Black, Your
25 Honor.

1 THE COURT: Okay. And that's fairly instructive on
2 this issue of TIA's and notice. I am going to study on
3 that case and a couple of other cases I want to read. So
4 bottom line, unless there is anything else you guys want
5 to tell me, I am going to take it under advisement. And
6 the best I can do is just tell you to be ready to go
7 forward tomorrow and if it does not, if I side with Mr.
8 Hodges then, Solicitor Brown, I don't know if, kind of
9 have some stuff kind of waiting in the wings. I wish I
10 could give you a ruling right now, make it a lot easier
11 for you guys but I need to look at this a little bit
12 harder.

13 MR. HODGES: Do you have a cite on the Wrapp case.

14 THE COURT: I do. It is 421, SC, 531; State versus
15 Wrapp, W-R-A-P-P. An opinion came out back in August 2017
16 and basically Judge Russo tried the Defendant in the
17 absence and they reversed it. Then a couple of other
18 cases I want to take a look at too.

19 MR. HODGES: Judge, I had some other pretrial
20 motions. You want to set those outside and wait until you
21 rule on this issue or do you want to take them up.

22 THE COURT: Tell me what they are first and then I
23 can tell you whether or not I want to deal with them now
24 or just put them on hold.

25 MR. HODGES: A couple of them are very brief. One

1 would be to sequester witnesses. The other would be, he
2 was arrested on an underlying warrant and I think it would
3 be inappropriate for the State's witnesses to get into
4 what the nature of that warrant is. I mean, obviously,
5 the fact that he is being arrested on a warrant, they have
6 to get into that but I don't think they need to talk about
7 what that warrant was for.

8 THE COURT: Are you conceding that they can bring it
9 out, that we were looking for Mr. Pride because we had a
10 warrant. But don't go into the nature of the charge or
11 details or anything like that. And we have dealt with
12 that before and I don't think that's going to be an issue.
13 Give a reason why they are out there looking for him but
14 don't go into details. Sure.

15 MR. HODGES: And then there was the whole issue about
16 the redaction on the video. Mr. Downtin and I have talked.
17 I don't think there is going to be a lot of conflict on
18 that issue but we will still need to make a record of what
19 is not.

20 THE COURT: Well, let's do this. Y'all get together
21 and, if you can kind of come to some agreement we can put
22 that on the record. If there is any portions you can't
23 agree on then I can deal with that if we do go forward.
24 Sequestration of witnesses, Solicitor, are you okay with
25 that?

1 MR. DOWTIN: I have no objection to anything Mr.
2 Hodges said, Your Honor.

3 THE COURT: Okay.

4 MR. HODGES: And, of course, if we get that far, the
5 motion to suppress.

6 THE COURT: Right. The issue that we will deal with
7 tomorrow if I deny your TIA motion. Okay.

8 MR. HODGES: Yes.

9 THE COURT: Okay. Well, I will let you guys know
10 something as soon as I can in the morning. And if for
11 some reason I am able to make a decision before the end of
12 the evening I will let you know that as well.

13 MR. HODGES: Thank you, Your Honor.

14 *** END OF REQUESTED TRANSCRIPT OF RECORD ***
15
16
17
18
19
20
21
22
23
24
25

I N D E X

(SW) - Denotes State's Witness
 (DW) - Denotes Defense Witness
 (IC) - Denotes In Camera

	<u>Page No.</u>
Pre-Trial Motions.....	5
<u>(DW) CODY BISHOP (IC):</u>	
Direct Examination by Mr. Hodges.....	8
Cross-Examination by Mr. Andrews.....	17
Redirect Examination by Mr. Hodges.....	21
Recross-Examination by Mr. Andrews.....	21
Further Examination by Mr. Hodges.....	22
<u>(DW) SCOTT RUSS (IC):</u>	
Direct Examination by Mr. Hodges.....	23
Cross-Examination by Mr. Andrews.....	28
<u>(SW) CHAD COX (IC):</u>	
Direct Examination by Mr. Andrews.....	30
Cross-Examination by Mr. Hodges.....	32
Redirect Examination by Mr. Andrews.....	33
Matters of Law.....	34
Introductory Remarks by the Court.....	49
Opening Statement by Mr. Andrews.....	54
Opening Statement by Mr. Hodges.....	58
Matters of Law.....	63
<u>(SW) WESLEY MCCLINTON:</u>	
Direct Examination by Mr. Downtin.....	68
Cross-Examination by Mr. Hodges.....	84
Redirect Examination by Mr. Downtin.....	91
<u>(SW) SAMMY DAVIS:</u>	
Direct Examination by Mr. Downtin.....	92
Matters of Law.....	97
<u>(SW) WHITFIELD BROOKS (IC):</u>	
Direct Examination by Mr. Andrews.....	99
Cross-Examination by Mr. Hodges.....	101
Examination by the Court.....	102

INDEX (CONTINUED)

	<u>Page No.</u>
<u>(SW) WHITFIELD BROOKS:</u>	
Direct Examination by Mr. Andrews.....	103
<u>(SW) KENYA GRIFFIN:</u>	
Direct Examination by Mr. Downtin.....	107
Cross-Examination by Mr. Hodges.....	112
Redirect Examination by Mr. Downtin.....	114
Recross-Examination by Mr. Hodges.....	116
<u>(SW) SHANNON SORRELLS:</u>	
Direct Examination by Mr. Andrews.....	117
Cross-Examination by Mr. Hodges.....	126
State Rests.....	130
Motions.....	131
Defense Rests.....	139

WEDNESDAY, DECEMBER 12, 2018

Matters of Law.....	141
Closing Argument by Mr. Downtin.....	144
Closing Argument by Mr. Hodges.....	150
Charge on the Law by the Court.....	158
Verdict of the Jury.....	172
Certificate of the Court Reporter.....	178

INDEX (CONTINUED)E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
(State's Exhibits)			
S-1	Photograph.....	69.....	69
S-2	Drugs.....	69.....	126
S-3	Phone.....	69.....	79
S-4	Scale.....	69.....	96
S-5	DVD-Body Cam-1-W. McClinton.....	69.....	81
S-6	DVD-Body Cam-2-W. McClinton.....	69.....	81
S-7	DVD-Body Cam-J. Lovett.....	69	
S-8	DVD-Body Cam-M. Blackwell.....	69	
S-9	Evidence/Property Report.....	114.....	116
S-10	SLED Document.....	119.....	123
S-11	SLED Document.....	119.....	126
(Court's Exhibits)			
C-7	Warrant and Incident Report.....	30.....	30
C-8	Certified Conviction.....	176.....	176
C-9	Certified Conviction.....	176.....	176
C-10	Certified Conviction.....	176.....	176

All Exhibits were retained by the Clerk of Court for Greenwood County.

1 to the events that the Court will hear about in this
2 trial.

3 The underlying warrant was a distribution case that
4 was made by Officer Bryan Louis, who was dismissed by the
5 Greenwood County Sheriff's Office for irregularities in
6 his use of confidential informants and his making of
7 distribution cases. And that's what I want to make a
8 record on is what the investigation was by the sheriff's
9 office internally that led to his dismissal.

10 And then the seizure of my client and subsequent
11 seizure of the drugs would be fruit of the poisonous tree
12 from his earlier investigation.

13 THE COURT: Okay. So the -- the sheriff's office
14 internally decided to dismiss that warrant because of --

15 MR. HODGES: Not dismiss the warrant, dismiss the
16 officer.

17 THE COURT: They dismissed the officer. What
18 happened to the -- to the actual charge then?

19 MR. HODGES: It's still pending.

20 THE COURT: It's still pending. Okay. And just for
21 the record, I have reviewed the personnel file of Bryan
22 Louis previously. And I can kind of go more into that at
23 some point in time dealing with this motion.

24 But -- so you intend to call somebody with the
25 sheriff's office to discuss why Bryan Louis was terminated

1 from the sheriff's office?

2 MR. HODGES: Correct.

3 THE COURT: Okay.

4 MR. HODGES: I've, also, just before we get into
5 that, I've got one other case that I think is
6 distinguishable. I've only got one copy of it, but I'll
7 give everybody the cite. It's 361 S.C. 620 in the
8 Interest of Jeremy W.

9 THE COURT: 361, what now?

10 MR. HODGES: S.C. 620.

11 THE COURT: 620.

12 MR. HODGES: It's in the interest of Jeremy W.

13 THE COURT: All right. The -- the State vs. Mayzes,
14 M-A-Y-Z-E-S, that case without having read it, is that
15 dealing with a -- a police officer being terminated? Or
16 does it just kind of discuss in general the -- the
17 proposition of the "fruit of the poisonous tree"?

18 MR. HODGES: Right.

19 THE COURT: Okay.

20 MR. HODGES: It's more dealing with that.

21 THE COURT: Okay. Well, call -- do you have one
22 witness or more than one?

23 MR. HODGES: I have two, one more lengthy and the
24 other should be fairly brief.

25 THE COURT: All right. Call your first --

1 MR. HODGES: I would call Captain Cody Bishop.

2 WHEREUPON,

3 CODY BISHOP,

4 after first having been duly sworn, testified as follows:

5 THE WITNESS: Good morning, Judge.

6 THE COURT: How are you doing?

7 THE WITNESS: Good.

8 How are you?

9 THE COURT: Good, good.

10 All right. You may proceed.

11 MR. HODGES: Thank you, Your Honor.

12 DIRECT EXAMINATION

13 BY MR. HODGES:

14 Q Captain Bishop, could you tell us, what are your
15 duties at the Greenwood County Sheriff's Office?

16 A Yes, sir. I am the captain over investigations, as
17 well as the drug enforcement unit. I assign cases. I
18 monitor cases, discipline employees, and work a caseload
19 myself.

20 Q Okay. Would it be fair to say that you and Sheriff
21 Kelly have made an effort during his administration to
22 make the sheriff's office a more professional
23 organization, at least, maintain high professionalism?

24 A Sure. Yes, sir.

25 Q And is the sheriff's office accredited?

1 A Yes, sir.

2 Q And the accreditation process requires that you have
3 policies on, basically, everything to do with the
4 operation of the sheriff's office?

5 A That's correct.

6 Q And those policies, I'm sure, are important. And
7 they guarantee the safety of the public. Would that be
8 fair to say?

9 A It would, yes, sir.

10 Q And, also, to ensure the trustworthiness of any
11 investigations that the sheriff's office enters into?

12 A Yes, sir. Absolutely.

13 Q And you indicated that one of your duties is to
14 discipline employees?

15 A Yes, sir.

16 Q As part of those duties, did you engage in an
17 internal investigation with a former deputy by the name of
18 Bryan Louis?

19 A Yes, sir, I did.

20 Q I'm going to hand you what's been previously marked
21 as Court's Exhibit 2. I'll ask you to look at that
22 document. Does that document contain the results of your
23 internal investigation?

24 A Yes, sir.

25 MR. HODGES: Your Honor, I would offer Court's

1 Exhibit No. 2 as Court's Exhibit No. 2.

2 THE COURT: Okay. It -- it's been marked. And since
3 it's not going into evidence, it will remain marked as
4 Court's Exhibit No. 2.

5 BY MR. HODGES:

6 Q All right. What -- what was Agent Louis' position at
7 the Greenwood County Sheriff's Office?

8 A He was a drug enforcement agent.

9 Q All right. And what was the nature of the allegation
10 that caused you to conduct this investigation?

11 A One of the things was that he was, basically, middle
12 manning drug deals. If a violator would have been
13 arrested, then he would assist with getting them out of
14 jail and allowing them to set up buys.

15 In the meantime, one of the allegations was that he
16 would allow the informant to do whatever it is they do in
17 the meantime and not necessarily under the watchful eye of
18 the unit.

19 Q Okay. What do you mean by the middle man?

20 A Basically, he didn't put any -- if she was -- or
21 whoever was selling drugs, one of the statements that was
22 made is that he was -- the informant was allowed to do
23 that outside of the unit, as long as the information came
24 back to him was one of the allegations.

25 Q So, basically, that instead of the informants only

1 operating at the behest of the sheriff's office that they
2 could continue to be engaged in other activities?

3 A Yes, sir. That was the allegation.

4 Q That was the allegation. Okay. Was that the -- the
5 balance of the allegation?

6 A I'm sorry.

7 Q Was that it? I mean, was that, basically, the gist
8 of the allegation?

9 A Yes, sir.

10 Q All right. And could you just summarize what the
11 results were of your investigation?

12 A Yes, sir. As I -- as I looked into it, I noticed
13 that an informant had been arrested. And I was involved
14 in the arrest for distribution of a narcotic. I, also,
15 noticed that within 30 minutes of the arrest that she was
16 gotten back out of jail on a personal recognizance bond.
17 This would have been a distribution second offense, which
18 caught my attention that on a distribution second offense
19 that they would have received a personal recognizance bond
20 on that.

21 I went and spoke with the Judge. The Judge,
22 basically, told me that she doesn't remember because there
23 was a several month timeframe from the time I caught it --
24 from the time of the allegation that she doesn't remember
25 necessarily speaking with him directly. But it would be

1 uncommon for her to set a personal recognizance bond on a
2 distribution second whenever there -- whenever it was a
3 distribution second without first speaking with the
4 officer.

5 I spoke with him. He remembered very fine details of
6 the investigation. But when it came to the part did he
7 assist the informant in getting a personal recognizance
8 bond, he could not remember.

9 Q All right. And according to your investigating file,
10 you conducted an interview with Officer Louis on May the
11 14th of 2018?

12 A That sounds right. Let me just locate it in the
13 file.

14 Q It's on about -- let's see. I think it's on the
15 seventh page.

16 A Okay. Yes, sir.

17 Q Continuing investigation on Bryan Louis.

18 So you interviewed him regarding this complaint or
19 allegation on May 14th of 2018?

20 A Yes, sir.

21 Q And do you have any specialized training from the
22 academy or otherwise in terms of interview techniques
23 and -- and I would assume being a captain over
24 investigations, you've had training on interviewing?

25 A I -- I -- I've been to several interviewing classes

1 throughout my career, yes, sir.

2 Q Okay. You indicate in your report that it appeared
3 to you and to Lieutenant Russ that Agent Louis was being
4 untruthful. What led you to that belief that he was not
5 telling the truth about this investigation?

6 A The thing that caught my attention most is that he
7 remembered all the fine details of all the investigations
8 concerning this particular informant. But when it came to
9 me asking him a question, he -- he couldn't remember,
10 which was unusual.

11 Q And you -- you indicate later in there that it
12 appeared that he was withholding pertinent information
13 concerning --

14 A Yes, sir.

15 Q As a result of that, you set it up for him to take a
16 polygraph; is that correct?

17 A I did. I, actually, you know, consulted with the
18 sheriff, of course. And we set him up for a polygraph.

19 Q And one of the many policies that the sheriff's
20 office has is that employees have to voluntarily submit to
21 those, if requested?

22 A That's correct.

23 Q Now, I'm not going to ask you what the results of
24 the -- of the polygraph were. But you, actually, did not
25 get any results from the polygraph; is that correct?

1 A I -- I think that that's correct in so many words,
2 yes, sir.

3 Q All right. Your report indicates that, basically, he
4 was using counter measures to prevent an accurate result
5 from the polygraph exam?

6 A Yes, sir. Now -- now, my report just echos the
7 report of the calligrapher.

8 Q Right. Which indicated that he was using some sort
9 of breathing techniques or something to circumvent an
10 accurate result?

11 A That's correct. It did.

12 Q The report -- or your investigation includes a
13 document that is Policy 307 that indicates that you have
14 to come to a disposition of the complaint. And that it
15 can be unfounded, exonerated, not sustained, sustained,
16 withdrawn, or misconduct not based on the complaint. What
17 was the result? What was the disposition of this
18 allegation?

19 A The disposition was that there was really not a
20 formal disposition. There were several indicators
21 showing, you know, untruthfulness. And that's what I
22 reported back to the sheriff.

23 Q All right. And as -- as a result of this internal
24 investigation, he was dismissed from the sheriff's office?

25 A Yes, sir.

1 Q All right. You included in your investigative report
2 one particular policy or general order. It is number 702.
3 The subject is Use and Control of Confidential Informants.
4 Are you familiar with that policy?

5 A I am.

6 Q It's about halfway through the packet, if you want to
7 try to put your hands on it.

8 A Okay.

9 Q Under the paragraph with the heading of Policy, it
10 indicates that investigations can be undermined by either
11 the misconduct of confidential informants or the deputy
12 utilizing the informant. Is that fair to say?

13 A It is.

14 Q And would you agree with me that the actions of Agent
15 Louis had undermined the investigations that he was
16 involved in because of his misconduct?

17 A I don't know if it undermines every investigation.
18 But, you know, during the process of being set in a
19 position that I'm in, I set standards. Some of those
20 standards would be that I would be notified before any
21 confidential informant was to be released from the
22 detention center. And I would approve or disapprove it.

23 I think that that was undermined. And I was not
24 aware of this going on as far as every investigation.
25 That particular incident, I -- I do think, yes, sir,

1 undermined me.

2 Q Well, would you agree that his dishonesty is,
3 certainly, not a trait that is desired by a police officer
4 and you would hope to have officers that are being honest?

5 A Absolutely. It's not something I stand for, no, sir.

6 Q So, again, that -- that dishonesty in itself is a --
7 a factor that may undermine the investigations that he was
8 involved in?

9 A Well, it's -- it's really hard for me to -- to answer
10 that question with a "yes" or a "no." Because I -- I
11 think that a human being can be dishonest on some things
12 and honest on others.

13 So for me to say every investigation, it would be
14 very difficult for me to testify to that. But he was
15 dishonest in this circumstance I have reasons to believe.

16 Q And, specifically, dishonest about his use of
17 informants in drug investigations?

18 A Yes, sir. You're correct.

19 Q I assume being the head of the drug enforcement unit,
20 you are familiar with the investigations that occur under
21 your watch?

22 A Yes, sir.

23 Q And the -- the investigation of the case that led to
24 the ultimate arrest of Tremaine Pride that resulted in
25 these charges was a distribution case that was made by

1 Bryan Louis; is that correct?

2 A That's -- yes, sir. That's correct. I know he was
3 one of the agents. I don't think he was the only agent.
4 But I -- I -- he was there, yes, sir.

5 Q Okay. So he -- he was -- Tremaine Pride was arrested
6 on a warrant, I believe, signed by Agent Louis that then
7 led to the discovery of the drugs that he's charged with
8 in this case?

9 A Yes, sir. I believe you're correct.

10 MR. HODGES: All right. Please answer any questions
11 that the Solicitor may have.

12 THE WITNESS: Yes, sir.

13 THE COURT: Okay. Solicitor Andrews.

14 MR. ANDREWS: Thank you, Your Honor.

15 CROSS-EXAMINATION

16 BY MR. ANDREWS:

17 Q Captain Bishop, good morning, sir.

18 A Good morning.

19 How are you?

20 Q This is a bizarre kind of arrangement. I've never
21 had to cross-examine you before.

22 A Yes, sir.

23 Q So I'll try to be very gentle.

24 Sir, during the course of your investigation, did
25 Bryan Louis ever admit to any misconduct?

1 A Well, he -- he made a statement that he didn't
2 knowingly do anything wrong. But if he did, it was with
3 no intentions. I don't know how you take that statement.
4 But that's about the only thing that he said as admitting
5 to any misconduct.

6 Q So is it fair to say that he -- he may have admitted
7 to being negligent, but not doing something deliberately
8 or intentionally?

9 A That's fair to say.

10 Q And even then, that was kind of hedged along the
11 lines of if I did something, I didn't do it intentionally;
12 is that correct?

13 A That's correct. Yes, sir.

14 Q Out of all this, did you ever refer the case for
15 criminal investigation?

16 A No, sir.

17 Q Are you aware of -- where did Mr. Louis wind up?
18 What's his current position? Do you know?

19 A He is working with Ware Shoals Police Department.

20 Q Do you know if he's -- he remains a certified
21 officer?

22 A He does.

23 Q Okay. Do you have any familiarity with the case that
24 we're trying today against Mr. Pride?

25 A I do. It's -- it's brief. I didn't have any

1 involvement in it personally. But I -- I do have some
2 knowledge of it, yes, sir.

3 Q And are you aware that -- and I think you just
4 discussed this with Mr. Hodges -- the underlying warrant
5 that Mr. Louis sought and was, ultimately, issued, that's
6 the basis of the arrest in the case we're trying today?
7 Are you familiar with that?

8 A Yes, sir.

9 Q Do you have any reason to believe that Mr. Louis was
10 dishonest in seeking that warrant?

11 A No, sir, not at all. I have reasons to believe that
12 there are evidence to -- that are very clear showing that
13 this crime was committed, being a videotape.

14 Q Okay. Now, when you say "this crime," you mean the
15 case on which Mr. Louis is the affiant, or do you mean
16 this case we're trying today?

17 A The case you're trying today.

18 Q All right. But as to the -- the facts of the case
19 where Mr. Louis was the affiant, the case -- the case that
20 resulted because Mr. Louis sought the warrant?

21 A Yes, sir. I -- I don't have any reason to believe
22 that anything involving misconduct was done leading to
23 that, no, sir.

24 Q Okay. Typically, how many officers are present on
25 controlled buys?

1 A A minimum of two. Most of the time, we try to
2 utilize, at least, half the unit.

3 Q Okay. Do you know if multiple officers would have
4 been involved in the buy that Mr. Louis was involved in?

5 A Yes, sir, there was.

6 Q Okay. Who was the other officer involved in that?

7 A I believe it was Wesley McClinton.

8 Q All right. But you're not sure?

9 A I -- I'm not, to be honest with you. I know several
10 guys had their hands in and out of that at some point or
11 another. But I can't, specifically, name which ones were
12 involved, no, sir.

13 Q All right. Well, let me -- let me be more specific.
14 Sir, I'm going to show you -- and I wish I -- I had had
15 the foresight to print this out. I'm going to show you a
16 copy of warrant 20188241020035. If you would, just review
17 that briefly.

18 A Yes, sir.

19 Q All right. Do you have any familiarity with this
20 particular case?

21 A I don't.

22 Q Okay. How long have you been a captain over the
23 sheriff's office?

24 A Since July of 2017, mid July. I want to say around
25 the 17th, to be exact.

1 Q Okay. And it is -- is it sheriff's office policy to
2 have, at least, two officers on a controlled buy?

3 A It is, yes, sir.

4 Q So based on the date of this incident, which would
5 have been between April 3rd and April 4th, it's fair to
6 say there would have been two officers on that controlled
7 buy?

8 A Yes, sir.

9 MR. ANDREWS: Thank you.

10 Your Honor, no additional questions.

11 THE COURT: Any redirect, Mr. Hodges?

12 MR. HODGES: Very briefly.

13 REDIRECT EXAMINATION

14 BY MR. HODGES:

15 Q Would it be fair to say that your investigation was
16 not specific to Mr. Pride's case, but more specific to
17 the -- the general activities of Agent Louis as it related
18 to his use of informants?

19 A Yes, sir. I think that would be fair to say.

20 MR. HODGES: That's all I have, Your Honor.

21 MR. ANDREWS: Just -- just very quickly.

22 RE CROSS EXAMINATION

23 BY MR. ANDREWS:

24 Q Well, I mean, in fact, your investigation was very
25 specific to a certain person, wasn't it? To a certain

1 informant; correct?

2 A It was, yes, sir.

3 Q Okay. Did that informant -- was that informant
4 involved in these cases at all?

5 A Not to my knowledge at all, no, sir.

6 MR. ANDREWS: Thank you.

7 THE COURT: That was a female confidential informant,
8 was it not --

9 THE WITNESS: Yes, sir.

10 THE COURT: -- Captain?

11 THE WITNESS: That's correct.

12 THE COURT: Okay. Thank you, sir.

13 You can step down.

14 MR. HODGES: Can I ask one question?

15 THE COURT: Wait a minute.

16 Okay. One more question.

17 FURTHER EXAMINATION

18 BY MR. HODGES:

19 Q Do you know if the informant in that underlying
20 distribution is the same or -- or not? Or do you just not
21 know?

22 A The -- the informant which Bryan Louis' investigation
23 started between the informant with Mr. Pride?

24 Q Right.

25 A No, sir. I -- I have no knowledge of that.

1 Q You -- you don't know?

2 A No, sir.

3 MR. HODGES: Okay. Thank you, Your Honor.

4 THE COURT: Okay. You can step down, sir.

5 Thank you.

6 THE WITNESS: Yes, sir.

7 THE COURT: You say you had one short witness,

8 Mr. Hodges, on this issue?

9 MR. HODGES: Yes. Lieutenant Russ.

10 THE COURT: Okay.

11 THE CLERK: Place your left hand on the Bible and

12 raise your right hand.

13 WHEREUPON,

14 SCOTT RUSS,

15 after first having been duly sworn, testified as follows:

16 THE CLERK: You can take a seat.

17 THE WITNESS: Good morning, sir.

18 THE COURT: You may proceed.

19 MR. HODGES: Thank you, Your Honor.

20 DIRECT EXAMINATION

21 BY MR. HODGES:

22 Q Lieutenant Russ, were you as part of your --

23 THE COURT: Spell your last name for the court

24 reporter.

25 THE WITNESS: R-U-S-S.

1 THE COURT: Okay.

2 BY MR. HODGES:

3 Q As part of your duties with the Greenwood County
4 Sheriff's Office, were you involved in an internal
5 investigation regarding Bryan Louis?

6 A Yes.

7 Q All right. Briefly, have you received any training
8 in interview techniques?

9 A Yes.

10 Q All right. You are an investigator, I guess, and
11 that's part of your investigative training?

12 A That is correct.

13 Q All right. Were you involved in an interview of
14 Bryan Louis on -- let me get the day -- May 14, 2018?

15 A I was involved in an interview with him. I don't
16 remember the exact date, no.

17 Q All right. The report that resulted from that
18 interview that was written by Captain Bishop. He
19 indicates -- indicates in his report that it appeared to
20 both Lieutenant Russ and I that Agent Louis was being
21 untruthful. Do you agree with that statement that you,
22 also, believed he was being untruthful in that
23 interview?

24 A Was there a specific part? I mean, I don't...

25 MR. HODGES: Could he see Court's Exhibit 2?

1 BY MR. HODGES:

2 Q If you'd like to refer to that report. That may help
3 you.

4 A Okay.

5 Q I'm, basically, talking about the first paragraph on
6 that page.

7 A Yes. I do remember this.

8 Q All right. And what I'm asking you is that's -- that
9 is written by Captain Bishop. But I'm asking if you agree
10 with his assertion that you believed that Agent Louis was
11 being untruthful in that interview?

12 A At that point, yes, I do.

13 Q All right. And what led you to that belief?

14 A Nothing exact. It was just some of the -- some of
15 the wording. I don't remember the specific wording. But
16 I remember the feeling that I had whenever he was speaking
17 with Captain Bishop about it. In this particular
18 interview, I was more or less just sitting in more so as a
19 witness.

20 Q Would it be fair to say that you conduct a lot of
21 interviews and have the opportunity to gauge what you
22 believe to be the trustworthiness and non-trustworthiness
23 of what you're being told?

24 A That'd be a fair assumption.

25 Q And, essentially, without remembering specifics, that

1 was your impression from that interview was that he was
2 not being truthful?

3 A Not the entirety of the interview, but...

4 Q Portions of it?

5 A Maybe a portion.

6 Q Now, this was not the first time that you were
7 involved in an internal investigation regarding Officer
8 Louis; is that correct?

9 A That is correct.

10 Q In fact, you were involved in an investigation back
11 in January of 2012, where the allegation was that he was
12 potentially leaking information about confidential files
13 to family members; is that correct?

14 A I -- I do recall that, yes, sir.

15 Q Can you -- can you summarize for us what that
16 investigation was about?

17 A Let me see how I want to put this. The -- the
18 allegation arose -- and not directly to me -- where there
19 had been some information that was potentially leaked
20 possibly through him. I think during an investigation
21 something was discovered, maybe his wife had gotten ahold
22 of the phone that he had and discovered some of the
23 information on there, and maybe disseminated it from
24 there.

25 So it wasn't a direct reflection upon something that

1 he had, actually, done himself.

2 Q Now, at the time, was he in the drug enforcement
3 unit?

4 A Yes. I believe he was still in the drug enforcement
5 unit.

6 Q All right. And the leaked information dealt with
7 confidential informants and the use of confidential
8 informants; is that fair to say?

9 A Right.

10 Q And as a result of that investigation in 2012, he was
11 taken out of the drug enforcement unit and
12 transported back -- transferred back to uniform patrol?

13 A I think that's correct, yes.

14 Q All right. Then at some point between 2012 and 2018,
15 he was back in the drug enforcement unit, which then led
16 to the more recent investigation and, ultimately, his
17 dismissal; correct?

18 A At some point, he had to go back. I don't remember
19 when he -- when he did.

20 Q But he was back and that's where he was when he was
21 dismissed for this most recent investigation?

22 A Yes. I believe so.

23 MR. HODGES: All right. Please answer any questions
24 that the Solicitor may have.

25 THE COURT: Solicitor, any questions?

1 MR. ANDREWS: Yes, Your Honor.

2 Thank you.

3 CROSS-EXAMINATION

4 BY MR. ANDREWS:

5 Q Good morning, Lieutenant. How are you, sir?

6 A I'm fine, sir.

7 Q At any point during your investigation, did Bryan
8 Louis ever admit to any misconduct?

9 A No.

10 Q Did you feel like you needed to open a criminal
11 investigation in this case?

12 A No.

13 Q Did he ever -- was your investigation limited to a
14 single instance? In other -- well, let me back up.

15 Was your investigation limited to Mr. Louis' conduct
16 with a single informant?

17 A Yes.

18 Q Okay. Are you aware of there ever being an
19 allegation that he falsified an affidavit on an arrest
20 warrant?

21 A I'm not aware of it.

22 Q Okay. Do you know where Bryan Louis is now?

23 A Last I heard, he was a police officer in Ware Shoals.

24 MR. ANDREWS: All right. Thank you, sir.

25 THE WITNESS: Thank you.

1 THE COURT: Anything in redirect, Mr. Hodges?

2 MR. HODGES: No, Your Honor.

3 THE COURT: You can step down.

4 Thank you.

5 THE WITNESS: Who gets this prize?

6 THE COURT REPORTER: Just lay it on the table.

7 THE COURT: You can just leave it right there on the
8 table.

9 All right. Mr. Hodges, anything further on -- as it
10 relates to your motion?

11 MR. HODGES: Not provided with any testimony.

12 THE COURT: Okay.

13 MR. HODGES: Are you prepared to hear argument?

14 THE COURT: Sure. I'll take very brief argument.

15 MR. ANDREWS: Well, Your Honor --

16 THE COURT: Oh, you want to put up some other
17 witness?

18 MR. ANDREWS: Yes, sir, Your Honor. I -- I guess at
19 the last minute, we decided to call a witness. He's on
20 his way.

21 THE COURT: All right. Well, let's take a -- we'll
22 take a little short recess. And as soon as that witness
23 gets here, then we can put him up or her up.

24 MR. ANDREWS: Okay. Thank you, Your Honor.

25 THE COURT: All right. Everybody be at ease.

1 (WHEREUPON, a break was taken.)

2 (WHEREUPON, Court's Exhibit No. 7 was marked for
3 identification and admitted into evidence.)

4 THE COURT: Solicitor, you have a witness you want to
5 call as it relates to this motion for suppression?

6 MR. ANDREWS: We do, Your Honor. The State calls
7 Chad Cox.

8 WHEREUPON,

9 CHAD COX,

10 after first having been duly sworn, testified as follows:

11 THE WITNESS: Judge.

12 THE COURT: Good to see you.

13 THE WITNESS: Good to see you.

14 THE COURT: You may proceed, Solicitor.

15 MR. ANDREWS: Thank you, Your Honor.

16 DIRECT EXAMINATION

17 BY MR. ANDREWS:

18 Q Good morning, sir.

19 Please state your name.

20 A Chad Cox.

21 Q And where are you employed?

22 A Greenwood County Sheriff's Office.

23 Q How long have you been there?

24 A About since -- about 20 years.

25 Q Okay. Were you recently in the narcotics division?

1 A I was.

2 Q Okay. Sir, I'm going to show you what's been marked
3 as Court's Exhibit No. 7.

4 A So it's a warrant, a county warrant for Tremaine
5 Okeefe Pride.

6 Q Okay. Is there an incident report attached to that?

7 A There is, having case number 189519.

8 Q Okay. What is the charge on that incident report?

9 A Distribution of crack cocaine third offense.

10 Q And who were the officers listed on that incident
11 report?

12 A Agent Louis and myself.

13 Q Okay. Now, looking to Page 1 of that Court's
14 Exhibit, sir, again, what --

15 A Are you talking about the warrant -- the warrant?

16 Q Yes, sir.

17 A Yes, sir.

18 Q And what's that warrant for?

19 A Distribution of crack cocaine third or subsequent
20 offense.

21 Q Okay. And who was the affiant on that warrant?

22 A Bryan Louis.

23 Q All right. Was it your policy when you were in the
24 narcotics unit to have multiple officers on a controlled
25 buy?

1 A Yes. We don't -- we never did a controlled buy
2 without, at least, two officers.

3 Q Okay. So were you and Mr. Louis the two officers on
4 that controlled buy?

5 A It says I was. It says I was in the incident report.

6 Q Okay. Do you have any reason to doubt that the
7 incident report is incorrect?

8 A I do not.

9 Q Okay. Sir, do you know why -- or are you aware of
10 the circumstances of Mr. Louis' termination?

11 A I was not. I know there was an investigation and
12 Captain Bishop handled all that. I was not privy.

13 Q Okay. Do you know any of the details of the
14 investigation?

15 A I do not.

16 MR. ANDREWS: Thank you, sir.

17 Please answer any questions Mr. Hodges may have for
18 you.

19 THE COURT: Any cross-examination?

20 MR. HODGES: Just a few questions, Your Honor.

21 CROSS-EXAMINATION

22 BY MR. HODGES:

23 Q You seemed a little unsure about the case when the
24 Solicitor was asking you about it. Do you have any
25 independent recollection sitting here today about --

1 A I do not. I -- just reading the incident report.
2 Because a lot of times when we would have our own cases,
3 you may jump in there with somebody -- with another
4 officer and do the drug buy. But I don't.

5 Q All right. And so would it be fair to say that this
6 was a -- Bryan Louis' case?

7 A I would -- it would be fair to say that, yes.

8 Q He's the one that wrote the report?

9 A I'm sure.

10 Q His name appears at the bottom?

11 A At the bottom. So, yeah, I'm sure he wrote it.

12 Q All right. And -- and his name is the one that's on
13 the -- the warrant seeking -- seeking a warrant from the
14 judge?

15 A Yes, sir.

16 Q All right. So he would be the lead officer involved?

17 A Yes, sir.

18 MR. HODGES: All right. That's all the questions I
19 have, Your Honor.

20 THE COURT: Okay. You can step down, sir.

21 MR. ANDREWS: Just brief redirect.

22 REDIRECT EXAMINATION

23 BY MR. ANDREWS:

24 Q Have you watched the video that's associated with
25 this case, sir?

1 A Yes, sir, I did.

2 Q Do you have any reason to doubt any of the facts
3 stated in the warrant or in the incident report?

4 A No, sir.

5 MR. ANDREWS: Thank you.

6 THE COURT: Thank you, sir.

7 You can step down.

8 THE WITNESS: Do you want this?

9 MR. ANDREWS: That's just a Court's Exhibit. So if
10 you'd just leave it.

11 THE BAILIFF: Lay it on that desk there -- the table
12 in front -- there you go.

13 THE COURT: All right. Does the State have anything
14 further as it relates to witnesses on the motion?

15 MR. ANDREWS: No further witnesses, Your Honor.

16 THE COURT: All right. Mr. Hodges, I'll take some
17 brief argument, if you'd like to make any.

18 MR. HODGES: Thank you, Your Honor.

19 As you've heard, Officer Louis was twice disciplined
20 for his conduct regarding the use of CI's back in 2012
21 and, again, in 2018. I would note that this most recent
22 investigation was around the same timeframe that Mr. Pride
23 was arrested. And as you heard, the interview with him
24 was on -- in May. His arrest was in April. So this --
25 this all was happening contemporaneously.

1 As you heard Captain Bishop testify, under Greenwood
2 County Sheriff's Office policy, investigations are
3 undermined if either informants or officers are engaged in
4 misconduct with regard to the use of confidential
5 informants. And as you heard, this officer was fired
6 because of the misuse of confidential informants.

7 The officers involved in investigating and doing the
8 internal investigation believe that he was lying and that
9 he was using counter measures to attempt to
10 submerve [phonetic] the polygraph when they tried to give
11 it.

12 And, Judge, I would just submit to the Court that
13 under the circumstances, Mr. Pride's arrest on this
14 warrant was unreasonable under the Fourth Amendment and
15 that any subsequent seizure of him and seizure of anything
16 on his person would be proof -- fruit -- fruit of that
17 poisonous tree. And I would move to suppress the drugs
18 that resulted from that search.

19 I would, also, point out that he is charged with
20 resisting arrest. As the Court knows, it is permissible
21 to resist an unlawful arrest. And if the Court finds that
22 the search was unreasonable and an unlawful arrest, then I
23 think it would be appropriate to dismiss that charge as
24 well.

25 THE COURT: Thank you, Mr. Hodges.

1 Anything briefly, Solicitor?

2 MR. ANDREWS: Thank you, Your Honor.

3 I would just note that both Captain Bishop and
4 Lieutenant Russ testified that Mr. Louis was fired,
5 basically, on suspicion of being dishonest. They
6 themselves didn't even refer a case for a criminal charge.

7 Mr. Cox just testified that he has no reason to
8 believe that, based on everything he knows about the case,
9 there was anything misstated in the incident report and
10 then the warrant that followed.

11 Further, Your Honor, officers have a right to rely on
12 a warrant that was properly issued or, at least -- at the
13 very least, appears to be properly issued. And for that
14 proposition, we would cite United States vs. Leon. And
15 that is a U.S. Supreme Court case, 468 U.S. 897. That
16 case, of course, involves a search warrant, Your Honor,
17 that had been issued that officers relied on. In this
18 case, it's an arrest warrant. We think that the arrest is
19 proper.

20 THE COURT: Okay. Thank you very much.

21 I'm going to deny the Defense's motion to suppress
22 the drugs. I find that there's no connection between the
23 internal investigation and the termination of Officer
24 Louis and the Pride warrant.

25 The internal investigation was related to one

1 confidential informant unrelated to the Pride case. And I
2 don't find that the -- that the Pride warrant constitutes
3 a poisonous tree.

4 I think it's -- it's -- I think it's an important
5 fact that the charge is still pending and has not been
6 dismissed. So determination -- and -- and, too, let me
7 back up, you know.

8 Officer Louis never admitted to anything. So, you
9 know, it's a kind of a he said she said kind of situation.
10 And I just don't think it rises to the level to -- to
11 create any taint on this case. And I will, therefore,
12 deny the motion.

13 Now, with all that said, let's go back and let's
14 revisit, Mr. Hodges, your motion of yesterday where you
15 raised some arguments as it relates to procedural due
16 process. The -- the warrant shows a different -- or an
17 incorrect CDR code, a CDR code for cocaine and not crack
18 cocaine. The warrant, also, references statute 370 for
19 cocaine, as opposed to 375 for crack cocaine. And you
20 believe that that would constitute insufficient notice of
21 the charge on which he is being tried today.

22 And I know I'm summarizing. I'm not stating in
23 detail all your various arguments. And I'm going to deny
24 your motion based upon the fact that the body of the
25 warrant sufficiently states the drug involved was crack

1 cocaine. The -- the bond order and the bond hearing all
2 reference crack cocaine.

3 So I believe we have really nothing more than just a
4 scribbler's error. And I think there's more than ample
5 notice being given to Mr. Pride as to the charge on which
6 he's being tried for today.

7 In addition, and this is in reference to the Wrapp --
8 And, Madam Court Reporter, that's W-R-A-P-P.

9 The Wrapp case, I must make sufficient findings --
10 two sufficient findings. That, one, Mr. Pride did receive
11 notice of this actual term of court where his trial would
12 be conducted. And that he knew that -- secondly, he knew
13 that he would be tried in his absence if he failed to
14 attend.

15 We've had a wealth of conversations in chambers and
16 -- and I have decided that any communication from an
17 attorney to a client defendant as to notice of the date
18 and time of a trial would not be violative of the
19 attorney-client privilege if, in fact, that communication
20 from the attorney to a defendant was disclosed.

21 And I make that finding based upon the State vs.
22 Doster -- D-O-S-T-E-R -- case, the State vs. Love case,
23 and the federal case In Re: Grand Jury Proceedings,
24 which, specifically, said notice of trial does not come
25 under the attorney-client privilege.

1 Consequently, Mr. Hodges, as an officer of the court,
2 did you have any communication with Mr. Pride as it
3 relates to this case being called for trial yesterday,
4 December 10th, or the week of December 10th?

5 MR. HODGES: Before I answer that question, may I put
6 a few things on the record?

7 THE COURT: Sure.

8 MR. HODGES: As -- as the Court indicated, we have
9 had a wealth of conversations in chambers about this
10 issue. The Ravenell case, which is 387 S.C. 449, and
11 Morris vs. State, which is 371 S.C. 278. And it's
12 abundantly clear that if I were not to object to a trial
13 in absence and move for a continuance, which is what I
14 have done, that I would be ineffective in -- in not doing
15 that. And that's -- that's what I have done.

16 As you mentioned, the Doster case, that's 276 S.C.
17 647. I would note in the Doster case that the Court did
18 not require the communication between the attorney and the
19 client to be revealed. And there was some dicta in there
20 that makes it sound like that it would have to be a
21 situation where there's going to be a crime committed,
22 which is one of the exceptions in the -- in the rule
23 regarding communication with a client, which would be Rule
24 146.

25 One of the exceptions to Rule 1.6 that states that a

1 lawyer shall not reveal information relating to the
2 representation of a client is if the Court orders the
3 attorney to reveal that. And I am aware of the federal
4 case that the Court cited, 568 F.2d 555, which indicates
5 that communications between defense counsel about the time
6 and place of trial are not confidential.

7 But notwithstanding all that, I would object to being
8 required to reveal that confidential communication with my
9 client. But if the Court is going to overrule that
10 objection, then I will provide that information.

11 THE COURT: Objection overruled.

12 MR. HODGES: Your Honor, I had a conversation with my
13 client on October the 4th, which I orally notified him of
14 the trial date. Another oral conversation with him on
15 November 26th. And then written communication on November
16 the 28th. I have no way of knowing if he received the
17 written communication from November 28th.

18 THE COURT: And the written communication is the 28th
19 you said?

20 MR. HODGES: November the 28th.

21 THE COURT: And all three of those communications
22 gave him notice of the trial date being December 10th?

23 MR. HODGES: That's correct, Your Honor.

24 THE COURT: Thank you.

25 So, again, I'm going to revisit the two specific

1 findings that I must make under the Wrapp case, one, did
2 Mr. Pride receive notice of a specific term of court that
3 he needed to be present? I find that he did, based upon
4 Mr. Hodges' oral communication on October 4th and
5 November 26th to Mr. Pride, and his written communication
6 on November 28th.

7 Secondly, was Mr. Pride sufficiently apprised of the
8 fact that if he did not attend his trial that he would be
9 tried in his absence? And based upon Court's Exhibit No.
10 3, he signed an acknowledgement on the second page, which
11 indicates -- I'm just going to quote from the
12 acknowledgement that he signed on September 11th of 2018,
13 I understand and have been informed that I have a right
14 and obligation to be present at trial. And should I fail
15 to attend the Court, the trial will proceed in my absence.

16 So the motion to continue is denied. And we will
17 proceed forward with a trial in Mr. Pride's absence.

18 Now, there was some discussion back in chambers
19 concerning this notice, whether or not the notice needs to
20 come from the State. And I have determined that under the
21 Wrapp case that it does not have that requirement. The
22 Wrapp case does make reference to no evidence from either
23 party in that case, whether or not notice was given.

24 And under the State vs. Ravenell case, the notice,
25 actually, came from the Court and not from the State or

1 from the Defendant. So I don't see -- I think notice
2 coming from Defense Counsel to the Defendant is adequate
3 notice. And, again, we will proceed to trial.

4 Now, and I'll, also, mention that I have evidence, as
5 reflected in Court's Exhibit No. 4, that on December 1st
6 of this year, Mr. Pride cut off his ankle monitor. And
7 so --

8 And, Mr. Hodges, you are standing. So do you want to
9 add something?

10 MR. HODGES: You mentioned about the source of the --
11 the notice for trial. And -- and we discussed this in
12 chambers. And that was part of my argument is that the --
13 the notice should either come from the State or from the
14 Court.

15 I think I mentioned, you know, in other courts that I
16 practice in -- for instance, in Family Court, if you're
17 going to have a rule to show cause where someone is
18 subject to imprisonment that you, actually, have to serve
19 that party with notice. To the parties attorney is not
20 sufficient. It, actually, has to be notice by the moving
21 party to that -- to the party being sought on a rule to
22 show cause.

23 My clients in juvenile court are regularly summoned
24 by DJJ. My clients in magistrate's court are regularly
25 summoned by the Court. I practice law in the Eleventh

1 Circuit General Sessions. And they regularly provide me
2 a -- a form that they have my clients sign indicating when
3 they come back.

4 So my position would be that that's where the notice
5 should be coming from, either from the State or from the
6 Court, and not relying on my private communications with
7 my client for that notice. Because the State's the one
8 that's the moving party seeking a trial in absence.

9 So I just add those exceptions to the record.

10 THE COURT: Right. And, Solicitor, do you want to
11 add the State's position as to this -- this point
12 concerning the source of the notice to a defendant?

13 MR. ANDREWS: Yes, sir, Your Honor. And I know
14 Mr. Hodges mentioned in juvenile court, DJJ gives the
15 notice. Magistrate's court, the Court gives the notice.
16 We would note that DJJ are usually not attorneys. Most of
17 the time, magistrates are not attorneys.

18 What -- what our office is very squeamish about --
19 and I understand that other solicitor's offices do it is
20 communication with represented parties. I mean, we just
21 take the position that if somebody has a lawyer, the code
22 of professional conduct prevents us from -- from
23 contacting that person. Again, I know other offices do
24 it. We've just never done it here in this circuit.

25 Also, Your Honor, if I could just mention one very

1 brief housekeeping matter --

2 THE COURT: All right.

3 MR. ANDREWS: -- before you bring the jury out.

4 Yesterday afternoon, Mr. Downtin, and Mr. Hodges, and I
5 discussed the potential redaction of the videos, anything
6 objectionable in those videos that was on the audio
7 portion. We thought the most efficient way to handle that
8 was rather than giving it to our IT guy and having him
9 take out the relevant portions, we would just be hitting
10 the mute button at the appropriate time.

11 I wonder if you could just give the jury just a --

12 THE COURT: Right. And I do that any time there is a
13 redaction either in some document that portions are
14 blacked out or in an audio video to where there's -- the
15 sound is muted, portions taken out of the video. I always
16 give an instruction to the -- to the jury that we're --
17 you know, the Court, nor the State, nor the Defendant are
18 trying to hide anything from the jury. They're to place
19 no significance over the fact that -- well, in this case
20 that some of the sound is muted. That they are only to
21 consider what is admissible and relevant evidence in the
22 case. So I give an instruction in some fashion.

23 So just whenever the State intends to play that, just
24 kind of give me the heads up so I'll remember to give that
25 curative instruction.

1 MR. ANDREWS: Okay. And it should be with our first
2 witness --

3 THE COURT: Oh, okay.

4 MR. ANDREWS: -- that we're intending to get that
5 video in.

6 THE COURT: All right.

7 MR. HODGES: Judge, could I -- could I put on the
8 record what we've agreed to with regard to redactions?

9 THE COURT: Yes. That's fine.

10 MR. HODGES: There are four different videos. The
11 first one is referencing the Matt Blackwell video. It's
12 Officer Blackwell's body-cam video. We agreed that from
13 one minute and nine seconds to one minute and 12 seconds,
14 that would be redacted. That's a comment that he'd been
15 sitting there all day dealing.

16 From 1:33 to 1:37, there's a comment that the last
17 time he ran, he had a gun.

18 From 3:14 to 3:30, the officer is talking with an
19 unrelated individual about the fact that Mr. Pride had a
20 warrant about selling drugs.

21 And then from 4:05 to 4:15, there's editorializing
22 about the size of the bag of crack.

23 The second video is the video of Jamie Lovett. From
24 13:45 to 13:55 is a comment about him -- him dealing all
25 day.

1 There are two Wesley McClinton videos. They -- for
2 whatever reason, there's one and then the second one kind
3 of overlaps. But in the first video from 10:30 to 10:40,
4 it's the same comment that appears on the other video.
5 It's just that the mic picks up the other comment. But,
6 again, that he's been sitting there all day dealing.

7 And then from 10:55 to 11:05, the last time he ran,
8 he had a gun.

9 The second Wesley McClinton video, from 6:00 to 6:10,
10 a comment about he's got issues.

11 From 6:40 to 6:50, he put another bag in his pocket.

12 From 3:15 to 3 -- or I'm sorry, from 13:15 to 13:25,
13 a comment about the size of the bag.

14 And then from 14:25 to 14:35, again, about -- a
15 comment about him selling all day.

16 We agreed to all that yesterday. When we met
17 yesterday, it was my understanding that the State was
18 going to modify the videos to, basically, drop the sound
19 out at those points. They informed me this morning they
20 just intend to hit the mute button, which gives me a
21 little temerity if somebody's slow on the trigger on that.
22 But, obviously, if -- if it gets played and we've
23 stipulated that it shouldn't be, I'll be objecting to
24 that.

25 THE COURT: Right.

1 MR. HODGES: That's up to the State about how they
2 want to admit their evidence.

3 THE COURT: All right. Very good.

4 Thank you.

5 MR. ANDREWS: We agree to those times, Your Honor.

6 THE COURT: All right. Very good.

7 All right. Let's -- let's do this. Let's get the
8 jury out, get them sworn in. I'll give them a little
9 preliminary instruction. You do your opening. And then
10 we'll take a recess before we put up the first witness.

11 MR. ANDREWS: Yes, Your Honor. Mr. Downtin just
12 stepped out to get some of the evidence.

13 THE COURT: All right. Anything further before we
14 bring the jury out?

15 (WHEREUPON, there was no response.)

16 THE COURT: And during my -- my little preliminary
17 charge to the jury, I will give them a very specific
18 charge. And we'll do it again that the fact that
19 Mr. Pride is -- is not present, that fact is not to
20 prejudice him in any way, not to be considered by the jury
21 in any manner whatsoever, not to be -- kind of like the
22 election, not to testify, not to even be discussed in the
23 jury room during their deliberations.

24 And I'll explain to them that -- that Mr. Pride has
25 no burden of proof. And it's up to the State to prove the

1 allegations. So I'll -- just to make y'all aware I plan
2 to do that in -- in my preliminary remarks.

3 MR. HODGES: Thank you, Your Honor.

4 MR. DOWTIN: And, Your Honor, I know Mr. Hodges asked
5 for the witnesses to be sequestered. We have all the main
6 witnesses in the back. I'll let Andrew know.

7 Ms. Griffin, who -- Kenya, our evidence custodian is
8 in here with the evidence. But she didn't have anything
9 to do directly with this case, other than she received the
10 stuff in evidence.

11 THE COURT: Okay. Are you okay?

12 MR. HODGES: I'm fine with it.

13 THE COURT: Okay. Let's -- let's bring the -- bring
14 the jury out, Mr. Hamby.

15 (WHEREUPON, the jury came into open court at
16 approximately 11:35 a.m.)

17 THE COURT: Let the record reflect the jury is back
18 in.

19 Good morning, once again, ladies and gentlemen.

20 I appreciate your patience and understanding.

21 We just had some additional pre-trial matters that I
22 needed to work on with the lawyers. So that's why you
23 were kept for almost -- for almost an hour now. But we're
24 ready to -- we're ready to get started.

25 Have -- have you decided on a foreperson?

1 (WHEREUPON, the jurors pointed.)

2 THE COURT: Okay. And tell me your name.

3 JUROR #96, JAMASON MARTIN: Jamason Martin.

4 THE COURT: Okay. Mr. Martin, if you will just
5 switch seats. And congratulations. And I'm sure you'll
6 do a fine job.

7 The first order of business is we need to have you
8 sworn in as the trial jury.

9 So, Madam Clerk, if you would handle that, please.

10 THE CLERK: Yes, sir.

11 Everyone, please, stand and raise your right hand.

12 (WHEREUPON, the jury was sworn at approximately
13 11:36 a.m.)

14 THE CLERK: You may be seated.

15 INTRODUCTORY REMARKS

16 THE COURT: Ladies and gentlemen, I'm going to give
17 you a -- just a -- make some preliminary comments,
18 remarks, some things I want you to think about, consider
19 as we go through this trial. After I do that, then the
20 lawyers will make their opening arguments to you.

21 The first thing that I want to impress upon you is
22 the fact that the Defendant, Tremaine Pride -- and as you
23 can see, he's not here in the courtroom. He is to be --
24 there should be no prejudice to him whatsoever by virtue
25 of the fact that he is not here in this courtroom today.

1 That is not to even be considered by you, his not being
2 here. It's not to be considered by you in any manner
3 whatsoever. I don't even want you -- once you begin your
4 deliberations to even discuss in the jury room the fact
5 that he is not present.

6 Mr. Pride has no burden of proof to prove anything.
7 He has no burden of proof to prove his innocence. The
8 sole burden of proof rests on the State of South Carolina
9 to prove these charges to you beyond a reasonable doubt.

10 And so Mr. Pride has every right not to attend this
11 trial. He has an excellent lawyer who is representing
12 him. But he has every right not to attend. And so you
13 need to afford him that right. Okay.

14 Secondly, it's -- it's very important that you pay
15 very close attention to everything that goes on during
16 this trial. We do not anticipate this trial being a
17 lengthy trial. It more than likely will go into tomorrow,
18 I would imagine.

19 But you need to be very attentive. Because I don't
20 permit jurors to take notes. The reason why I don't
21 permit -- some judges do, some circuit court judges do.
22 And that's fine. I don't because I have found that jurors
23 oftentimes will pay more attention to their note taking
24 than listening to what -- the testimony that's being
25 offered.

1 So in order to have a good memory when you begin your
2 deliberations -- and you're not going to remember
3 everything. I understand that. That's why we have a
4 group of people. But I want you to have a -- as best
5 memory as you can. And in order to have a good memory,
6 then you have to be very attentive. Be alert.

7 There's -- there's nothing worse than for a judge to
8 look over into the jury box and see -- see a juror just
9 kind of looking around, not appearing to be very
10 interested and attentive to what's going on, and even
11 worse to appear to be asleep. So be alert, be attentive,
12 if you would.

13 I want you to understand that your role in this case
14 is you are the sole judge of the facts in this case. You
15 are to determine what took place in this case. You're the
16 sole judge of the facts.

17 And the same law that makes me the sole judge of the
18 facts -- makes you the sole judge of the facts makes me
19 the sole judge of the law. I make a determination on what
20 law is applicable to this case, whether it's as we go
21 through this proceeding -- I've already made some
22 decisions, some legal decisions concerning pre-trial
23 matters. And then I will instruct you at the end of the
24 case of what law for you to consider and apply to the
25 facts in the case.

1 And I told you yesterday that the fact that Mr. Pride
2 has been indicted in this case is not proof of any guilt
3 on his part on these two charges. The indictments put him
4 on notice of what the charges are. And the indictments
5 get the case into court where we are today. And they
6 serve no further purpose.

7 Please understand that Mr. Pride is presumed
8 innocent. Once he was arrested, he was automatically by
9 law presumed innocent. And that presumption of innocence
10 will be with him all the way through this trial. And I'll
11 explain more about presumption of innocence later on.

12 And, again, the State of South Carolina has the
13 burden of proving to you beyond a reasonable doubt to your
14 satisfaction these two charges against -- against
15 Mr. Pride. Again, Mr. Pride has no burden of proof
16 whatsoever.

17 Now, there may be times where one of the lawyers --
18 and I told you yesterday we have three excellent lawyers.
19 They may object to something. And they may say, Judge, I
20 have a matter of law. We need to discuss something with
21 you. We'll try to handle those at what we call sidebar
22 conferences.

23 But there may be a need from time to time to send you
24 back to the jury room to -- for me to discuss those legal
25 issues. And that discussion may require me to discuss the

1 facts of the case. And I don't want to discuss the facts
2 in the case in your presence. Because, once again, you
3 are the sole judge of the facts in this case.

4 Now, I mentioned to you yesterday about doing
5 research. And that we have just at our -- at the click of
6 a button, we have a wealth of information, be it Internet,
7 social media, and the like. And the reason why I don't
8 want you to do -- to do any research is because the
9 research that you do or the information that you obtain
10 from that research may be faulty information. Even if
11 it's not faulty information, it is information that the
12 other members of the jury do not have access to.

13 And your collective decision as a jury is to be based
14 100 percent on what is brought out in this courtroom. So
15 I don't want information outside of this courtroom to
16 influence you in any way whatsoever as to your decision in
17 this case. So during the course of this case, don't do
18 any research.

19 I don't know if there's going to be any media
20 coverage about this case. But don't consider that either,
21 if there is.

22 And, lastly, ladies and gentlemen, it's so important
23 to keep an open mind. Don't pass any quick judgments
24 about this case. Don't make any rash decisions about this
25 case until all of the evidence has been presented to you,

1 the lawyers have made their closing arguments at the
2 conclusion of the case, and then I have instructed you on
3 the law. Up until that time, keep an open mind.

4 Does the State have any objections to the Court's
5 preliminary charge?

6 MR. DOWTIN: No objection from the State, Your Honor.

7 THE COURT: The Defense?

8 MR. HODGES: No objection, Your Honor.

9 THE COURT: Okay. Thank you very much.

10 Now, these opening arguments, ladies and gentlemen,
11 that the lawyers are going to make are not evidence in
12 this case. It's just their statement of what they believe
13 the evidence will show and, basically, what they think
14 about this case to kind of give you a kind of framework of
15 what they believe that this trial will -- will show.

16 All right. Is the State ready?

17 MR. ANDREWS: The State's ready, Your Honor.

18 THE COURT: Okay. You may proceed, Solicitor.

19 OPENING STATEMENTS

20 MR. ANDREWS: Thank you, Your Honor.

21 May it please the Court.

22 Ladies and gentlemen of the jury, one second is not a
23 very long time. It takes about one second to say one, one
24 thousand. But Tremaine Pride hoped that one second would
25 be just long enough for him to get rid of 29 grams of

1 crack before law enforcement, finally, got to him.

2 Here's what happened in this case. On April 18th of
3 2018, officers with the Greenwood Drug Enforcement Unit
4 were looking for Tremaine Pride. They had a warrant for
5 him. When they found him on Gray Street, there was a very
6 brief conversation. Then Mr. Pride ran away from them.

7 He ran behind the apartments on Gray Street.

8 Officers Evans and McClinton chased behind him. Mr. Pride
9 ran into the creek in those apartments -- behind those
10 apartments on Gray Street. And then just as Officer Evans
11 is about to -- he's getting close, just at that one last
12 second, Mr. Pride took 29 grams of crack and threw it
13 toward the apartments hoping to make it land in the brush.

14 Officer Wesley McClinton was right there tracking the
15 thing the whole time. He's able to retrieve the drugs.
16 The drugs are put into evidence. Ultimately, SLED tested
17 the drugs. And they come back positive for crack cocaine
18 in an amount just over 29 grams.

19 Now, those are the basic facts, ladies and gentlemen,
20 of this case.

21 Like Judge Hocker told you when you first came in
22 yesterday -- it seems like it was an eternity ago -- many
23 of you probably don't have much experience with the
24 criminal justice process. And your experience is probably
25 limited to things you've seen on television. That would

1 mean scripted dramas, quasi documentary programs maybe
2 like 48 Hours or Forensic Files. This is not going to be
3 like that. This is real life.

4 And because this is real life, things just may not
5 seem as dramatic or exciting. There may not be big
6 reveals or gasps when somebody says something surprising.
7 But don't let that fool you.

8 Again, this is real life. There are real stakes
9 here. This doesn't just wrap up in 30 minutes that you
10 spend watching the investigators do -- do what they do,
11 and then the last 30 minutes are courtroom drama. Again,
12 this is real life. There are real stakes here.

13 Now, after you get all of the evidence and you hear
14 all of the facts, the Judge is going to charge you on the
15 law. And I'm not going to go into a lot of detail on
16 that. Again, that -- you're going to hear that at the
17 end. And then after the Judge charges you on the law,
18 you'll be able to make your decision.

19 There is one area of the law I just want to tell you
20 a little bit about. The Prosecution's burden -- the
21 State's burden in this case is that the State has to prove
22 this case beyond a reasonable doubt to all 12 of you.
23 That requires a little bit of explanation.

24 You may be thinking, what is a reasonable doubt? If
25 you are convinced of something beyond a reasonable doubt,

1 that means you are firmly convinced of it. You may, also,
2 hear the definition that a reasonable doubt is a doubt
3 that would make a reasonable person hesitate to act. That
4 requires a little bit of explanation. Okay. It's
5 hesitancy to act. Don't confuse that with some reflex or
6 automatic behavior.

7 Like Judge Hocker told you, you are the judge of the
8 facts. It is your job to think about the facts. So don't
9 think that just because you're thinking about something
10 that that's hesitancy to act. It is not.

11 If Wade throws that pen at me, I may try to swat it
12 away, I may blink, I might flinch. All of that is
13 automatic. All of that is reflex. I had to think about
14 none of that. That's not what we're talking about here.

15 Your job is to think about this case. And here's an
16 example I like to use, I've used it in here about 12
17 million times. I'm sure everybody in here is tired of
18 hearing it. But this is your first time. And this is the
19 best example I could think of.

20 If you come to an intersection and there's a red
21 light, obviously, you stop at the red light. When the
22 light turns green, you don't automatically pound the gas
23 pedal and plow through the intersection. I mean, you
24 might, but you shouldn't.

25 What do you do? The light turns green, look right,

1 look left. You see the path is clear and you proceed.
2 Why is that a smart thing to do? Because, sometimes,
3 people will run that red light from the lane that crosses
4 you. In other words, you have a reasonable doubt that
5 everyone obeys traffic lights. So by seeing the green
6 light and pausing just briefly to look in both directions,
7 what are you doing? You're eliminating the reasonable
8 doubt.

9 And after you've heard all the evidence in this case,
10 you, too, will be able to eliminate the reasonable doubt
11 and find Tremaine Pride guilty.

12 Thank you.

13 THE COURT: All right. Thank you, Solicitor.

14 Mr. Hodges, are you ready, sir?

15 MR. HODGES: Yes, sir.

16 Thank you, Your Honor.

17 Ladies and gentlemen of the jury, Winston Churchill
18 was the Prime Minister of Great Britain back during World
19 War II. He very famously said that jury service is the
20 greatest duty that a citizen can provide to their country
21 in peacetime. We, certainly, appreciate your presence
22 here today.

23 This is an important case for the State and,
24 certainly, an important case for my client, Tremaine
25 Pride. Today is really the first day that Mr. Pride has

1 had an opportunity to challenge these charges. As you
2 heard from the Solicitor, this case has been going on
3 since last April. Law enforcement went to a judge and got
4 a warrant. I wasn't there. Mr. Pride wasn't there to
5 raise objections, to point out why that warrant shouldn't
6 be issued.

7 As you heard the Judge tell you yesterday, there's an
8 indictment in the case. Well, I don't get to be present
9 in front of the Grand Jury when that indictment is
10 considered. Mr. Pride doesn't get to be there. There's a
11 whole process that goes on that we don't really get to
12 participate in. And as you've heard the Judge tell you,
13 that indictment is not evidence of anything.

14 The Solicitor just told you a story. That isn't
15 evidence of anything either. The Judge just told you a
16 few minutes ago that the statements of the lawyers aren't
17 evidence either.

18 So, at this point, you don't know anything about the
19 case because you haven't heard any evidence yet. And
20 that's what I'm asking you is that you listen to the
21 evidence, that you consider the evidence that comes from
22 the witnesses on the stand, that you listen to the
23 questions from the Solicitor, and that you listen to the
24 questions that I ask. Because, again, this is the first
25 time that the Defense has had an opportunity to challenge

1 these charges.

2 The Solicitor, also, talked to you a little bit about
3 the burden of proof and reasonable doubt. He is
4 absolutely correct that the Prosecution has the burden of
5 proof in this case. And it's a very high burden of proof.
6 You know, there are -- there are different courts in our
7 state.

8 You may have been involved in a civil case. You
9 know, maybe a car wreck case where one person's suing
10 another for some money, something like that. The burden
11 in that kind of a case is preponderance of the evidence.
12 If you will think of the -- the scales of justice. To
13 prevail in a civil case, you've got to tip the scales just
14 slightly in your favor to prevail. But that's not the
15 case in General Sessions Court, in criminal court.

16 In this court, the proof has to be proof beyond a
17 reasonable doubt. They've got to tip the scales really
18 far in their direction to prevail. And that's because
19 we're talking about liberty. You know, there are
20 Constitutional rights that people who are accused have.
21 And the burden of proof is proof beyond a reasonable
22 doubt.

23 As the Solicitor told you, one of the ways to define
24 reasonable doubt is a doubt that causes you to hesitate to
25 act. If you go back and you're deliberating and you are

1 hesitating to convict, that's that inking of doubt that
2 you have. That's a reasonable doubt. You're not
3 convinced. And that's what you need to be listening to
4 when you go back and you deliberate is, did the
5 Prosecution convince me? Or do I have that inkling of
6 doubt, that reasonable doubt that's making me hesitate to
7 convict?

8 And I, again, just thank you for your presence.
9 Listen to the evidence. We will ask at the end of the
10 trial after you deliberate that you find my client,
11 Tremaine Pride, not guilty of these charges.

12 Thank you.

13 THE COURT: Thank you, Mr. Hodges.

14 Mr. Foreman, and, ladies and gentlemen of the jury,
15 we're going to take about a 10-minute recess. Because
16 even though you were back there and had, I guess, we call
17 it a break, we did not. So we're going to take a little
18 10-minute break.

19 So if you'll go back to the jury room. Once again, I
20 remind you not to begin any discussions about this case.
21 And we'll get you back out shortly. Okay.

22 (WHEREUPON, the jury was excused from open court at
23 approximately 11:53 a.m.)

24 THE COURT: We'll be in recess about 10 minutes.

25 (WHEREUPON, a break was taken.)

1 (WHEREUPON, State's Exhibit Nos. 1, 2, 3, 4, 5, 6, 7,
2 and 8 were marked for identification only.)

3 THE COURT: Let's bring the jury out.

4 (WHEREUPON, the jury came into open court at
5 approximately 12:09 p.m.)

6 THE COURT: Let the record reflect the jury is back
7 in.

8 Mr. Foreman, and, ladies and gentlemen of the jury,
9 we have decided to go ahead and break. This will be a
10 good time to break for lunch.

11 So you're free to go. Be back here promptly at 1:30
12 and we will start with the evidence in the case.

13 Again, I remind you not to have any discussions among
14 yourselves or with anybody that you come into contact with
15 over the lunch break. And if you plan to go to one of the
16 local restaurants, if you don't mind, leave your juror
17 button visible. And the reason for that is that if you're
18 in that restaurant and, let's say, some of the -- the
19 lawyers, or officers, or whomever may be in that same
20 restaurant and may not recognize you being on the jury and
21 they're discussing the case, we don't want you to overhear
22 those discussions. But if they see that red juror button,
23 they'll know to not talk too loudly. So do that, if you
24 would.

25 We'll see you back at 1:30. Have a good lunch.

1 (WHEREUPON, the jury was excused from open court at
2 approximately 12:10 p.m.)

3 THE COURT: All right. We'll be in recess until
4 1:30.

5 (WHEREUPON, a lunch break was taken.)

6 THE COURT: Gentlemen, you had indicated you had some
7 matter we needed to put on the record.

8 MR. HODGES: Yes, Your Honor. The Solicitor brought
9 to my attention that they had intended to call an officer
10 and qualify him as an expert and then illicit questioning
11 along the lines of the street value of the substance, the
12 comparative size of the substance in this case to other
13 cases.

14 And I just think that it's completely irrelevant to
15 what we're here for today. This is not a PWID case where
16 they have to prove any sort of intent. It's a trafficking
17 case that's possession of a certain weight. I just think
18 that's completely irrelevant. And I'd move in limine
19 to --

20 THE COURT: All right. Solicitor --

21 MR. HODGES: -- prohibit that testimony.

22 THE COURT: Oh, I'm sorry. I didn't mean to cut you
23 off.

24 MR. HODGES: I was just saying I'd move in limine to
25 prohibit that testimony.

1 THE COURT: Okay. Solicitor, evidence of street
2 value of the drugs, what would the relevance be to a
3 trafficking case?

4 MR. ANDREWS: Your Honor, I think just going at it as
5 a lay person -- to me, trafficking always meant, I guess,
6 stainless steel brief cases full of cocaine and cash.
7 And -- and I'm concerned that the jury may, also, take the
8 same view, like, wait a minute, you're telling me this
9 much is trafficking weight, an amount that could fit in my
10 coat pocket is trafficking.

11 And so I just want to be able to give the jury an
12 insight into, well, how much are those drugs worth? How
13 many dosage units would that represent? And I -- I
14 thought that's something that really I could only illicit
15 from someone who had been qualified as an expert in
16 narcotics investigations.

17 THE COURT: All right. So you're wanting to get
18 your -- your guy to testify as far as -- all right --
19 28 grams of crack would represent how many -- you use the
20 word doses?

21 MR. ANDREWS: Yes, sir.

22 THE COURT: How many uses you could get out of
23 28 grams?

24 MR. ANDREWS: Yes, sir, Your Honor.

25 THE COURT: Okay. So you're not wanting to get into

1 street value. In other words, 28 grams is worth X number
2 of dollars on the street.

3 MR. ANDREWS: Well, that -- and that would have,
4 also, been a question. Because, again, I just -- I think
5 it's a relevant issue to let this jury understand that
6 that much is, indeed, trafficking.

7 And I think this may kind of get into our charge
8 conference potentially. Certainly, we would object to any
9 lesser included offense. But my concern is if the Court
10 decides to give a lesser included charge of possession, I,
11 certainly, think it's relevant to let the jury know that
12 this is not merely a possession.

13 THE COURT: Mr. Hodges.

14 MR. HODGES: Depending on what the testimony is, I
15 would be asking for a lesser included possession. But I
16 think it all just comes down to whether the State has
17 proved the weight under the statute.

18 THE COURT: All right. It's not -- street value, how
19 many uses you could get out of 28 grams, or whatever is
20 not an element of the -- of the crime.

21 MR. ANDREWS: Right.

22 THE COURT: And you're wanting to -- I guess you're
23 wanting to try to -- I'm trying to think of the right word
24 to use -- to try to give a little more meaning to -- this
25 is 28 to a hundred. Is that what it is?

1 MR. ANDREWS: Yes, Your Honor. I think what our SLED
2 analyst is going to testify to is 29.06 grams.

3 THE COURT: I'm going to grant Mr. Hodges's motion.
4 I would allow either one of your officers or you've got
5 the SLED analyst coming, they can, certainly, say, you
6 know, 28 grams is -- is a small amount, but it -- that's
7 what trafficking is. It depends on, you know, certain --
8 certain quantity levels. But since it's not the value,
9 usage is not an element of the -- of the crime, I'm going
10 to grant Mr. Hodges motion to -- to limit you on that.

11 Now, if you want to proffer it, then by all means,
12 I'll allow you to do that so you've got a good record.
13 And if you decide to proffer it, just let me know whenever
14 that witness is on the stand and we can send the jury out.

15 I'm going to limit it to the -- to the elements. But
16 you can, you know, get somebody to say, yeah, I mean, 28
17 grams, that's trafficking, but it is a small amount.

18 MR. ANDREWS: All right. So, I mean, I can't go near
19 street value, this is --

20 THE COURT: No.

21 MR. ANDREWS: -- 300 dosage units, or anything like
22 that?

23 THE COURT: Right, right.

24 MR. ANDREWS: Thank you, Your Honor.

25 THE COURT: All right. Anything further?

1 MR. HODGES: Not from the Defense.

2 MR. DOWTIN: Nothing from the State.

3 THE COURT: All right. Let's bring the -- the jury
4 out, please.

5 (WHEREUPON, the jury came into open court at
6 approximately 1:43 p.m.)

7 THE COURT: All right. Let the record reflect the
8 jury is back in.

9 Ladies and gentlemen, I failed to tell you, if at any
10 time we're in the middle of the trial and you need to take
11 a break and you can't wait, then all you have to do is
12 just raise your hand and we'll -- we'll take a break.

13 Also, I don't have any problem with you -- if you
14 want to have a bottle of water, a cup of coffee, whatever,
15 bring it out. I don't really want you to bring any snacks
16 out with you. But something to drink while you're sitting
17 here, I have no problem with that.

18 Okay. Is the State ready to -- to call its first
19 witness?

20 MR. DOWTIN: It is, Your Honor. The State calls
21 Wesley McClinton.

22 WHEREUPON,

23 WESLEY MCCLINTON,
24 after first having been duly sworn, testified as follows:

25 THE CLERK: Thank you.

DIRECT EXAMINATION

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

BY MR. DOWTIN:

Q Agent McClinton, if you would, please, introduce yourself to the jury.

A I'm Wesley McClinton. I work at the Greenwood City Police Department. I'm currently in the narcotics unit.

Q And how long have you been with the Greenwood Police Department?

A Going on eight years now.

Q And about how long have you been with the drug enforcement unit?

A Almost two years.

Q So were you working with the drug enforcement unit back on April 18th of 2018?

A Yes, sir.

Q And that day do you recall an incident involving Tremaine Okeefe Pride?

A Yes, sir, I do.

Q Do you remember approximately what time you came in Mr. -- in contact with Mr. Pride that day?

A No, sir. I'm thinking in the afternoon sometime.

MR. DOWTIN: Your Honor, may I approach the witness?

THE COURT: You sure can.

BY MR. DOWTIN:

Q Agent McClinton, I'm going to show you what's been

1 marked as State's Exhibit No. 1 for identification
2 purposes. If you could, take a look at that and tell me
3 if you know who that is.

4 A Yes, sir. That's Tremaine Pride.

5 Q That is the individual you came in contact with that
6 day?

7 A Yes, sir, it is.

8 MR. DOWTIN: Your Honor, at this time, the State
9 would move State's Exhibit No. 1 into evidence.

10 THE COURT: Okay.

11 MR. HODGES: Without objection, Your Honor.

12 THE COURT: All right. Without objection, State's
13 Exhibit No. 1 into evidence for the State.

14 (WHEREUPON, State's Exhibit No. 1 was admitted into
15 evidence.)

16 MR. DOWTIN: Permission to publish to the jury, Your
17 Honor.

18 THE COURT: Okay. Go ahead and get it marked first.

19 MR. DOWTIN: Oh, it's marked already, Your Honor.

20 THE COURT: Okay. Yes.

21 BY MR. DOWTIN:

22 Q This is the individual you know as Tremaine Pride?

23 A Yes, sir, it is.

24 Q And this is the individual you made contact --

25 contact with on April 18th, 2018?

1 A Yes, sir.

2 Q All right. Going back to when you made contact with
3 him, do you know where it was you made contact with
4 Mr. Pride that day?

5 A It was on Gray Street. I believe it was 719 is the
6 address.

7 Q And can you kind of describe that area for us?

8 A If you cut off and go onto Gray Street, on the right,
9 there's a strip of apartments. I think it's four or five
10 different residences. This one will be the first one on
11 the right as soon as you come in contact with the
12 apartments.

13 Q And is that in Greenwood, South Carolina?

14 A Yes, sir, in the city limits of Greenwood.

15 Q Were you alone that day?

16 A No, sir. Actually, there was two other narcotics
17 agents with me at the time.

18 Q And if you could, tell us why you were in that area.

19 A We had gotten information that Mr. Pride may be in
20 the area. We knew he had an active arrest warrant.

21 Q So you're in the area and you're aware that Mr. Pride
22 had an active warrant. And do you come in contact with
23 Mr. Pride at some point there?

24 A Yes, sir. When we turn on to Gray Street, we saw
25 Mr. Pride sitting on the front porch -- or the front stoop

1 of 719 Gray Street.

2 Q Is that the first time you had seen Mr. Pride?

3 A That day?

4 Q No. Just ever. Is that your first dealing --

5 A No. I had seen him before.

6 Q Okay. And who all was with you that day?

7 A It was me, and Lieutenant Brooks, and Agent Evans.

8 Q That was just totally on scene or just with you in
9 your vehicle?

10 A That was just with me in the vehicle, yes, sir.

11 Q Okay. So once you make contact with Mr. Pride, just
12 kind of take us through what happened from when you made
13 contact until the ultimate end of this.

14 A Once we pulled up on Gray and we were able to see
15 that it was him, we got out of the vehicle and went to
16 approach Mr. Pride. He was sitting in a -- in a chair
17 leaning up against a -- the apartment.

18 We got close enough to him to where we could tell
19 him, you know, you've got an arrest warrant, you're under
20 arrest. At that time, he stood up and took off running
21 around the apartment building.

22 Q And did he come to a stop right behind the building?

23 A No, sir. We chased him around -- I chased him around
24 the building. When he went around the building, he went
25 to reaching in his pockets. And I didn't know if he had a

1 gun, or something. So I drew my taser and told him to
2 stop several times. I deployed the taser. Only one of
3 them struck him -- only one of the probes struck him.

4 He continued to flee. He kept running straight
5 behind the apartments, crossed over Gray Street, which
6 goes toward the city shopping [phonetic], if anybody's
7 familiar with that. There's a water run off creek that
8 separates that. He went down behind the house. He went
9 down into the creek.

10 And, ultimately, I was able to get him to stop down
11 in the creek. And Agent Evans was able to get down there
12 with him. But before Agent Evans was able to get ahold of
13 him, Mr. Pride reached down in his sock and pulled out
14 probably a golf size bag of narcotics and threw it, I
15 guess, as far as he could.

16 So while Agent Evans detained him, I followed the
17 narcotics through the air and went and retrieved it.

18 Q And just going back behind the building, you said he
19 was reaching in his pockets?

20 A Yes, sir. I don't -- I didn't know, at the time, if
21 he was pulling out a gun, or what. But I think he was
22 trying to get rid of stuff. We found a -- a cell phone
23 and a hat laying behind there that were his. And we
24 collected those. And I think Agent Evans collected some
25 stuff after he had arrested him.

1 Q And just briefly, what comes in the decision of you
2 making, I guess, the ultimate -- ultimate call to attempt
3 to tase somebody?

4 A I know the area. And I know there's a lot of gang
5 activities and a lot of violent crimes that happen in that
6 area. And when he run and went around the building, I saw
7 him go straight to his pockets with his hand. I didn't
8 know if he was reaching for a gun.

9 He already knew that he was under arrest. We had
10 advised him of that. He chose to flee. People who are
11 desperate do desperate things. I didn't know if he had a
12 weapon of some type.

13 Q Okay. But you said it was not effective; correct?

14 A No, sir. Only one of probes struck him. The other
15 one missed. So without both of them, there is no effect.

16 Q And so, as you said, you and Agent Evans, ultimately,
17 end up in the creek?

18 A Yes, sir.

19 Q Can you kind of describe that situation? Where are
20 you at when he -- when Mr. Pride, ultimately, ends up in
21 the creek?

22 A I'm standing on the -- the creek from the ground
23 level, it's probably six or eight foot down to the creek
24 bed, I guess, a concrete creek. So I'm standing on the
25 edge of it as he's walking holding the taser. He's --

1 obviously, I've already discharged the taser, but he
2 doesn't know that at the time. Agent Evans goes in while
3 I've got him, you know, with the taser pointed at him to
4 try to keep him from running. And he's able to get his
5 hands on him and place him under arrest.

6 Q And you said, at some point, you were able to observe
7 Mr. Pride reach down and throw something through the air?

8 A Yes, sir. He reached -- I believe it was his left --
9 left foot sock area and pulled out probably, like I said,
10 a golf ball size bag of what we later found out to be
11 crack and hurled it like a baseball.

12 Q And after -- after he does that, what'd you do at
13 that point?

14 A I immediately went toward where the -- where I seen
15 it land at. And Agent Evans was able to get him in
16 handcuffs.

17 Q And so once you go over and pick up this baseball --
18 you're talking about the drugs, what do you do with them
19 at that point?

20 A I take it back to Lieutenant Brooks' vehicle and
21 secure them in the vehicle, along with the hat and the
22 cell phone.

23 Q Okay. When you say "secure" it in the vehicle, what
24 do you mean exactly?

25 A I placed it in the back floorboard, along with the

1 hat and cell phone and locked the doors.

2 Q And when you, ultimately, leave the scene -- like,
3 what happens with the drugs at that point?

4 A Once we collect the drugs, we take them back to our
5 office where they're photographed and weighed. Then
6 they're put in what's called a BEST pack and it -- that's
7 sent to SLED for analysis, basically.

8 It's tested on-site. We test it in the office just
9 to confirm that it is an illegal narcotic, which we
10 thought it was crack and it was. Then it's sent to SLED.
11 And they do further analysis and tell you exactly what the
12 percentage is, and how potent it is, and stuff that's way
13 above my pay grade.

14 Q And once you were back at the office, did you weigh
15 the drugs?

16 A Yes, sir. I want to say it was about 30 grams of
17 crack.

18 Q What other pieces of evidence did you collect that
19 day?

20 A It was a cell phone and a hat. I, also, had some
21 scales that came out of Mr. Pride's pocket. And I think
22 it was a little over \$300 cash, \$370, \$380, something like
23 that.

24 Q So all that's collected at the scene, taken back to
25 your office?

1 A Yes, sir.

2 Q And once you -- y'all counted up the money?

3 A Yes, sir.

4 Q Weighed the drugs?

5 A That's correct.

6 Q What happens with the evidence at that point? Where
7 is it taken?

8 A It's then taken to the city police department
9 evidence locker and secured in the evidence locker until
10 Sargent Griffin, our evidence technician, can retrieve it
11 and do her processing.

12 Q And do you know who submitted all these items into
13 evidence?

14 A I did, yes, sir.

15 Q Do you remember the date that was done?

16 A It was the same date, the 18th.

17 Q And can you just briefly for us describe how that
18 works? Like, do you hand it directly to somebody? Is it
19 put in a locker? How's that whole process work?

20 A Yes, sir. If you could think of a different size
21 locker like you have at school, they're -- you turn a
22 knob, push a button, and that locker itself is secured.
23 You take everything, put it in that locker, document what
24 locker you put it in, and secure it. Nobody else has
25 access to it but Sargent Griffin.

1 MR. DOWTIN: Your Honor, may I approach the witness,
2 please?

3 THE COURT: You can.

4 BY MR. DOWTIN:

5 Q Agent McClinton, I'm going to show you what's been
6 marked as State's Exhibit No. 2 for identification
7 purposes. If you could, take a look at that and tell us
8 what it is.

9 A It's crack cocaine that came from Tremaine Pride. It
10 was, like I said, what, 30.84 grams. And that's my
11 handwriting, yes, sir.

12 Q Is there any number or something on there where
13 you're able to tie that evidence to this case?

14 A Right. Yes, sir. It's the BEST pack number. And
15 that's -- the BEST pack, it comes in several -- it's a big
16 manila envelope. And there's several pieces that go in
17 there. Each one is marked with the same control number.
18 That's how they know which particular incident and which
19 particular BEST pack was associated with that incident.

20 Q So those are the drugs you received that day and
21 submitted into evidence?

22 A Yes, sir.

23 MR. DOWTIN: Your Honor, at this time, the State
24 requests to move State's Exhibit No. 2 into evidence.

25 THE COURT: Okay.

1 MR. HODGES: I would object at this point, Your
2 Honor. I don't believe they've established a sufficient
3 chain of custody.

4 MR. DOWTIN: We'll just do it for ID purposes then,
5 Your Honor.

6 THE COURT: Yeah. Just -- just remain for
7 identification only at this time.

8 BY MR. DOWTIN:

9 Q Agent McClinton, I'm going to show you what's been
10 marked as State's Exhibit No. 3 for ID purposes. Could
11 you tell us what that is?

12 A That's the phone -- Mr. Pride's phone.

13 Q And you found that piece of evidence at the scene?

14 A Yes, sir. This was, actually, lying in the roadway,
15 yes, sir.

16 Q And then you submitted this?

17 A Yes, sir, I did.

18 MR. DOWTIN: Your Honor, at this time, I request to
19 move State's Exhibit No. 3 into evidence.

20 MR. HODGES: Could we approach at a side bar, Your
21 Honor?

22 THE COURT: Sure.

23 (WHEREUPON, a bench conference was held.)

24 THE COURT: All right. State's Exhibit No. 3 will be
25 into evidence for the State.

1 (WHEREUPON, State's Exhibit No. 3 was admitted into
2 evidence.)

3 BY MR. DOWTIN:

4 Q So we have the drugs, we have the phone that you
5 submitted into evidence. You said there was, also, some
6 cash that was recovered. But you weren't the one that,
7 actually, found that at the scene; is that correct?

8 A No, sir. Agent Evans got that out of Mr. Pride's
9 pocket once he arrested him.

10 Q But you submitted that cash into evidence?

11 A Yes, sir.

12 Q I'm going to show you what's been marked as State's
13 Exhibit No. 4 for identification purposes. If you could,
14 tell us what that is.

15 A That's digital scales that came out of Mr. Pride's
16 pocket.

17 Q And you didn't -- again, you did not find the scales?

18 A No, sir. That was Agent Evans. The scales and the
19 cash were in Mr. Pride's pocket when Agent Evans arrested
20 him. He's the one that retrieved those.

21 Q But you, ultimately, submitted the scales --

22 A Yes, I did.

23 Q Agent McClinton, were you -- did you have any
24 body-cam video?

25 A Yes, sir, I did.

1 Q And when did that body-cam video come on?

2 A It comes on -- it's -- it's always on. Once you push
3 the button, then the sound comes on to activate it. But
4 it goes back one minute prior to you pushing the button.
5 So it's, honestly, always recording, I think. And it
6 doesn't, actually, play the sound until you push the
7 button, yes, sir.

8 Q Agent McClinton, I'm going to show you what's been
9 marked as State's Exhibit Nos. 5 and 6 for identification
10 purposes. If you could, look at those and let us know if
11 you're able to identify each of them.

12 A Yes, sir. These are the videos from -- I just,
13 actually, looked at these yesterday and confirmed they
14 were the videos.

15 Q And you -- so you had a chance to review them?

16 A Yes, sir. And I dated both of them 12/10/2018.

17 Q And this is an accurate representation of your body
18 cam --

19 A Yes, sir.

20 Q -- from the incident?

21 A Yes, sir.

22 MR. DOWTIN: Your Honor, at this time, the State
23 requests permission to move State's Exhibit Nos. 5 and 6
24 into evidence and publish to the jury.

25 THE COURT: Okay.

1 MR. HODGES: No objection, but subject to our
2 stipulation.

3 THE COURT: Right.

4 (WHEREUPON, State's Exhibit Nos. 5 and 6 were admitted
5 into evidence.)

6 THE COURT: While the Solicitor is getting that set
7 up, Mr. Foreman, and, ladies and gentlemen of the jury, as
8 you watch the videos and listen to the audio portions,
9 there are going to be some audio portions that will be
10 muted. I don't want you to give any significance to the
11 fact that portions of the audio will be muted and you will
12 not be able to hear it.

13 The evidence that's presented to you in this case in
14 whatever form is only relevant and admissible evidence.
15 So there was some portions of the video -- the audio
16 portions of the video that we did not feel like was
17 relevant to the case. And that's why it's muted. Do not
18 give it any significance whatsoever.

19 We're not trying to hide anything from you. But all
20 we want for you to consider is relevant and admissible
21 evidence. Okay.

22 Now, let me ask you this before you start, are you
23 going to need this officer to provide any commentary
24 during the playing of the video?

25 MR. DOWTIN: I'm probably just going to let the video

1 play, Your Honor. Maybe at the end, if I think of
2 anything else --

3 THE COURT: Sure.

4 MR. DOWTIN: -- to ask him. But I'll just let it
5 play through so it's not confusing.

6 THE COURT: That'll be fine.

7 And do we need to do the lights? Does that help? I
8 can't remember.

9 MR. DOWTIN: I think it should be clear, Your Honor.
10 If -- if any of them need us to, we, obviously, can turn
11 them off.

12 THE COURT: Okay.

13 MR. ANDREWS: If the Court -- Defense doesn't object,
14 we're going to speed up the video until they actually --
15 until the officers, actually, get out of the vehicle.

16 THE COURT: Okay. That's fine.

17 Mr. Hodges, do you have any objection?

18 MR. HODGES: No objection.

19 THE COURT: Okay. That's probably a pretty good
20 idea.

21 MR. ANDREWS: All right. And, certainly, Mr. Hodges
22 is -- you know, we'll make this available for him to play.

23 THE COURT: Sure.

24 (WHEREUPON, State's Exhibit No. 5 was played in open
25 court.)

1 MR. DOWTIN: Your Honor, I apologize. I said I'd
2 wait until the end, but I might go ahead and ask a
3 question right here, if it's okay.

4 THE COURT: Okay.

5 BY MR. DOWTIN:

6 Q Agent McClinton, who is that officer standing there
7 to the left?

8 A That's Agent Evans, Sammy Evans.

9 Q He has his vest on, it appears?

10 A Yes, sir.

11 Q That would identify he's a law enforcement officer?

12 A Yes, sir.

13 Q Did you have yours on as well?

14 A Absolutely.

15 Q Is the person sitting in that chair Tremaine Pride?

16 A Yes, sir, it is.

17 (WHEREUPON, State's Exhibit No. 5 continued to be
18 played in open court.)

19 MR. DOWTIN: And then State's Exhibit No. 6 is the
20 second part of his video, Your Honor.

21 THE COURT: Okay.

22 MR. ANDREWS: And, Your Honor, of course, subject to
23 Mr. Hodges' objection, this is something we discussed.
24 Part of the second video overlaps with the first video.
25 So we were just going to start at the part that overlaps.

1 THE COURT: Okay.

2 MR. ANDREWS: Where there's no overlap, rather.

3 MR. HODGES: No objection.

4 THE COURT: Okay. Very good.

5 (WHEREUPON, State's Exhibit No. 6 was played in open
6 court.)

7 BY MR. DOWTIN:

8 Q Agent McClinton, is that all the body-cam footage you
9 have in this case?

10 A Yes, sir, it is.

11 MR. DOWTIN: Thank you, Agent McClinton.

12 Please answer any questions Mr. Hodges may have for
13 you.

14 THE WITNESS: Yes, sir.

15 THE COURT: Cross-examination.

16 MR. HODGES: Thank you, your Honor.

17 CROSS-EXAMINATION

18 BY MR. HODGES:

19 Q Agent McClinton, I was provided a -- an incident
20 report and your name appears at the bottom. Do I -- I
21 assume that means you wrote the report?

22 A It's possible.

23 Q Okay. And the reason I asked, you had -- had
24 testified about when you approached Mr. Pride. And in the
25 report, it indicates that agents grasped Pride's wrist to

1 place him in handcuffs and then he -- then he pulled away.
2 Is that a -- a fair statement that he was -- he was
3 seized, essentially, and then he pulled away?

4 A He was advised he was under arrest, yes, sir, for an
5 active warrant. Yes, sir.

6 Q Okay. Law enforcement officers often use the term
7 high drug area. Would this area that you were in be in
8 that category?

9 A Yes, sir, it was.

10 Q All right. And what is -- what is meant by a high
11 drug area?

12 A I guess per call volume, we get a lot of drug
13 complaints in that area. There's a lot of individuals in
14 the area that are known to sell drugs. We -- we frequent
15 the area a lot for the same similar situations as that.

16 Q Okay. Now, as we watched the video, it looked like
17 you did a lot of looking around behind the apartment
18 complex --

19 A Yes, sir.

20 Q -- and sort of in the -- the area?

21 And you, actually, made the comment on the video, You
22 never know what you might find.

23 A That's true.

24 Q It looked like that there was a lot of just stuff,
25 debris, and whatever behind the apartment and -- and down

1 along this path that you took?

2 A That's correct.

3 Q In fact, you -- you indicated you found a paint ball
4 gun. Apparently, y'all had some problem with people --

5 A We had a rash of people driving through that street,
6 actually, that prior week and they were shooting up cars
7 with paint ball guns.

8 Q Now, that didn't come from Mr. Pride?

9 A No, sir, it didn't.

10 Q And you found a jacket that looked like it was behind
11 a back screen door, or something?

12 A Yes, sir.

13 Q Obviously, that didn't come from Mr. Pride?

14 A No, sir.

15 Q What was it that you were digging out of the pocket
16 of that jacket?

17 A I believe it was a -- actually, a crack pipe in there
18 and a push rod.

19 Q So some sort --

20 A There's a lot of drug use in that area.

21 Q Some sort of drug paraphernalia?

22 A Yes, sir.

23 Q And I think it looked like maybe you'd picked up some
24 random baggies and --

25 A There was a bag of bullets laying on the ground near

1 the paint ball gun, yes, sir.

2 Q And -- and what other kind of stuff were you finding
3 out there?

4 A I believe that was it.

5 Q It looked like maybe there were empty bags and, I
6 mean, all kinds of --

7 A I'm not sure.

8 Q Okay.

9 A I searched pretty -- pretty hard.

10 Q All right. When you testified on direct, you
11 indicated when he reached into his sock and threw
12 something that you later found out what it was?

13 A Yes, sir.

14 Q Would it be fair to say you didn't know what he was
15 getting out of his sock when he reached into his sock?

16 A Obviously, not, no, sir. I -- I just saw he reached
17 down in his sock. And it looked like he switched it from
18 his left hand to his right hand before throwing it.

19 Q Okay. You testified on direct that you locked the
20 evidence that you had seized in -- in a vehicle. And I
21 think we saw that on the video. Was there someone else in
22 the vehicle when you --

23 A Lieutenant Brooks was in the vehicle. When -- when
24 you saw that it was parked up at the top of the hill
25 further away than it was when we, initially, got out, it's

1 because he was in the vehicle when -- I guess when he took
2 off -- when Pride took off running. So he drove his
3 vehicle around to try to cut him off and, eventually, came
4 back and blocked the road there to keep anybody from
5 coming down there.

6 So he was in the vehicle during that time.

7 Q Okay.

8 A That's who I was speaking with.

9 Q All right. You would agree with me that the -- the
10 Prosecution, the State has the burden of proof in these
11 type of cases?

12 A Yes, sir.

13 Q And I would assume that your goal in making cases is
14 to try to make the best case possible?

15 A Yes, sir.

16 Q Tell me what, if any, training you have had in any
17 type of forensic testing?

18 A I have none in forensic testing, no, sir. Besides
19 field-testing, that's the only -- the only type.

20 Q All right. Did you receive any training either at
21 the academy or -- or since then in obtaining fingerprints?

22 A I -- in the academy, they'd go over -- they,
23 actually, go over identifying different types of drugs and
24 basic fingerprint techniques, how to lift latent prints,
25 and dusting for latent prints.

1 Q Are you provided with any kind of equipment to be
2 able to -- to do that?

3 A Yes, sir. They give you a kit once you start on your
4 own. And it's a brush and some dust, actually.

5 Q So that's something you -- I guess you keep in your
6 vehicle with you?

7 A No, sir, not any more.

8 Q You don't keep that in your vehicle?

9 A No, sir.

10 Q All right. Would it be fair to say that you did not
11 attempt to lift any fingerprints off of this bag or --

12 A No, sir, I did not.

13 Q All right. What is touch DNA? Do you know what that
14 is?

15 A To the best of my ability in explaining it, if I
16 touch something, they're able to swab it. And if they
17 have a -- if they have your DNA on file on the CODIS
18 system, they're able to match it up.

19 Q So basic -- so, basically, if you touch something,
20 you tend to leave your DNA on it. And if it's swabbed and
21 tested --

22 A That's my understanding. I just -- I have basic
23 knowledge of it. I don't know a lot about that.

24 Q All right. You filled out a form. You talked about
25 this paperwork that you did with the BEST pack?

1 A Yes, sir.

2 Q You filled out a form to request that SLED do the
3 drug analysis; correct?

4 A Yes, sir.

5 Q Now, SLED, also, has other types of forensic experts
6 that assist local agencies; right? I mean, that's,
7 basically, what SLED does, they do drug testing for y'all,
8 fingerprint testing, DNA testing. They've got --

9 A They do that, yes, sir.

10 Q They've got a bunch of scientists in --

11 A Yes, sir.

12 Q -- Columbia that do those sort of things?

13 So you could have filled out paperwork asking SLED to
14 do DNA testing just like you asked for them to do drug
15 testing; is that fair to say?

16 A This case would be far done and over with by the time
17 DNA evidence came back. That would -- that's completely
18 unnecessary in this case. It -- it takes sometimes
19 18 months to two years to get DNA evidence back. So that
20 would have -- I would -- that would have never crossed my
21 mind.

22 Q All right. I mean, are you suggesting the case is
23 not important enough to do DNA testing?

24 A No, sir, not a bit. I'm suggesting -- I guess I'm
25 not suggesting anything. When I observed him pull it out

1 of his sock and throw it, I don't need to send it off.
2 It's pretty cut and dry for me at that time.

3 Q Okay. But it's fair to say you did not request that
4 testing?

5 A No, sir.

6 MR. HODGES: All right. That's all the questions I
7 have.

8 Thank you, Your Honor.

9 THE COURT: Anything on redirect?

10 MR. DOWTIN: Just briefly, Your Honor.

11 REDIRECT EXAMINATION

12 BY MR. DOWTIN:

13 Q Agent McClinton, is it common to -- for y'all to
14 request touch DNA when you see someone in possession of a
15 narcotic?

16 A Absolutely not.

17 Q And there's no doubt in your mind the object that he
18 retrieved -- the Defendant retrieved from his sock and
19 threw through the air is the same object you recovered on
20 video and submitted into evidence?

21 A There's no doubt. I watched it the whole time fly
22 through the air. It, actually, hit the house and fell on
23 the ground. I watched it with my own eyes.

24 Q Do you find -- routinely find 30 grams of crack just
25 laying around?

1 A I've never -- that's the first time I've ever seen
2 that much crack at one time.

3 Q Did you just have a bag of crack in your pocket and
4 throw it down there on the scene?

5 A No, sir.

6 MR. DOWTIN: No further questions, Your Honor.

7 THE COURT: Recross?

8 MR. HODGES: No, Your Honor.

9 Thank you.

10 THE COURT: You can step down, Officer.

11 All right. Solicitor, have you got another witness?

12 MR. DOWTIN: Your Honor, request permission from

13 Mr. McClinton be excused or to be able to sit in.

14 THE COURT: Yeah. You're welcome to sit in with us.

15 MR. DOWTIN: The State calls Sammy Evans.

16 THE CLERK: Place your left hand on the Bible and

17 raise your right hand.

18 WHEREUPON,

19 SAMMY EVANS,

20 after first having been duly sworn, testified as follows:

21 DIRECT EXAMINATION

22 BY MR. DOWTIN:

23 Q Agent Evans, if you could, please, introduce yourself

24 to the jury.

25 A Sammy Evans. I'm a detective with the drug

1 enforcement unit with the Greenwood County Sheriff's
2 Office.

3 Q How long have you been with the drug enforcement
4 unit?

5 A Since January of this year.

6 Q And how long have you been in law enforcement?

7 A It'll be seven years in March of next year.

8 Q Do you recall if you were working back on April 18th
9 of 2018?

10 A I was.

11 Q And back on that day, do you remember coming in
12 contact with a Tremaine Pride?

13 A I do.

14 Q Agent Evans, I'm going to show you what's been marked
15 as State's Exhibit No. 1. Are you able to identify that
16 person?

17 A Yes, sir. It's Tremaine Pride.

18 Q And do you recall where it was you made contact with
19 Tremaine Pride that day?

20 A It was his apartment. I believe it was 719 Gray
21 Street.

22 Q Is that in Greenwood, South Carolina?

23 A It's within the city limits of Greenwood.

24 Q And were you alone that day when you approached
25 Mr. Pride?

1 A No. I had -- Agent McClinton was also -- got out of
2 the car with me. And Lieutenant Whitfield Brooks was
3 inside the car. He didn't -- he never exited the vehicle.

4 Q And if you will, just take us through what happened
5 when y'all approached Mr. Pride?

6 A I approached Mr. Pride first. Up until that point, I
7 wasn't -- I didn't know who he was. I asked him what his
8 name was. He told me Tremaine Pride. I knew at that
9 point, he -- he did, in fact, have a warrant for his
10 arrest.

11 Agent McClinton told him to place -- one of us told
12 him to put his hands behind his back. He was under
13 arrest. He took off running toward Milwee, which is the
14 direction we came from around the side of the apartments,
15 across the back, across Gray into the Gain [phonetic]
16 Street creek where he -- I, ultimately, put him in
17 handcuffs in the creek.

18 Q And before you placed him in handcuffs, did you
19 notice anything else?

20 A Yeah. When he got in the creek, he was reaching for
21 something around his ankle. I drew my weapon. Once I
22 confirmed he was not pulling a weapon, when I saw what was
23 in his hand, I re-holstered. He threw what he had in his
24 hand. Agent McClinton went and retrieved it while I
25 placed Mr. Pride in handcuffs.

1 Q And when Mr. Pride's placed in handcuffs, do you --
2 did you, ultimately, search Mr. Pride?

3 A When I got him out of the creek, I did.

4 Q And were you able to locate any items on Mr. Pride?

5 A I pulled out a set of black digital scales and some
6 money out of his pocket.

7 Q Do you recall approximately how much money it was?

8 A I believe it was -- it was \$388, maybe.

9 MR. DOWTIN: Your Honor, permission to approach the
10 witness.

11 THE COURT: Sure.

12 BY MR. DOWTIN:

13 Q Agent, I'm going to show you what's been marked as
14 State's Exhibit No. 4 for ID purposes. Can you tell us
15 what that is?

16 A It's a set of black digital scales.

17 Q Is that the set of scales you recovered off
18 Mr. Pride?

19 A Yes.

20 MR. DOWTIN: Your Honor, permission to -- to move
21 State's Exhibit No. 4 into evidence.

22 THE COURT: What says the Defense?

23 MR. HODGES: Without objection.

24 THE COURT: All right. Without objection, State's
25 Exhibit No. 4 into evidence for the State.

1 (WHEREUPON, State's Exhibit No. 4 was admitted into
2 evidence.)

3 BY MR. DOWTIN:

4 Q And you said you recovered \$388 worth of cash?

5 A Correct.

6 Q And that's -- that was, ultimately, submitted into
7 evidence?

8 A Yes.

9 MR. DOWTIN: I beg the Court's indulgence.

10 THE COURT: Sure.

11 (Pause.)

12 MR. DOWTIN: Thank you, Agent.

13 Please answer any questions Mr. Hodges may have for
14 you.

15 THE COURT: Cross-examination.

16 MR. HODGES: I don't have any questions for this
17 officer -- for this witness.

18 THE COURT: You may step down, sir.

19 THE WITNESS: Thank you, Your Honor.

20 THE COURT: All right. Let's take a 10-minute
21 recess.

22 Mr. Foreman, and, ladies and gentlemen of the jury,
23 we'll take a little short afternoon recess. And I remind
24 you, once again, don't begin any discussions about this
25 case. And we'll get you back out shortly.

1 (WHEREUPON, the jury was excused from open court at
2 approximately 2:43 p.m.)

3 THE COURT: Okay. We will take a 10-minute recess.
4 (WHEREUPON, a break was taken.)

5 THE COURT: Solicitor, it's my understanding that the
6 next witness you intend to call is Whit Brooks with the
7 sheriff's department; is that correct?

8 MR. ANDREWS: Yes, sir, Your Honor.

9 THE COURT: And, Mr. Hodges, you have an objection?

10 MR. HODGES: I do, Your Honor. As Your Honor
11 recalls, yesterday, I moved for sequestration of all the
12 witnesses. And the State conceded to that. During
13 Officer McClinton's testimony, he testified on direct
14 examination that he'd locked the evidence in this case in
15 a vehicle.

16 I pointed out a break in the chain during
17 cross-examination that there was actually -- the drugs
18 were left in someone else's presence in the vehicle. And
19 he identified that as Lieutenant Brooks, who was present
20 during the balance of Officer McClinton's testimony about
21 that chain of custody issue.

22 So I would object because of the violation of the
23 sequestration rule to his testimony.

24 THE COURT: Well, I mean, we -- we had some
25 communication in chambers. I don't know necessarily that

1 by virtue of Lieutenant Brooks being in the car with the
2 drugs would necessarily be a break in the chain of
3 custody.

4 But as it relates to a violation of the sequestration
5 order, it's my view -- and, apparently, the Solicitor has
6 alluded to Officer Brooks' testimony and it would not be
7 related necessarily to something that's already been
8 testified to. I think it would be in violation of the
9 sequestration order if it's something different or
10 something that has not been brought out.

11 So, I mean, that's -- what we can do, we can take in
12 camera -- I think you indicated it's going to be very
13 brief. We can take in-camera testimony and see exactly
14 what's going to be asked and answered. And then we can --
15 we can revisit your objection.

16 MR. HODGES: Thank you, Your Honor.

17 THE COURT: Okay. So let's go ahead.

18 And, Officer Brooks, if you'll come and be sworn in.
19 Take the stand. We'll do this in camera.

20 WHEREUPON,

21 WHITFIELD BROOKS,
22 after first having been duly sworn, testified as follows:

23 THE COURT: Solicitor, do you confirm that -- that
24 Officer Brooks has been in the courtroom for your first
25 two witnesses? I looked over there and saw him, but I,

1 certainly, don't know when he came in.

2 DIRECT EXAMINATION

3 BY MR. ANDREWS:

4 Q Lieutenant Brooks, when did you come into the
5 courtroom during this trial?

6 A It was -- I believe it was fairly early on during
7 Detective McClinton's testimony. I -- I can't say exactly
8 how early into it. Because I don't know how much was
9 heard before I walked in.

10 Q Okay. Were you present for the cross-examination?

11 A Yes, sir.

12 Q And, sir, I'm going to ask you about the substance of
13 Officer McClinton's video. Do you remember the incident
14 involving Mr. Pride, sir?

15 A Yes, sir, I do.

16 Q Which vehicle did Mr. McClinton arrive in?

17 A My vehicle. I was the driver.

18 Q Okay. And what's the make and model of that vehicle?

19 A I believe it's a -- it's either a '12 or a '13 Ford
20 Explorer, gray.

21 Q I may need you to come off the witness stand here in
22 just a second so you can watch this video.

23 A Yes, sir.

24 Can I step down, sir?

25 THE COURT: Sure. Yeah, yeah. Do what you need to do.

1 BY MR. ANDREWS:

2 Q Okay. I'm showing you -- hopefully, I'm about to
3 show you what's been marked as -- well, what is State's
4 Exhibit No. 5.

5 A Yes, sir.

6 (WHEREUPON, a portion of State's Exhibit No. 5 was
7 played in open court.)

8 BY MR. ANDREWS:

9 Q Is this you in the driver's seat, sir?

10 A Yes, sir, it is.

11 Q I'm going to go along with the video here.

12 Is there somebody in the driver's seat of that
13 vehicle, sir?

14 A That's me. You can see my forearm. It looks like --
15 almost like I had a phone in my ear. You can see my arm.

16 (WHEREUPON, State's Exhibit No. 5 continued to be
17 played in open court.)

18 BY MR. ANDREWS:

19 Q And is that your vehicle?

20 A Yes, sir, it is.

21 Q Okay. Does anyone else, other than you, have access
22 to that vehicle?

23 A No, sir. I was the only one with keys to it.

24 Q Okay. If you left that vehicle, would you lock it?

25 A Yes, sir.

1 Q Separate apart from this incident, do you normally
2 leave your vehicle unlocked?

3 A Not -- I never leave it unattended and unlocked.
4 Either myself or if another officer's in it, I may not
5 lock it --

6 THE COURT: Officer Brooks, speak up since you're
7 away from the microphone, please, sir.

8 THE WITNESS: I never leave it unattended and
9 unlocked. If -- if I was in it or another officer was in
10 it, I may not lock it. But if -- if it's unattended, I'm
11 away from it and no other officer's in it, I would lock
12 the doors always.

13 MR. ANDREWS: Your Honor, that's all the questions we
14 have.

15 THE COURT: Do you have anything as far as in-camera
16 testimony?

17 CROSS-EXAMINATION

18 BY MR. HODGES:

19 Q Officer, did you -- were you in the courtroom when
20 Officer McClinton testified that he had locked the
21 evidence in the vehicle?

22 A Yes, sir.

23 Q And you were present in the courtroom when I asked
24 him on cross-examination about whether you were, actually,
25 in the vehicle when the drugs were in there?

1 A Yes, sir.

2 Q You heard all that testimony?

3 A Yes, sir.

4 MR. HODGES: That's all I have, Your Honor.

5 THE COURT: Okay.

6 EXAMINATION

7 BY THE COURT:

8 Q Officer Brooks, did the drugs ever change location
9 from where Officer McClinton put them in the vehicle?

10 A No, sir.

11 Q Okay. Has any of the testimony from the prior two
12 witnesses had any influence whatsoever on the testimony
13 you've given today?

14 A No, sir.

15 THE COURT: All right. We'll have to -- we'll bring
16 the jury out. Then they'll recall you.

17 THE WITNESS: Yes, sir.

18 THE COURT: And your objection is noted for the
19 record.

20 I'm going to find that, based upon what he's
21 testified to, the sequestration order has not been
22 violated.

23 Let's bring the jury out, please, Mr. Hamby.

24 (WHEREUPON, the jury came into open court at
25 approximately 3:16 p.m.)

1 THE COURT: All right. Let the record reflect the
2 jury is back in.

3 Solicitor, do you want to call your next witness?

4 MR. ANDREWS: Yes, sir, Your Honor. The State calls
5 Whit Brooks.

6 WHEREUPON,

7 WHITFIELD BROOKS,

8 after first having been duly sworn, testified as follows:

9 DIRECT EXAMINATION

10 BY MR. ANDREWS:

11 Q Good afternoon, sir.

12 Please state your name for the record.

13 A Yes, sir. Whitfield Brooks.

14 Q And who do you work for?

15 A The Greenwood County Sheriff's Office.

16 Q And in what capacity are you employed there?

17 A I am the lieutenant in the narcotics unit.

18 Q Okay. How long have you been in the narcotics unit?

19 A February will be four years.

20 Q Okay. How long have you been -- are you the head of
21 the narcotics unit?

22 A I'm the lieutenant from the sheriff's office side.

23 There's, also, a lieutenant from the city police

24 department side.

25 Q Okay. Did you expect to be in court today, sir?

1 A No, sir, I didn't.

2 Q When did you find out that you would be called as a
3 witness in this case?

4 A Maybe 10 minutes ago.

5 Q All right. Were you present during the incident that
6 occurred on April 18th of 2018?

7 A Yes, sir.

8 Q Okay. Sir, I'm going to show you some portions out
9 of State's Exhibit No. 5 that is Officer McClinton's first
10 body-cam video.

11 A Yes, sir.

12 Q All right. And if you need to -- if you need to come
13 down off the witness stand to...

14 A Yes, sir.

15 (WHEREUPON, a portion of State's Exhibit No. 5 was
16 played in open court.)

17 BY MR. ANDREWS:

18 Q Who's that in the driver's seat, sir?

19 A That's me.

20 Q Okay. And what -- what kind of vehicle do you drive?

21 A It's a gray Ford Explorer. It's either a '12 or '13
22 model.

23 Q Okay. Is that your work vehicle?

24 A Yes, sir. It's my county-issued unmarked vehicle.

25 Q All right. And I'll go to the end of this video.

1 (WHEREUPON, a portion of State's Exhibit No. 5 was
2 played in open court.)

3 BY MR. ANDREWS:

4 Q This vehicle in the background here --

5 A Yes, sir.

6 Q -- is that your car?

7 A Yes, sir.

8 Q Is there someone in the driver's seat?

9 A Yes, sir. You can -- you can see my forearm right
10 there through the windshield. It's like it's kind
11 of raised like I've got a phone in my ear, or
12 something.

13 Q Okay. Does anyone else ever drive your car?

14 A No, sir.

15 Q All right. Are you the only one with keys to it?

16 A Yes, sir.

17 (WHEREUPON, State's Exhibit No. 5 continued to be
18 played in open court.)

19 BY MR. ANDREWS:

20 Q Do you remember how long you stayed in the vehicle
21 after Detective McClinton had placed those -- those items
22 in there?

23 A Maybe a minute or so. I believe I'll be on video a
24 little bit later when we were looking around trying to
25 find any additional evidence.

1 Q Okay. Would you have left the car unlocked if you
2 left it?

3 A No, sir.

4 Q All right. Separate apart from this case, just as a
5 general principle --

6 A Yes, sir.

7 Q -- if you're not around the vehicle, do you leave it
8 unlocked?

9 A No, sir.

10 Q All right. Did you handle those -- those items after
11 Detective McClinton put them in the vehicle?

12 A No, sir.

13 MR. ANDREWS: Thank you, sir.

14 Please answer any questions the Defense may have for
15 you.

16 THE WITNESS: Yes, sir.

17 MR. HODGES: I have no questions for the witness,
18 Your Honor.

19 THE COURT: You can step down, sir.

20 Thank you.

21 THE WITNESS: Thank you, Your Honor.

22 THE COURT: Okay. Next witness.

23 MR. DOWTIN: The State calls Kenya Griffin, Your
24 Honor.

25 THE COURT: Okay.

1 WHEREUPON,

2 KENYA GRIFFIN,

3 after first having been duly sworn, testified as follows:

4 DIRECT EXAMINATION

5 BY MR. DOWTIN:

6 Q Ms. Griffin, if you could, please, introduce yourself
7 to the jury.

8 A I'm Kenya Griffin. I work for the Greenwood City
9 Police Department.

10 Q And, Ms. Griffin, how long have you worked for the
11 police department?

12 A 15 years.

13 Q And what is your current position with the police
14 department?

15 A I am the crime scene and evidence technician.

16 Q And how long have you been the evidence technician?

17 A About 10 years.

18 Q Can you explain to us what some of your day-to-day
19 responsibilities are as the evidence technician?

20 A I'm in charge of logging in and maintaining custody
21 for any evidence that officers turn in.

22 Q And can you just briefly tell us, if an officer
23 brings you evidence over at the police station, how does
24 it, typically, work? Like, what do you do with it?

25 A There's two ways they can submit it. If I'm in the

1 office, they can bring it to me personally. They bring in
2 an evidence sheet. They sign it over to me.

3 If I'm not in the office, we have a set of evidence
4 lockers outside my office that they can put it in, put the
5 evidence in with the evidence sheet, they lock it. Once
6 it's locked, they can't get back in.

7 Q And can anybody just come and go as they please from
8 the evidence room?

9 A No, they cannot.

10 Q Do you recall back on April 18th of 2018, receiving
11 some evidence related to a case involving Tremaine Pride?

12 A Yes, I do.

13 Q And how would you be able to associate the pieces of
14 evidence you received in that case to this specific
15 incident? Like, is there a form, or anything?

16 A Yes. Any evidence that is submitted to the evidence
17 room, the officer has to fill out a chain of custody or
18 evidence report form. That report has a case number for
19 the incident. And it, also, lists the evidence that they
20 put in the locker.

21 Q And do you recall what all pieces of evidence you
22 received that's related to this case?

23 A Yes, sir. There was a BEST pack, a cell phone, a set
24 of digital scales, and some cash.

25 Q You said "BEST pack." What is that?

1 A It's the packaging that they have to put drugs in to
2 be sent to SLED.

3 Q And do you recall who you received these pieces of
4 evidence from?

5 A Officer McClinton put them in the evidence locker.
6 And I retrieved them from the evidence locker the next
7 day.

8 Q All right. And do you recall what day you received
9 the items?

10 A April the 19th, 2018.

11 Q And just briefly, the evidence locker, how does that
12 process work again?

13 A They put it in. There's a handle and a button. They
14 turn the handle, push the button. And once they do that,
15 it's -- the locker is locked. I have a key to unlock
16 the -- the locker.

17 Q Ms. Griffin, I'm going to show you what's been marked
18 as State's Exhibit No. 2 for identification purposes. If
19 you could, take a look at that. And let us know if you're
20 able to tell us what it is.

21 A This is the BEST pack that Officer McClinton turned
22 into evidence.

23 Q And do you know the BEST pack number?

24 A B288009.

25 Q Did you ever do anything else with these drugs?

1 A They were taken to SLED. I believe April 27th, I
2 took them down to Columbia to SLED.

3 Q And you just make that trip yourself?

4 A Yes.

5 Q Was that the only piece of evidence related to this
6 case that you took to SLED?

7 A Yes.

8 Q And so when you get to SLED, what do you do with the
9 drugs at that point?

10 A They're -- they have their own evidence lockers. I
11 take it back, time stamp the forms, and put it in the
12 locker and lock it.

13 Q And would you just be carrying the drugs out of the
14 package in your hand and dropping them off?

15 A No. I would not.

16 Q They would be in that BEST pack?

17 A They would be in that BEST pack, correct.

18 Q And you said you received some cash in this case.
19 What happened to the cash?

20 A The cash was turned into our finance department. Our
21 policy is that any money that is seized has to be put into
22 a -- an account. So it's turned into our finance
23 department for deposit into that account.

24 Q And did you, ultimately, receive the drugs back from
25 SLED?

1 A Yes, I did.

2 Q Do you recall what day that was on?

3 A I don't recall the exact date that that was on.

4 Q Is there any kind of document that that information
5 is listed on?

6 A Yes. Once it comes back, I log it back into our
7 evidence room with the -- the date that I received it back
8 from SLED.

9 Q I'm going to show you an evidence property report and
10 see if maybe this can refresh your memory on when you
11 received the drugs back from SLED?

12 A They were returned from SLED on July the 19th of
13 2018.

14 Q And this is a form that your office frequently
15 generates?

16 A Yes, it is.

17 Q After you received the drugs back from SLED, what do
18 you do with them at that point?

19 A They're put into our narcotics safe where they stay
20 until they're needed for court. Or once the case has been
21 disposed of, then the drugs are disposed of.

22 Q So after you came back from SLED on the 19th of July,
23 you placed the -- the drugs back into evidence. And
24 they've stayed there until today?

25 A That's correct.

1 Q And the rest of the evidence just stayed in your
2 custody the whole time?

3 A That's correct.

4 MR. DOWTIN: I beg the Court's indulgence.

5 THE COURT: All right.

6 (Pause.)

7 MR. DOWTIN: Please answer any questions Mr. Hodges
8 may have.

9 MR. HODGES: Just a few questions, Your Honor.

10 CROSS-EXAMINATION

11 BY MR. HODGES:

12 Q When you took this substance down to SLED, it's my
13 understanding that you placed that into a -- a locker?

14 A That's correct.

15 Q So you don't -- you don't, actually, know who
16 received it on the back end of that?

17 A No, I do not.

18 Q Okay. You testified that not only are you the
19 evidence custodian, but you're, also, the crime scene
20 technician?

21 A That's correct.

22 Q What does that mean?

23 A It means I'm responsible for responding and
24 processing any major crime scenes such as armed robberies,
25 homicides, or stuff like that.

1 Q Okay. And what sort of processing does that involve?

2 A Collecting any evidence such as DNA, fingerprints,
3 taking pictures, collecting physical evidence.

4 Q Okay. So you are a -- a resource in the police
5 department that is trained in those types of
6 investigations?

7 A That's correct.

8 Q Do you do any evidence processing back in your office
9 once evidence is submitted?

10 A Yes, sir. If an officer requests additional
11 processing, I can process for latent prints or swabs from
12 items for DNA.

13 Q Okay. In this particular case, did anyone ever
14 request that you process any of the evidence for either
15 fingerprints or DNA?

16 A No. They did not.

17 Q Is that something that could have been done?

18 A It could have, yes, sir.

19 Q And had you done that, then you would have submitted
20 that to SLED as well?

21 A That's correct.

22 Q And am I correct that SLED has a number of different
23 scientists or experts down there that process evidence in
24 different ways, and that, basically, is an assisting
25 agency to the police department?

1 A That's correct.

2 Q And so that is another resource that the police
3 department has to further investigate and process
4 evidence?

5 A Yes. That's correct.

6 MR. HODGES: All right. That's all the questions I
7 have, Your Honor.

8 THE COURT: Anything on redirect?

9 MR. DOWTIN: Just briefly, Your Honor.

10 REDIRECT EXAMINATION

11 BY MR. DOWTIN:

12 Q Ms. Griffin, how often have you checked a bag of
13 drugs for trace DNA?

14 A Not very often.

15 Q Or for fingerprints?

16 A Not very often.

17 MR. DOWTIN: Thank you.

18 THE COURT: Let me see the lawyers for just a minute.

19 (WHEREUPON, a bench conference was held.)

20 (WHEREUPON, State's Exhibit No. 9 was marked for
21 identification only.)

22 THE COURT: Do you need to see that?

23 MR. HODGES: Yes.

24 THE COURT: Show it to him.

25 (Pause.)

1 BY MR. DOWTIN:

2 Q Officer Griffin, I'm going to show you State's
3 Exhibit No. 9 for identification purposes. And if you
4 could, take a look at this and let us know if you can tell
5 what that is.

6 A This yellow sheet is our evidence form that the
7 officer fills out when they submit their evidence. The
8 second page is the Forensic Services Request form that I
9 fill out requesting analysis on the evidence that I submit
10 to SLED.

11 This page is the actual chain of custody that's in
12 the BEST pack that the officer fills out, along with the
13 analysis request that the officer, also, fills out. These
14 two forms come in the BEST pack.

15 Q And that is, typically, stapled to the drugs and
16 remains --

17 A Yes.

18 Q -- with it throughout the case?

19 A Once it comes back from SLED, I attach this paperwork
20 to the -- to the BEST pack.

21 MR. DOWTIN: Your Honor, at this time, we would ask
22 that State's Exhibit No. 9 be moved into evidence.

23 MR. HODGES: No objection.

24 THE COURT: All right. Without objection, State's
25 Exhibit No. 9 into evidence for the State.

1 (WHEREUPON, State's Exhibit No. 9 was admitted into
2 evidence.)

3 MR. HODGE: Just one follow-up question.

4 THE COURT: Oh, sure. Yeah.

5 RECROSS-EXAMINATION

6 BY MR. HODGES:

7 Q The second document you indicated was the -- what did
8 you call it again?

9 A It's a Pre-Log Analysis Request form.

10 Q Okay. So it's, basically, you telling SLED what
11 tests that you want --

12 A That's correct.

13 Q -- to have conducted?

14 Okay. And the only thing that's on here is drug
15 analysis?

16 A That's correct.

17 MR. HODGES: That's all I have, Your Honor.

18 THE COURT: Thank you, ma'am.

19 You can step down.

20 Next witness.

21 MR. ANDREWS: The State calls Shannon Sorrells.

22 THE COURT: You can be sworn in right there, please,
23 ma'am.

24 THE CLERK: Place your left hand on the Bible and
25 raise your right hand.

1 WHEREUPON,

2 SHANNON SORRELLS,

3 after first having been duly sworn, testified as follows:

4 THE CLERK: Thank you.

5 DIRECT EXAMINATION

6 BY MR. ANDREWS:

7 Q Good afternoon, ma'am.

8 Please state your name.

9 A Shannon Sorrells.

10 Q And what agency do you work for?

11 A I work for the South Carolina Law Enforcement
12 Division, more commonly known as SLED.

13 Q And what do you do at SLED?

14 A I am currently a forensic chemist in the drug
15 analysis department.

16 Q How long have you been there?

17 A I have been there 12 years, eight months.

18 Q And what are your duties there?

19 A As a drug chemist, I am in charge of maintaining a
20 chain of custody of evidence, testing that evidence for
21 the presence or absence of controlled substances.

22 Q And what type of training did you receive to qualify
23 for that position?

24 A I have a Bachelor's Degree in Chemistry from the
25 University of South Carolina. I, also, have a Master's

1 Degree in Analytical Chemistry from the University of
2 South Carolina.

3 I spent my first eight years at SLED as a
4 toxicologist. I did extensive drug and alcohol training
5 in looking for drugs and alcohol, not just in substances,
6 but in biological fluids, brain, liver, blood, urine.

7 I then switched over to the drug analysis department
8 five years ago where I did another extensive in-house
9 training on controlled substances and -- well, what's
10 considered drugs under a senior chemist. I have attended
11 multiple drug conferences, along with clan lab techniques
12 and been trained in how to analyze clan lab substances.

13 Q In your experience with drugs, about how many times
14 have you performed chemical tests -- or how many cases?

15 A It's hard to say exactly how many cases I've done.
16 Last year, I worked close to 1,300 cases. I've been there
17 for five years. So that's well over 10,000 cases -- well,
18 I take that back, well, over 6,000 cases. Sorry.

19 Q Okay. And have you ever qualified as an expert in
20 this field in General Sessions Court before?

21 A Yes, I have.

22 MR. ANDREWS: Your Honor, the State offers Agent
23 Sorrells as an expert in the field of drug analysis.

24 THE COURT: Okay.

25 MR. HODGES: Without objection, Your Honor.

1 THE COURT: All right. Without objection, Agent
2 Sorrells is found to be an expert in the area of drug
3 analysis.

4 Mr. Foreman, and, ladies and gentlemen of the jury,
5 ordinarily, witnesses are only permitted to testify as to
6 things that they have directly observed, heard, seen, that
7 sort of thing, and really not allowed -- except for a few
8 situations allowed to render opinions.

9 However, when a witness is found to be an expert in a
10 particular area because of education, training,
11 experience, they will be permitted to offer opinions and
12 the basis for those opinions. And Agent Sorrells will be
13 allowed to do that in this case.

14 However, it's -- it's up to you to give whatever
15 weight to Agent Sorrells testimony that you feel like is
16 appropriate. You are to consider and weigh her testimony
17 just like any other witness in the case.

18 You may proceed, Solicitor.

19 MR. ANDREWS: Thank you, Your Honor.

20 Your Honor, if I may beg the Court's indulgence. I
21 just wanted to mark a couple of exhibits for
22 identification.

23 THE COURT: Sure. Yeah.

24 (WHEREUPON, State's Exhibit Nos. 10 and 11 were marked
25 for identification only.)

1 MR. ANDREWS: May I approach the witness, Your Honor?

2 THE COURT: You sure can.

3 BY MR. ANDREWS:

4 Q Ma'am, I'm going to show you what's been marked as
5 State's Exhibit No. 2 for ID purposes. Do you recognize
6 this item?

7 A Yes, I do.

8 Q Okay. Do you know who submitted it to you?

9 A I would have to go back and look at my notes as to
10 who submitted it to me --

11 Q Okay.

12 A -- through the chain of custody.

13 THE COURT: Feel free to do that.

14 BY MR. ANDREWS:

15 Q Yes. And hold on. If I could...

16 A Get that out of the way?

17 Q Yes, ma'am.

18 A This was submitted to SLED by Kenya Griffin of the
19 Greenwood Police Department.

20 Q Okay. Do you know when it was submitted for
21 analysis?

22 A Based off of my chain of custody -- well, I don't
23 have the date and time it was submitted. I have the date
24 and time that it was logged in as a case at SLED.

25 Q Okay. While at SLED, would it have been continuously

1 under the custody, care, and control of SLED?

2 A Yes, it would have.

3 Q Okay. When this item reaches you, is it in
4 tamper-resistant packaging?

5 A It is. So what you see here, if you can see this,
6 this is what we call a BEST bag or a BEST kit. Best
7 stands for best evidence sample testing bag. If you look
8 on the sides, you see the blue rings that goes all the way
9 down the back and along the bottom.

10 When I get it, we check these rings to make sure that
11 they have not been cut, that all the lines line up
12 together, that they have not been tampered with. So what
13 it is not tamper proof, it is tamper evident.

14 In this case, I have written on the bag, Seal intact.
15 If it was not sealed, of course, it would say seal not
16 intact, and a notation would have been made on the report.

17 Q If you had gotten it back sealed not in intact, would
18 you have tested the substance?

19 A We would have tested the substance. But, again, we
20 would have notated on the evidence that the seal was not
21 intact, the seal was broken. And we would have notated on
22 the final report that the BEST kit was not properly
23 sealed.

24 Q So were you the first person to break the seal once
25 the BEST kit had been sealed?

1 A Yes. Each analyst is the -- the first person to
2 break it and the only person that should break that seal,
3 yes.

4 Q Okay. Now, I'm going to show you what's been
5 marked --

6 MR. ANDREWS: Permission to approach, Your Honor.

7 THE COURT: Sure.

8 BY MR. ANDREWS:

9 Q State's Exhibit No. 10 for ID purposes, do you
10 recognize that document?

11 A Yes. This is -- this is our actual electronic chain
12 of custody.

13 Q Okay. And you'd agree with me there are a number of
14 names on there?

15 A Yes, there are.

16 Q Okay. And a lot of names from SLED; correct?

17 A Yes, there are. Yes, that's correct.

18 Q Okay. Would any of those names, other than yours,
19 have broken that seal?

20 A No, they would not.

21 Q Okay. Who else at SLED handled this item?

22 A When it was first brought into SLED, it was -- well,
23 it was first touched by a Charlotte Pitts down in our log
24 in department. And what she does is she takes the
25 evidence and assigns it a case number. That's all she

1 does. And then she puts it in a hold bin until I call
2 down there and say, I need this case.

3 So then I go down to her and -- or go down to our log
4 in department and pick it up. In this case, I contacted a
5 Jackie M. Davis. And Jackie -- when I went down there,
6 Jackie personally handed this to me, electronically
7 scanned it into her custody out of their intake storage,
8 and then scanned it to me. And that's all they did.

9 Q Could I have State's Exhibit No. 10 back, please?

10 A (Witness complied.)

11 Q And, once again, did anyone at SLED, other than you,
12 break this seal?

13 A No, they did not.

14 MR. ANDREWS: Okay. Your Honor, the State offers
15 to -- the State moves to admit State's Exhibit No. 10 for
16 ID purposes into evidence.

17 THE COURT: Okay. Mr. Hodges.

18 MR. HODGES: Without objection.

19 THE COURT: Without objection, State's Exhibit No. 10
20 into evidence for the State.

21 (WHEREUPON, State's Exhibit No. 10 was admitted into
22 evidence.)

23 BY MR. ANDREWS:

24 Q Now, turning back to State's Exhibit No. 2 for ID
25 purposes, did you conduct an analysis on State's Exhibit

1 No. 2?

2 A Yes, I did.

3 Q All right. What kind of test did you conduct?

4 A I -- well, the first thing that happens when it comes
5 in the door is it gets weighed outside of all the
6 packaging. As you can see, that's the packaging that it
7 was in. It was taken out of this and weighed to get the
8 actual weight.

9 After that is done, a chemical spot test is performed
10 on it. All the spot test does is it gives a color
11 reaction to kind of give us an idea of what we have. That
12 spot test does not tell us right away what it is. After I
13 have an idea of which direction that this could possibly
14 be going in, I take a small portion of it and I do a gas
15 chromatography mass spectrometry analysis on it to get a
16 fingerprint of what this could possibly be.

17 Q Now, when you say a "fingerprint" -- there's been
18 some talk. Could you explain what you mean by
19 "fingerprint"?

20 A What we mean by a fingerprint is every drug that
21 comes in has a specific break down within the gas
22 chromatography mass spectrometer. It's bombarded with
23 electrons. Depending on the molecular weight, it breaks
24 down in a specific way. On a GCMS, it breaks down a
25 specific way every single time, depending on the drugs.

1 It, also, comes out at a very specific time.

2 So based off of the -- what is called the mass
3 spectrogram and the ions that we see, along with the
4 retention time that it comes off of the instrument, we can
5 say without a doubt what that substance is.

6 Q Do you have an expert opinion as to what State's
7 Exhibit No. 2 is?

8 A This substance was found to be cocaine base, more
9 commonly known as crack.

10 Q Okay. And what was the weight on that?

11 A The weight was -- hold on one moment. The weight was
12 29.06 grams.

13 MR. HODGES: May we approach, Your Honor?

14 THE COURT: Sure.

15 (WHEREUPON, a bench conference was held.)

16 THE COURT: What exhibit number is that, Solicitor?

17 MR. ANDREWS: Your Honor, this is State's Exhibit
18 No. 11 for ID purposes.

19 THE COURT: Okay.

20 BY MR. ANDREWS:

21 Q Ma'am, I'm going to show you what's been marked as
22 State's Exhibit No. 11 for ID purposes. What is State's
23 Exhibit No. 11 for ID purposes?

24 A This is a copy of my report that was done for this
25 case.

1 MR. ANDREWS: Your Honor, the State moves to admit
2 State's Exhibit Nos. 2 and 11 marked for ID purposes into
3 evidence.

4 THE COURT: Okay. And subject to our recent sidebar
5 conference, State's Exhibit Nos. 2 and 11 will come in as
6 evidence for the State.

7 (WHEREUPON, State's Exhibit Nos. 2 and 11 were
8 admitted into evidence.)

9 MR. ANDREWS: Thank you, ma'am.
10 Please answer any questions the Defense may have for
11 you.

12 THE COURT: Cross-examination, Mr. Hodges.

13 MR. HODGES: Thank you, Your Honor.

14 CROSS-EXAMINATION

15 BY MR. HODGES:

16 Q Agent, you mentioned that before becoming a drug
17 analyst that you were in the toxicology department. What
18 other departments are there at SLED? What other services
19 do SLED -- does SLED provide to local agencies?

20 A I really only know the lab. We kind of stay there.

21 Q When you say the "lab," what does that mean?

22 A The forensics lab.

23 Q Okay. What -- what services does the forensics lab
24 provide?

25 A We have a -- a crime scene department. I'm having to

1 go by floors. Crime scene, firearms, latent prints, DNA,
2 trace, tox, drugs, computer crimes, question documents. I
3 hope I have everybody.

4 Q In other words, there's lots of services that are
5 available to local agencies for assistance?

6 A Yes.

7 Q And -- and yours is one of a number of different
8 services available?

9 A That is correct, yes.

10 Q Okay. When we are talking about these types of
11 substances, what -- what is a cut or cutting agent? Can
12 you explain that to us?

13 A A cutting agent -- what we consider a cutting agent
14 is, sometimes, the drugs come in, but they're not
15 completely in pure form. They have what -- we say that
16 they have been cut with another substance. They have been
17 mixed with another substance.

18 Sometimes, that substance is something that's there
19 to hold it together. Or what we've found out more often
20 than not is if you get a -- a -- let's say you get a gram
21 of cocaine, but you want to sell it. Well, now, if I mix
22 it with, let's say, caffeine, which is a common cutting
23 agent we see a lot.

24 Now, I can mix a gram of caffeine with it. And now I
25 have two grams of what is cocaine. And you can't really

1 tell the difference between the cocaine and the caffeine
2 mixed in. So now, you can sell a gram to two different
3 people, instead of a gram to one person. That's what we
4 call a cutting agent.

5 Q And is it pretty common through the different stages
6 of distribution that cutting agents are added to,
7 basically, bulk it before it's passed on to the next step?

8 A It is a common practice, yes.

9 Q Okay. What is the -- what's the difference between a
10 quantitative analysis and a qualitative analysis?

11 A Quantitative analysis tells you how much is there --
12 is -- gives you an exact number. A qualitative analysis
13 tells you what it is.

14 Q Okay. And what do you do when you do an analysis?
15 Is -- is it one or the other, or both, or...

16 A It has recently changed with marijuana. But with
17 cocaine and with all other drugs currently, except for
18 marijuana, it is a qualitative analysis.

19 Q Okay. Which means what?

20 A Which means that we do not test to see how pure it
21 is, based off of South Carolina law. We test to tell you
22 what it is.

23 Q So, basically, you are just testing for the presence
24 of some quantity of illegal drug?

25 A That is correct, yes.

1 Q In the total?

2 A That is correct.

3 Q But you are not testing for what is the purity of
4 that particular substance?

5 A We do not test the purity of the substance. No, we
6 do not.

7 Q Okay. You -- you testified about the chain of
8 custody. Is that -- is your knowledge about that based
9 upon the paperwork?

10 A Some on the paperwork, some on dealing with our log
11 in department every day. And we do get taught how they
12 are doing their steps, what they do day in and day out.

13 What's easy for our department is we have a sealed
14 package that's brought in. We get the sealed package
15 back. So they do not have any cutting into it. They just
16 transfer it from one place to another just so that
17 officers can drop it in the door, they can assign it a
18 case, and then we can go down and get it.

19 Q Would it be fair to say, though, that this substance
20 is passing through hands at SLED, and is not within your
21 personal knowledge, and you're not -- you're not there
22 when it's happening?

23 A I am not present when the outer bag is being moved
24 from place to place. But I am the only one that,
25 actually, touches the evidence.

1 MR. HODGES: Okay. That's all the questions I have.

2 Thank you, Your Honor.

3 THE COURT: Anything on redirect?

4 MR. ANDREWS: Nothing on redirect, Your Honor.

5 THE COURT: Okay. Any objection to Agent Sorrells
6 being excused?

7 MR. HODGES: No objection from the Defense.

8 MR. ANDREWS: Not from the State, Your Honor.

9 THE COURT: Okay. You're free to leave, ma'am.

10 THE WITNESS: Thank you.

11 MR. DOWTIN: May we approach Your Honor?

12 THE COURT: Sure.

13 (WHEREUPON, a bench conference was held.)

14 MR. DOWTIN: Your Honor, at this time, the State
15 rests.

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

17 Mr. Foreman, and, ladies and gentlemen of the jury,
18 let's -- I need to kind of talk to the lawyers about a few
19 matters, see how we're going to proceed. Consequently, I
20 will need for you to go back to the jury room. And it may
21 very well be we'll maybe adjourn for the day. I'm not
22 sure. I just want to wait and see what the lawyers have
23 to tell me.

24 So if you'll go back to the jury room. We'll get you
25 back out shortly.

1 (WHEREUPON, the jury was excused from open court at
2 approximately 3:57 p.m.)

3 THE COURT: Okay. Prior to the Court admitting into
4 evidence the analysis report, State's Exhibit No. 11, and
5 the actual drugs, State's Exhibit No. 2, the lawyers
6 approached. We had a sidebar conference.

7 And, Mr. Hodges, you placed your objection to that
8 coming in on a chain of custody analysis -- or not
9 analysis, but basis for your objection. And we agreed to
10 go -- that I would go ahead and let it in, but then have
11 you put your objection on the record, but noting that your
12 objection was made to the Court prior to the evidence
13 coming in.

14 So I will -- I will hear from you at this time
15 concerning that and then anything else you need to put on
16 the record at this stage of the trial.

17 MOTIONS

18 MR. HODGES: Thank you, Your Honor.

19 Your Honor, on May the 24th of 2018, when I filed my
20 Rule 5 and Brady requests, I, also, filed under Rule 6 or
21 rules -- specifically, under Rule 6(b) demanding the
22 appearance in court of all persons within the chain of
23 custody of any evidence. We have not heard from the --
24 the full chain in the case. I think there were a number
25 of gaps in the chain.

1 The analyst testified that she didn't know -- at
2 least, didn't have personal knowledge of who all the
3 substances came through.

4 So my motion would be that it was a -- my objection
5 was it's an insufficient chain of custody presentation by
6 the State. And, therefore, the drugs should not be
7 admitted.

8 THE COURT: Let me just -- just take a peek at that
9 rule.

10 (Pause.)

11 THE COURT: Okay. Solicitor, talk to me about Rule
12 6(b).

13 MR. ANDREWS: Your Honor, if I could...

14 THE COURT: If you need a few minutes, that's fine.

15 MR. ANDREWS: Yes, sir. Really, what we would be
16 citing to, Your Honor, is State v. Brockmeyer.

17 THE COURT: Right.

18 MR. ANDREWS: And that is 406 S.C. 324.

19 THE COURT: The State v. Brockmeyer discussed Rule
20 6(b)?

21 MR. ANDREWS: Well, Your Honor, really, it goes to
22 the issue of the log establishing the chain of custody for
23 items recovered by investigators and law enforcement was
24 not testimonial in nature and, thus, custodian's testimony
25 about chain of custody items did not implicate defendant's

1 confrontation under Crawford.

2 As you heard the analyst say, none of these people
3 are people who, actually, broke the seal on the
4 tamper-evident packaging. You did hear from Agent
5 McClinton, who seized the evidence. You heard from Agent
6 Brooks, who was present.

7 THE COURT: Right.

8 MR. ANDREWS: You -- you heard from Sergeant Griffin,
9 who collected the evidence. And then you heard from Agent
10 Sorrells, who, actually, tested the evidence.

11 THE COURT: Right. So would 6(b) come into play only
12 if the analysis -- or the one doing the analysis, their
13 report comes in without live testimony. And in that
14 case -- I'm just looking. Let's -- let's set State v.
15 Brockmeyer aside. Okay.

16 MR. ANDREWS: Yes, Your Honor.

17 THE COURT: So Rule 6, it can come in without the one
18 conducting the analysis. It can come in without the
19 person testifying, unless the Defendant objects.

20 And then if the Defendant objects, then you've got to
21 have the -- the one who did the analysis to come and --
22 and testify personally.

23 MR. ANDREWS: Yes, sir, Your Honor.

24 THE COURT: So 6(b) kicks in, as -- as I read it.
25 And you guys are smart. You can -- you can help educate

1 me. I read 6(b) to kick in as far as sworn statements
2 signed by each successive person having custody of the
3 evidence. That there be a sworn statement from
4 potentially these other people.

5 MR. HODGES: What I -- what --

6 THE COURT: That's the way I read it.

7 MR. HODGES: What I'm looking at, Judge, is the very
8 last sentence in Subsection B. It says, The Defendant or
9 his attorney may demand appearance in court of the persons
10 within the chain of custody in the same manner provided in
11 Section A.

12 And that's, specifically, what my Rule 6 motion says
13 that I filed is that pursuant to Rule 6(b), the Defendant
14 hereby demands the appearance in court of all persons
15 within the chain of custody with the evidence.

16 So that was my objection to the admission of the
17 drugs is that we have not heard from all the people in the
18 chain of custody.

19 THE COURT: Well, we -- we know that it's the law in
20 South Carolina that not everybody has to testify within
21 this "chain of custody." I'm just trying to figure out
22 how Rule 6 fits into that.

23 So when you say the Defendant or his attorney may
24 demand the appearance in court of the persons within the
25 chain of custody, is that chain of custody meaning every

1 person that shows up on the SLED report, or the legal
2 chain of custody, which does not necessarily mean
3 everybody? Do you see what I'm saying?

4 MR. ANDREWS: Right. And, Your Honor, it would be
5 our position that it's anybody who's got -- I guess for
6 lack of a better term, a substantial investment in the
7 chain. Like, you heard Agent Sorrells testify. There are
8 people who just move the bag around.

9 THE COURT: Right.

10 MR. ANDREWS: And she testified that it's in
11 tamper-evident packing. So she would have known if anyone
12 other than her had broken the seal.

13 THE COURT: Okay.

14 MR. ANDREWS: Your Honor, if you could give us just a
15 couple more minutes maybe to address this issue.

16 THE COURT: Sure. That's fine.

17 (Pause.)

18 MR. ANDREWS: Your Honor --

19 THE COURT: Hold that thought, Solicitor, if you
20 would, for just a minute for me, please.

21 MR. ANDREWS: Yes, Your Honor.

22 (Pause.)

23 THE COURT: Okay. Let's go back on the record.

24 Solicitor, you wanted -- you came across something
25 you wanted to address?

1 MR. ANDREWS: Well, Your Honor, yes. I just wanted
2 to cite State vs. Joseph.

3 THE COURT: What's that cite?

4 MR. ANDREWS: 328 S.C. 352. And in that case, that
5 does address a violation of Rule 6.

6 THE COURT: Okay. Let me pull that one up.

7 (Pause.)

8 THE COURT: Okay. The way -- the way I read -- and
9 I've looked at the Joseph case, Brockmeyer. In reading
10 Rule 6 and 6(b), the requisite chain of custody witnesses,
11 the Defense can require them to be present. I don't think
12 that says or means that everybody on the -- on the SLED
13 chain of custody sheet -- in this case, I think two, one
14 who logged it in and assigned it a number, and then one
15 who logged it out and gave it to the chemist. I don't
16 think that means all those people, too.

17 I think -- for example, let's say Officer Griffin,
18 who was the evidence custodian here, certainly, you could
19 require her presence and not have an affidavit submitted
20 in lieu of her testimony.

21 So I think 6(b) allows you to require all necessary
22 chain of custody witnesses to be present. And all
23 necessary chain of custody witnesses have testified in
24 this case. And under Brockmeyer and some of the other
25 cases, it doesn't require that everybody -- that those who

1 gave it a number has to come and testify.

2 So I'm going to deny your request. I am, however --
3 because it's been a while since Rule 6 has been -- has
4 been argued before me, I'm going to look at it a little
5 bit further.

6 But my -- my initial ruling, Mr. Hodges, is to deny
7 your motion to exclude the -- State's Exhibit Nos. 11 and
8 2 coming into evidence based upon that. But it's -- I'm
9 going to look at it a little bit further.

10 MR. HODGES: Thank you, Your Honor. .

11 THE COURT: Okay.

12 MR. HODGES: One other housekeeping matter. I don't
13 know what State's Exhibit number it is, it's the cell
14 phone. It's State's Exhibit No. 3. When that was
15 admitted, we had a sidebar. And I raised the exception, I
16 guess, that I had no objection to the admission, as long
17 as the jury did not have the ability to go into the phone.
18 There's a whole line of cases that talks about --

19 THE COURT: Right.

20 MR. HODGES: -- search warrants on phones. And I
21 haven't been provided any kind of phone dump. And the
22 Court ruled at sidebar that it would be admitted, but the
23 jury would not be able to access any contents inside of
24 the phone.

25 THE COURT: Right.

1 MR. HODGES: I just wanted to clear that up on the
2 record.

3 THE COURT: Right. It's -- it's been put into
4 evidence that this was just something that was found at
5 the -- at the scene. And -- and I'll -- I'll just
6 instruct the jury that they cannot open the envelope that
7 the phone is in. They can look at it. And, you know,
8 that's the -- that's the extent.

9 MR. HODGES: And then at this stage, Judge, I would
10 move for a directed verdict of not guilty on these two
11 charges and renew my motion to suppress, based upon my
12 earlier arguments about the -- the unreasonable search and
13 seizure, the fruit of the poisonous tree. And that the
14 Defendant had the right to resist an unlawful arrest.

15 THE COURT: All right. I will respectfully deny your
16 motion and the renewal of your motions.

17 Based upon my prior ruling and on your motion for
18 directed verdict, viewing the evidence in the light most
19 favorable to the State, the Court finds that there does
20 exist sufficient evidence to send this case to the jury.
21 We're just concerned with the existence of evidence and
22 not with the weight.

23 All right. We're going to bring the jury out.

24 The State, you've already rested on the record;
25 right?

1 MR. DOWTIN: Yes, Your Honor.

2 THE COURT: You've already rested on the record.
3 Bring the jury out. And I think it's your intention
4 not to put up a case; correct?

5 MR. HODGES: That's correct, Your Honor.

6 THE COURT: Okay. And the Defense can rest. And
7 then we'll send the -- the jury home for the afternoon.
8 And I'm going to have them come back just to give us
9 enough time to deal with the charge at about 10:30, I
10 think, have the jury back.

11 And we can have an informal conference this afternoon
12 for a little bit.

13 Okay. Let's bring the -- bring the jury out.

14 (WHEREUPON, the jury came into open court at
15 approximately 4:19 p.m.)

16 THE COURT: All right. Let the record reflect the
17 jury is back in.

18 Mr. Hodges.

19 MR. HODGES: The Defense rests, Your Honor.

20 THE COURT: Okay. Very good. The evidentiary record
21 in this case is now closed.

22 Ladies and gentlemen of the jury, what we have left
23 to do -- and this is going to be tomorrow is the lawyers
24 will make their closing arguments to you. And then I will
25 charge you the law applicable to -- to this case and what

1 you are to consider. And -- and then I will instruct you
2 after that to begin your -- your deliberations. We'll do
3 all that in the morning.

4 We have some work to do on the case that does not
5 involve you directly. Therefore, you will not need to be
6 here until 10:30 in the morning. Be sure to be prompt.

7 And, again, there's my -- my instruction not to have
8 any discussions about this case among yourselves or with
9 anybody that you come into contact with. I remind you of
10 the prohibition against any independent research into this
11 case.

12 And we will see you in the morning at -- at 10:30.
13 Have a good nights rest. And have a good -- have a good
14 evening.

15 (WHEREUPON, the jury was excused from open court at
16 approximately 4:21 p.m.)

17 THE COURT: All right. We'll take a little break.
18 And then we can kind of start chatting about charges.

19 (WHEREUPON, the proceedings were concluded at
20 approximately 4:22 p.m., to be reconvened on
21 Wednesday, December 12, 2018.)
22
23
24
25

1 WEDNESDAY, DECEMBER 12, 2018

2 THE COURT: We're -- we're back on the record.

3 In -- two things. One, I want to -- to supplement my
4 ruling as it relates to the Defense's objection as to
5 chain of custody. And I want to cite and -- and rely on
6 State vs. Hatcher. That's 392 S.C. 86. And it just
7 further supports my ruling.

8 And I want to quote from State v. Hatcher. It found
9 that the State was not required to, specifically, identify
10 every individual who handled drug evidence in order to
11 establish change -- chain of custody.

12 And the State vs. Hatcher even went further and said
13 that the practice -- and this is in another case, I can't
14 recall the name of it -- of identifying those who
15 handled -- identifying everybody who handled the -- the
16 fungible item, the drug, whatever that's being tested and
17 their role didn't even have to do that so long as you had
18 everybody necessary to testify to establish chain of
19 custody. That was enough.

20 So in this case, we had all the necessary people to
21 testify to establish the chain of custody.

22 So I just wanted to supplement my ruling on -- on
23 that, not to -- to relitigate or reargue that particular
24 objection, but just to further support my ruling.

25 All right. Secondly, concerning the charge. We had

1 an informal charge conference yesterday afternoon in
2 chambers wherein Mr. Hodges had requested the Court to
3 charge the lesser included offense of possession with
4 intent to distribute, as well as simple possession.

5 And after a considerable amount of discussion, I
6 declined to -- to charge that, basically, relying on State
7 vs. Grandy, 306 S.C. 224, and Statute 44-53-392.

8 Basically, Grandy holding that when the weight is not in
9 dispute -- it's not in dispute in this case -- that the
10 lesser included offense or offenses should not be charged.

11 So I've declined Mr. Hodges' request.

12 Anything else you want to put on the record on that
13 point?

14 MR. HODGES: Just one clarification.

15 THE COURT: Sure.

16 MR. HODGES: I believe I had just asked for the
17 lesser included possession, not possession with intent.

18 THE COURT: Oh, okay.

19 MR. HODGES: And the -- the other thing I had asked
20 for that the Court had indicated you declined to charge
21 was the hesitate to act.

22 THE COURT: Right. Just leave the firmly convinced
23 language.

24 Also, I think with everybody's agreement, I took out
25 any constructive possession language that normally appears

1 in the standard charge. But in this case, there was not
2 any. So by agreement of both sides, I -- I took that out.

3 And I think that covers everything that we discussed
4 as far as the charge; correct, gentlemen?

5 MR. HODGE: I believe that's correct, Your Honor.

6 MR. DOWTIN: That's correct, Your Honor.

7 THE COURT: Very good.

8 All right. We're going to be down until 10:30. I
9 was a little -- I don't know why I said -- I guess I
10 thought maybe we needed more time to do whatever we needed
11 to do.

12 But, anyway, we'll be in recess until 10:30.

13 (WHEREUPON, a break was taken.)

14 THE COURT: Let's bring the jury out, Mr. Hamby.

15 (WHEREUPON, the jury came into open court at
16 approximately 10:35 a.m.)

17 THE COURT: All right. Let the record reflect the
18 jury is back in.

19 Good morning, ladies and gentlemen.

20 All right. Here's what we have left to do today.
21 The lawyers will make their closing arguments to you. I
22 will charge you the law that's -- that applies to this
23 case. After that is done, I will probably send you on for
24 a lunch break. It might be a little bit longer lunch
25 break and then a designated time for you to come back.

1 Don't start your deliberations when you come back.
2 Because I still have all 14 of you in there. Then I'll
3 bring you out and give you some further instructions.

4 So this is the last time the lawyers have an
5 opportunity to advocate for their respective sides, so,
6 please, give them your undivided attention.

7 Solicitor, are you ready?

8 CLOSING ARGUMENTS

9 MR. DOWTIN: Thank you, Your Honor.
10 May it please the Court.

11 Ladies and gentlemen, before I get started, I just
12 wanted to thank each of y'all for being here. Without
13 y'all, this whole process is not even possible. Y'all
14 have a huge role in this case, as the Judge told you and
15 is probably going to tell you again. Y'all, ultimately,
16 determine the facts of the case, based on the evidence
17 that's presented from this witness stand and the exhibits
18 like the video, and the -- the drugs, the scale that are
19 presented to you.

20 So thank y'all very much for being here.

21 This, hopefully, should finish up today. And as --
22 as the Judge just indicated, this will be the last time
23 you hear from me. I'm going to try and keep it as brief
24 as I can.

25 Y'all are aware of what Mr. Pride is charged with.

1 Mr. Pride is charged with trafficking crack cocaine 28
2 grams or more, but less than a hundred grams. We heard
3 the weight from the SLED analyst. It's not in dispute
4 what the weight was, 29.06 grams. He's, also, charged
5 with resisting arrest.

6 Now, as you heard, the burden is on us to prove
7 beyond a reasonable doubt Mr. Pride's guilt. Beyond a
8 reasonable doubt is that you're firmly convinced of the
9 Defendant's guilt. It doesn't mean beyond all doubt or
10 any doubt. But just that you're firmly convinced of
11 Mr. Pride's guilt.

12 So what do we have to prove to you beyond a
13 reasonable doubt? I'm going to read for you what the law
14 says and what Judge Hocker's going to read to you after
15 Mr. Andrews -- or Mr. Hodges is done with his closing
16 argument.

17 Starting with trafficking crack cocaine, it says, The
18 State must prove beyond a reasonable doubt that the
19 Defendant was knowingly in actual possession of crack
20 cocaine. And there is some more language as far as that
21 the Defendant sold, manufactured, cultivated. But it's
22 our position that doesn't apply here. What you should
23 focus on is that he was in actual possession of the amount
24 required to be considered trafficking, according to the
25 law.

1 So he was knowingly in actual possession of crack
2 cocaine. And that the weight of that crack cocaine was
3 28 grams or more, but less than a hundred grams.

4 And you'll, also, hear that it doesn't have to be a
5 hundred percent pure crack cocaine. It says it can be in
6 its pure form or it can be a mixture of crack with
7 whatever else. It can be salt, baking soda, whatever.
8 It's -- it can be a mixture. And, again, we heard from
9 the SLED analyst, 29.06 grams of crack cocaine, positive
10 crack cocaine.

11 Actual possession. That's pretty -- pretty
12 straightforward, ladies and gentlemen. You got to see the
13 video. It's in his possession when it's on him, when he
14 reaches down in his sock, when he puts it in his hand, and
15 he throws it. That's actual possession. That is,
16 actually, on the Defendant. It's pretty straightforward.

17 As far as resisting arrest, the law says we must
18 prove beyond a reasonable doubt that the Defendant
19 knowingly and willfully opposed or resisted a law
20 enforcement officer in serving, executing, or attempting
21 to serve or execute a legal writ or process, an arrest
22 warrant in this case.

23 You heard from law enforcement. They had heard
24 Mr. Pride was in the area. They see Mr. Pride. They have
25 an active warrant for Mr. Pride. They approach Mr. Pride.

1 They tell him, Hey, can you give us your name? You're
2 under arrest. You need to come with us. And at that
3 point, Mr. Pride runs. Again, I'm not going to go through
4 all that. You heard the testimony. You've seen the
5 video.

6 He was aware it was law enforcement. That's why he
7 ran. He was -- he ran because he knew it was law
8 enforcement. And he ran because he knew what he had in
9 his pocket and he knew what he needed to get rid of. He
10 didn't think it was a bag of sugar in his pocket, some
11 salt. He knew what he had on him. And he, also, had a
12 scale in his possession and \$388 in cash.

13 So, again, I kind of hit on the points about how we
14 proved our case.

15 We called Agent McClinton and Agent Evans. They
16 testified to you why they were there. You got to see
17 everything on the video. The crime is on video. So I'm
18 not going to rehash all their testimony. But you heard
19 from them what is confirmed on the video. It's pretty
20 rare we have a video of a crime, basically, from start to
21 finish. Everything is there.

22 I'm going to -- I'm not going to play the whole video
23 again. I'm just going to show you the -- basically, two
24 minutes that, actually, has the crime on there of Mr.
25 Pride running. I'm going to slow it down for y'all where

1 you can see him reach down in his pocket, throw the bag of
2 crack through the air.

3 And excuse my -- I guess my use of this, but the --
4 the officer, basically, you know, bird dogs it. He sees
5 the drugs fly through the air. He immediately goes over
6 to it, looks down, and there's the bag of crack. It's --
7 it's -- 30 grams of crack is not just going to be sitting
8 around. I don't really -- you know, where it's at -- the
9 area it's in, it's -- you're not going to just have
10 30 grams of crack randomly laying on the ground.

11 And, more importantly, there's the video showing he
12 threw it there. And the officer immediately picks it up,
13 puts it in evidence. It's, ultimately, sent to SLED,
14 tested, confirmed crack cocaine, 28 grams or more. It's
15 29.06 grams to be exact in this case.

16 Why did the Defendant run? We have to -- part of it
17 is we have to show he knew what he had on him. Again, he
18 ran because, one, he knew there was an arrest warrant for
19 him. And, two, because he knew what he had on him.

20 You can see in the video when he's walking in the
21 creek, he's got to be, what am I going to do with this? I
22 have this in my pocket. What am I going to do? He
23 reaches in his pocket, throws it away to get him off -- to
24 get if off of him. Because he knows what he has in his
25 possession. If it was something that was not an illegal

1 substance, I doubt he'd be trying to throw it and get it
2 off of him.

3 Now, Defense Counsel, they kind of talked about
4 the -- with the SLED agent on cross, hey, can you -- can
5 you talk about the purity? Like, can you tell us exactly
6 the purity of these drugs? She said, no, we don't do
7 that. And that's because the law says it doesn't matter.
8 Once it's confirmed that it's crack cocaine, whatever it's
9 mixed with, that does not matter. You take the weight of
10 all of it. Again, the weight is 29.06 grams.

11 Defense Counsel briefly mentioned trace evidence.
12 You heard from Ms. Griffin from the Greenwood Police
13 Department, the evidence technician. They don't do trace
14 evidence on a bag of drugs. You see the bag. The drugs
15 were in it right here. It's a little bag.

16 It, basically, just looks like some saran wrap, if
17 you will, wrapped in. It's confirmed on the video that's
18 what it's in. It was taken out and it was put in the bag
19 that it was weighed in by Agent McClinton where he weighs
20 it and it's 30.84 grams because he's weighing it in the
21 bag. It's taken down to SLED. They weigh the drugs.
22 It's not in the bag. It's just the actual weight of
23 the -- the crack, 29.06 grams.

24 So if you see this, that's what Mr. McClinton
25 testified to. He weighs it, that's what he got. But the

1 number you should be concerned with is SLED, ultimately,
2 said it was 29.06 grams.

3 At this point, ladies and gentlemen, that's -- that's
4 our case. I'm going to show you the crime on video one
5 more time. I think it's a couple minutes long. And I'll
6 pretty much wrap it up after that.

7 (WHEREUPON, a portion of State's Exhibit No. 5 was
8 played in open court.)

9 MR. DOWTIN: You can see Mr. Pride sitting right
10 there. He's been identified. I'm just going to slow it
11 down for you here.

12 (WHEREUPON, a portion of State's Exhibit No. 5
13 continued to be played in open court.)

14 MR. DOWTIN: You can see the drugs on the ground that
15 Agent McClinton's picking up. And there's State's Exhibit
16 No. 2 in his hand, 29.06 grams of crack.

17 Ladies and gentlemen, that's the case. Everything is
18 right there on video. I'm not going to stand up here and
19 talk any longer. I'm just asking that you find Mr. Pride
20 guilty of trafficking crack cocaine 28 grams or more, but
21 less than a hundred grams and resisting arrest.

22 Thank you very much for your time.

23 THE COURT: Thank you, Solicitor.

24 Mr. Hodges, are you ready, sir?

25 MR. HODGES: Yes, sir.

1 Thank you, Your Honor.

2 You never know what you might find. You may remember
3 Officer McClinton saying that on the video. You never
4 know what you might find out here. You may recall that he
5 testified this was what they call a high drug area. He
6 said there's lots of drug activity going on in this
7 particular area.

8 And I want you to think about when the officers are
9 searching back behind this apartment complex and looking
10 along this path. Think of all the stuff that they found
11 just in that short search. They found a paint ball gun.
12 They found a bag of bullets. There was a jacket behind
13 the screen door that had drug paraphernalia in it. Lots
14 of stuff that was in this area. You never know what you
15 might find.

16 Well, they, also, found this bag in a bunch of debris
17 behind this house. And it begs the question, I mean, you
18 can't tell what is thrown. All right. So it begs the
19 question, is that bag that the officer went and picked up
20 what he threw?

21 It's pretty easy for the State to answer that
22 question. There's a couple of ways that they could have
23 answered that question beyond a reasonable doubt to your
24 satisfaction. One way is with latent prints. You know,
25 each one of us is unique. And we all have unique

1 fingerprints. The tips of our fingers are all different.
2 If you look at them closely, you've got all these swirls
3 and whirls on your fingers. And when you touch something,
4 the oils in your fingers are going to leave a print of
5 those ridges and those valleys on your fingers.

6 And you heard Sergeant Griffin, who is the police
7 department crime scene technician, say that she's got lots
8 of equipment over there at city hall that she can use to
9 develop fingerprints. They didn't do that in this case.
10 She said they could have. Nobody asked her to do it.

11 There's, also, a thing called touch DNA. And DNA is,
12 basically, our genetic fingerprint. It's the -- the
13 material that's in each cell in your body. And it makes
14 me different from each one of you. And it's like a
15 fingerprint because it's unique to each one of us.

16 When you touch something, your DNA transfers to that
17 object, oil from your hand, sweat, skin cells, all of
18 those cells from your body transfer to whatever you touch.
19 And it's called touch DNA.

20 And you heard Sergeant Griffin tell you she's got the
21 swabs. She's got the equipment over there to do DNA
22 testing. You heard the SLED expert from Columbia tell you
23 they've got all kinds of experts and chemists down there
24 in four different floors worth of labs and departments
25 that can do all of this testing, that can assist local

1 agencies in this forensic testing. And the police
2 department didn't do that.

3 The Solicitor asked her on redirect, well, you know,
4 how often do you do that in drug cases? Rarely. Well, I
5 mean, is that an excuse that, well, they didn't do it in
6 this case because they don't do it in other cases? You
7 know, if they've got the equipment over there to bring you
8 that kind of evidence, why didn't they?

9 You know, the -- the State has got the burden of
10 proof. And I submit to you that they have got the
11 obligation to bring you the strongest case that they can
12 bring you to convince you beyond a reasonable doubt. They
13 could have done that in that -- in this case. And for
14 whatever reason, they didn't do it. They didn't bring
15 that evidence to you and they could have.

16 And, you know, if they had fingerprints on the bag or
17 they had touch DNA on the bag, that'd have been pretty
18 rock solid proof that this bag was in my client's
19 possession. They didn't bring you that evidence.

20 So when I talked to you in opening statement
21 yesterday and I was talking about that -- that inkling of
22 doubt, that's the kind of thing I'm talking about. You've
23 got to hold them to their burden. The burden of proof is
24 proof beyond a reasonable doubt. And that's a very high
25 burden. So that's something I'd ask you to think about.

1 The other thing I would ask you to consider is this
2 evidence of the chain of custody. You heard a lot about
3 chain of custody yesterday. And what chain of custody,
4 basically, is is that the State has got to convince you
5 that what was collected here in Greenwood is the same
6 thing that got to Columbia and got tested by that SLED
7 analyst.

8 All right. They've got to -- you know, they've got
9 to make sure that this is the same thing that got there.
10 Does that make sense? Because it -- you know, it's pretty
11 vitally important that what the SLED analyst is testing in
12 Columbia is the same thing that was collected in this
13 particular case.

14 And you heard her, she does, like, 1,300 cases a
15 year. She's not going to know one from the other.
16 They've got to keep it sorted out as to which -- which
17 evidence goes with which case. And so they've got to
18 prove this chain of custody to you, this chain of events
19 to get it where it goes.

20 Well, you heard in the testimony yesterday, Officer
21 McClinton said he took all this evidence and locked it up
22 in a car; right? And then I pointed out on
23 cross-examination, well, now, wait a minute. We just
24 looked at your video. And you left it in a car with
25 somebody else. That's not what he testified to on direct.

1 He said he locked it up in the car.

2 So I pointed out on cross, no, that's not what the
3 video shows. You left it in somebody else's custody.

4 Who's that? Oh, that's Lieutenant Brooks.

5 Who's the next witness that you heard from?

6 Lieutenant Brooks. And the first question the Solicitor
7 was asking him, Did you expect to testify today?

8 No.

9 How long have you known you were going to testify?

10 About 10 minutes.

11 I submit to you, the State was scrambling around to
12 try to plug that hole in their chain of custody.

13 And I would invite you to look at the paperwork that
14 was submitted to you about the chain of custody. There's
15 a form here certifying who's in the physical chain of
16 custody. Lieutenant Brooks' name is not anywhere on the
17 paperwork. Which then begs the question, you know, is
18 there anybody else that had custody of this that's not on
19 the paperwork that we don't know about? I mean, we
20 discovered the one because it happened to be on the video.
21 But, you know, who else's hands did this go through?

22 You will, also, see this other paperwork that's
23 the -- the SLED paperwork. And I asked the analyst, well,
24 do you have personal knowledge about who all's hands this
25 went through? Well, no, she didn't. And she could look

1 at the paperwork. But she didn't have personal knowledge
2 of it.

3 And there's a bunch of people listed on that
4 paperwork that you never heard from, that did not come in
5 this courtroom and testify about their role in that chain
6 of custody. Again, the State's got the burden to bring
7 witnesses into this courtroom and testify so you can judge
8 their credibility and decide if what was collected on that
9 scene is what was tested by that analyst.

10 And one of the reasons that I bring that up -- you
11 may be asking, well, why -- why is he harping on this
12 issue of the chain of custody? Well, you've got a SLED
13 analyst who has told you that what she tested was crack
14 cocaine and that it weighed 29.06 grams; right? But
15 you've got this bag that says 30.84 grams. That's a
16 pretty big inconsistency in the weight, which then begs
17 the question, is what they collected what got tested? Why
18 is there -- why is there the big difference in the weight?
19 That's 1.78 grams difference.

20 You know, they've got to convince you beyond a
21 reasonable doubt that what got collected here is the same
22 thing that got tested there, and that it wasn't
23 contaminated, or adulterated, or mixed up with other
24 evidence. You've got to be convinced beyond a reasonable
25 doubt that this is what got tested. And I submit to you

1 that there are holes in this chain that should lead you to
2 doubt that.

3 I'm going to ask you to direct your attention to this
4 chart. This is just to give you an idea of the burden
5 that the State is under. The Judge will tell you, again,
6 that the State has the complete burden of proof in this
7 case. It's proof beyond a reasonable doubt.

8 I told you in my opening yesterday it's not like in a
9 civil case where you've got to tip the scales just a
10 little bit. They've got to tip the scales almost all the
11 way in their favor.

12 And so if you go back in the jury room and you say,
13 you know, I think, perhaps, the Defendant's guilty, your
14 obligation is to find him not guilty, because that's not a
15 high enough burden. Or if you go back there and you say,
16 you know what, I think he's probably guilty of this crime.
17 Your obligation is to find him not guilty, because that's
18 not good enough. You go back there and say I've got a
19 strong belief that he's guilty. It's not good enough.

20 You've got to find him guilty beyond a reasonable
21 doubt. You have got to be firmly convinced of his guilt
22 before you can find him guilty. And if you've got that
23 inkling of doubt, if when you go back there and you
24 hesitate to convict, that's reasonable doubt talking to
25 you. And I would ask you to listen to that, you know.

1 arrest and the other for trafficking cocaine. Each
2 indictment charges a separate and distinct offense. You
3 must decide each indictment separately on the evidence and
4 the law applicable to it uninfluenced by your decision as
5 to any other indictment.

6 The Defendant may be convicted or acquitted on any or
7 all of the offenses charged. And you'll be asked to write
8 a separate verdict for guilty or not guilty for each
9 indictment. And I'll show you that verdict form which we
10 call a verdict form at the conclusion of this charge.

11 The Defendant has pled not guilty to these
12 indictments. And that plea puts the burden on the State
13 to prove the Defendant guilty. A person charged with
14 committing a criminal offense in South Carolina is never
15 required to prove himself innocent.

16 I charge you that it is an important rule of the law
17 that the Defendant in a criminal trial, no matter what the
18 seriousness of the charge may be, will always be presumed
19 to be innocent of the crime for which the indictment was
20 issued, unless guilt has been proven by evidence
21 satisfying you of that guilt beyond a reasonable doubt.

22 Now, this presumption of innocence does not end when
23 you begin your deliberations, but it accompanies the
24 Defendant throughout the trial until you reach or unless
25 you reach a verdict of guilt based on evidence satisfying

1 you of that guilt beyond a reasonable doubt.

2 The presumption of innocence is like a robe of
3 righteousness placed about the shoulders of the Defendant,
4 which remains with the Defendant until or unless it has
5 been stripped from the Defendant by evidence satisfying
6 you of the Defendant's guilt beyond a reasonable doubt.

7 The presumption of innocence is not mere legal
8 theory. It's not just a legal phrase. It is a
9 substantial right to which every Defendant is entitled,
10 unless you, the jury, are satisfied from the evidence of
11 the Defendant's guilt beyond a reasonable doubt.

12 Now, some of you may have served as jurors in civil
13 cases where you were told that it is only necessary to
14 prove that a fact is more likely true than not true, such
15 as by the greater weight or the preponderance of the
16 evidence. In criminal cases, the State's proof must be
17 more powerful than that. It must be beyond a reasonable
18 doubt. Proof beyond a reasonable doubt is proof that
19 leaves you firmly convinced of the Defendant's guilt.

20 Now, there are very few things in this world that we
21 know with absolute certainty. And in criminal cases, the
22 law does not require proof that overcomes every possible
23 doubt. If based on your consideration of the evidence,
24 you are firmly convinced the Defendant is guilty of the
25 crimes charged, you must find the Defendant guilty. If,

1 on the other hand, you think there's a real possibility
2 that the Defendant is not guilty, you must give the
3 Defendant the benefit of the doubt and find him not
4 guilty.

5 Now, ladies and gentlemen, I remind you, once again,
6 that during this trial, you and I have had certain duties
7 to perform. As the trial judge, it has been my
8 responsibility to preside over the trial of this case.
9 And I, also, have had the duty to rule on the
10 admissibility of evidence offered during this trial.

11 You are to consider only the competent evidence
12 before you. If there was any testimony ordered stricken
13 from the record in this case during this trial -- I'm not
14 sure if there was -- but if there was, you must disregard
15 that testimony. You are to consider only the testimony
16 which has been presented from this witness stand, any
17 exhibits which have been made a part of the record in this
18 case, and any stipulations of Counsel.

19 I have the additional duty to charge you the law
20 applicable to this case. As the presiding Judge, I am the
21 sole judge of the law in this case. And it is your duty,
22 as jurors, to accept and apply the law as I now state it
23 to you. If you already had any idea as to what the law is
24 or what the law ought to be and it does not agree with
25 what I now tell you the law is, you must abandon your

1 idea. Because you're sworn to accept the law and apply
2 the law exactly as I state it to you.

3 In every case tried in this Court before a jury, the
4 jury becomes the sole and exclusive judge of the facts in
5 the case. A trial Judge cannot intimate, state, comment
6 on, or make any statement to a trial jury about the facts
7 in the case.

8 Since you, the jury, are the sole judge of the facts
9 in this case, you're not to infer from what I have said
10 during the progress of this trial in ruling upon the
11 admissibility of evidence, or otherwise, or anything that
12 I say now during the course of this instruction to you
13 that I have any opinion about the facts in this case. The
14 law does not allow me to have an opinion about the facts
15 in this case.

16 This is a matter solely for you, the jury, to
17 determine. As jurors, it is your duty to determine the
18 effect, value, weight, and truth of the evidence presented
19 during this trial.

20 Now, there are two types of evidence which are,
21 generally, presented during a trial, that being direct
22 evidence and circumstantial evidence. Direct evidence
23 directly proves the existence of a fact and does not
24 require deduction. Circumstantial evidence is proof of a
25 chain of facts and circumstances indicating the existence

1 of a fact. Crimes may be proven by circumstantial
2 evidence.

3 The law makes no distinction between the weight or
4 value to be given to either direct or circumstantial
5 evidence. However, to the extent the State relies on
6 circumstantial evidence, all the circumstances must be
7 consistent with each other and when taken together point
8 conclusively to the guilt of the accused beyond a
9 reasonable doubt. If these circumstances merely portray
10 the Defendant's behavior as suspicious, the proof has
11 failed.

12 Once again, the State has the burden of proving the
13 Defendant guilty beyond a reasonable doubt. This burden
14 rests with the State regardless of whether the State
15 relies on direct evidence, circumstantial evidence, or
16 some combination of the two.

17 Necessarily, ladies and gentlemen, you must determine
18 the credibility of the witnesses who have testified in
19 this case. Credibility simply means believability. It
20 becomes your duty, as jurors, to analyze and to evaluate
21 the evidence and determine which evidence convinces you of
22 its truth.

23 In determining the believability of witnesses who
24 have testified in this case, you may believe one witness
25 over several witnesses, or several witnesses over one

1 witness. You may believe a part of the testimony of a
2 witness and reject the remaining part of the testimony of
3 that same witness. You may believe the testimony of a
4 witness in its entirety, or reject the testimony of a
5 witness in its entirety. You may consider whether any
6 witness has exhibited to you any interest, bias,
7 prejudice, or other motive in this case. You may, also,
8 consider the appearance and manner of a witness while on
9 the witness stand.

10 Now, as I explained yesterday to you concerning
11 expert witnesses, the rules of evidence ordinarily do not
12 permit witnesses to testify to opinions or conclusions.
13 An exception to this rule exists for witnesses we call
14 expert witnesses. A witness who by education and
15 experience has become an expert in some art, science,
16 profession, or calling may state an opinion as to relevant
17 and material matter in which the witness claims to be an
18 expert and may, also, state the reasons for that opinion.
19 You should consider any expert opinion received in
20 evidence in this case and, like any other evidence, give
21 it the weight you think it deserves.

22 If you decide that the opinion of an expert witness
23 is not based on sufficient education and experience, or if
24 you conclude that the reason given in support of the
25 opinion are not sound, or that the opinion is outweighed

1 by other evidence, you may disregard the opinion entirely.

2 An expert witnesses testimony is to be given no
3 greater weight than that of other witnesses simply because
4 the witness is an expert. Furthermore, you are not
5 required to accept an expert's opinion, even though it is
6 not contradicted.

7 Now, as I told you yesterday, under the laws of this
8 state, a Defendant may be tried even if the Defendant does
9 not attend the trial. The fact that the Defendant is not
10 present may not be considered by you at all and cannot be
11 considered against the Defendant in any manner whatsoever.

12 And since the Defendant was not here, he elected not
13 to testify. And I instruct you and emphasize the fact
14 that the Defendant did not testify is not a fact to be
15 considered by you in any way in your deliberations and in
16 your consideration on the question of the guilt or
17 innocence of the Defendant. It must not be considered by
18 you in any manner whatsoever.

19 A Defendant has the Constitutional right to remain
20 silent. And the assertion of this right must not be
21 considered by you in your deliberations. I repeat, under
22 the oath you took yesterday, you are to draw no conclusion
23 whatsoever from the fact that the Defendant in this case
24 did not testify. The fact that this Defendant did not
25 testify should not even be discussed in the jury room.

1 The burden of proof, as I've already stated to you
2 several times, is on the State. The Defendant is not
3 required to prove his innocence. The burden of proof
4 remains on the State to prove guilt beyond a reasonable
5 doubt.

6 Now, in order to establish criminal liability,
7 criminal intent is required. For example, the mental
8 state required to be proven by the State for a particular
9 crime might be purpose, intent, knowledge, recklessness,
10 or criminal negligence. Criminal intent must be proven by
11 the State beyond a reasonable doubt. Criminal intent is
12 always a matter that must be determined by the jury from
13 the circumstances surrounding the situation.

14 Now, there's no way to prove intent to a mathematical
15 certainty. There's no way medical science can dissect a
16 person's brain and determine what the person had in mind.
17 So the law says criminal intent may be inferred from the
18 circumstances shown to have existed. This is how you make
19 a determination of whether or not the element requiring
20 intent was present.

21 It is not necessary to establish intent by direct and
22 positive evidence. But intent may be established by
23 inference in the same way as any other fact by taking into
24 consideration the acts of the parties and all the facts
25 and circumstances of this case.

1 Criminal intent is a mental state of conscious
2 wrongdoing. It is up to you to determine what the
3 Defendant intended to do, based on the circumstances shown
4 to have existed.

5 Now, let me discuss with you the two charges, the
6 resisting arrest and trafficking crack cocaine. Resisting
7 arrest. The Defendant [sic] must prove beyond a
8 reasonable doubt that the Defendant knowingly and
9 willfully opposed or resisted a law enforcement officer in
10 serving, executing, or attempting to serve or execute a
11 legal writ or process.

12 Knowingly means with knowledge, consciously done.
13 Willfully means done intentionally and not done by
14 accident. Resist means to oppose, strive against,
15 obstruct. Obstruct means to impede, hinder, or interfere
16 with.

17 Even peaceful non-violent indirect obstruction of an
18 arrest or the service or execution of process is
19 considered resisting arrest. If the means used are
20 sufficient to prevent the officer from making an arrest,
21 the Defendant is guilty of resisting arrest.

22 Trafficking crack cocaine. The State must prove
23 beyond a reasonable doubt that the Defendant knowingly
24 sold, manufactured -- and I'm reading straight from the
25 statute in this state on trafficking crack cocaine. The

1 State must prove beyond a reasonable doubt that the
2 Defendant knowingly sold, manufactured, cultivated,
3 delivered, purchased, brought into the State, provided
4 financial assistance, or, otherwise, aided, abetted,
5 attempted, or conspired to sell, manufacture, cultivate,
6 deliver, purchase, or bring into the State, or was
7 knowingly in actual possession, or knowingly attempted to
8 become in actual possession of crack cocaine.

9 To prove possession, the State must prove beyond a
10 reasonable doubt the Defendant had both the power and
11 intent to control the disposition or use of the crack
12 cocaine. Actual possession means that the crack cocaine
13 was in the actual physical custody of the Defendant.

14 The State must, also, prove beyond a reasonable doubt
15 that the amount of the crack cocaine or any mixture
16 containing crack cocaine was 28 grams or more, but less
17 than 100 grams.

18 Now, concerning these charges, Mr. Foreman, and,
19 ladies and gentlemen of the jury, there are two possible
20 verdicts, guilty or not guilty. And your verdict as to
21 each charge must be unanimous among the 12 of you.

22 I'm going to come down in just a second and show you
23 the verdict form. In light of the fact that we've
24 accomplished all this a little sooner than I thought, in
25 probably just a few minutes, I'm going to go ahead and

1 instruct you to begin your deliberations and not send you
2 for lunch at this time because it's only 11:15. Okay.

3 And I realize what I have just read to you,
4 Mr. Foreman, and, ladies and gentlemen of the jury, was a
5 lot. And that's why I will provide you with a copy of
6 what I just read for -- in any use you want to make of the
7 jury charge, the written jury charge.

8 Let me come down and show you the verdict form that
9 you'll have to complete, Mr. Foreman, and sign. It's very
10 simple. This just has the name of the -- the case and the
11 two indictment numbers. And it says, As to the charge of
12 resisting arrest, we, the jury, find the Defendant -- and
13 you put your initials on either guilty or not guilty. And
14 the same thing for the trafficking charge, put your
15 initials on the line, guilty or not guilty. And sign it.

16 It's already been dated for you. The fact that
17 guilty appears above not guilty is of no significance.
18 One just has to go above the other. That's all.

19 Now, what I'm going to do is I'm going to ask that
20 the 14 of you go back to the jury room. Do not begin your
21 deliberations yet. I just need to discuss with the
22 lawyers to make sure there's no additions or corrections
23 to the charge.

24 If I don't bring you back out and the bailiffs bring
25 to you all of the evidence, the exhibits, that will be

1 your queue for two things to happen. One, the two
2 alternates, I will need to have exit the courtroom to come
3 back in here. And I'll talk with you then. And then that
4 will be your queue to begin your deliberations. Okay.
5 But don't start your deliberations yet.

6 And when you have reached a unanimous verdict as to
7 both charges, then knock on the door and let the bailiffs
8 know. There's a pad of paper back there for your use.

9 If you were to have a question that you needed
10 brought to the attention of the Court, write it out, sign
11 your name, Mr. Foreman, and knock on the door and let the
12 bailiffs know that you have a question or an issue for the
13 Court.

14 Okay. Now, one piece of evidence is this -- a cell
15 phone. And it is in a plastic bag. I don't think the
16 cell phone is operable. But you cannot take the cell
17 phone outside of the bag.

18 Okay. Now, if the four of you -- 14 of you would go
19 back in the jury room. And let me talk to the lawyers for
20 just a moment.

21 (WHEREUPON, the jury was excused from open court at
22 approximately 11:15 a.m.)

23 THE COURT: All right. Other than what's been noted
24 on the record previously, does the State have any
25 exceptions or objections to the Court's charge?

1 MR. DOWTIN: No, Your Honor.

2 THE COURT: And the Defense?

3 MR. HODGES: Just the -- just subject to the
4 objection I --

5 THE COURT: Previous.

6 MR. HODGES: -- included in the -- the hesitate to
7 act --

8 THE COURT: Right.

9 MR. HODGES: Nothing additional.

10 THE COURT: All right. Very good.

11 All right. We'll go off the record and make sure
12 we've got all our exhibits together.

13 (Pause.)

14 THE COURT: The exhibits are in order.

15 Here you go.

16 THE BAILIFF: Ready to go in?

17 THE COURT: Yes, ready to go in. And just bring the
18 two alternates out.

19 (WHEREUPON, the two alternates were released from
20 jury service.)

21 THE COURT: We will be at ease pending a verdict.

22 (WHEREUPON, the proceedings were recessed at
23 approximately 11:18 a.m.)

24 THE COURT: We're back on the record.

25 It's my understanding, gentleman, that the jury has

1 reached a verdict.

2 Mr. Hamby, if you'll bring the jury out, please.

3 (WHEREUPON, the jury came into open court at
4 approximately 11:42 a.m.)

5 THE COURT: Let the record reflect the jury is in.

6 Mr. Foreman, without telling me what the verdict is,
7 have you reached a unanimous verdict in this case on both
8 charges?

9 JUROR #96, JAMASON MARTIN: Yes, sir.

10 THE COURT: All right. If you'll hand the paperwork
11 to Mr. Hamby, please.

12 Madam Clerk, if you'll publish the verdict.

13 VERDICT

14 THE CLERK: Yes, sir.

15 State of South Carolina v. Tremaine Okeefe Pride,
16 indictments 2018-GS-24-1480 and 2018-GS-24-1481. As to
17 the charge of resisting arrest, we find the Defendant
18 guilty. As to the charge of trafficking crack cocaine, we
19 find the Defendant guilty.

20 THE COURT: Okay. I would ask the jury is and was
21 that your unanimous verdict? If so, designate by raising
22 your right hand.

23 (WHEREUPON, all jurors raised their right hand.)

24 THE COURT: Let the record reflect that all of the
25 jurors raised their hand.

1 Would you like for the jury to be polled?

2 MR. HODGES: That's not necessary, Your Honor.

3 THE COURT: Okay. Thank you very much.

4 Mr. Foreman, and, ladies and gentlemen of the jury, I
5 want to thank you for your jury service.

6 I hope it has been an educational experience for you
7 and maybe an experience that you would like to have again
8 sometime in the future, whether it's in the criminal arena
9 or whether it's in the civil arena. And as I mentioned to
10 you either yesterday or on Monday -- I can't remember --
11 jury service is extremely important in our society today.
12 And we have a great -- the greatest justice system
13 anywhere in the world.

14 The good thing is you do not need to come back. Now,
15 the clerk is going to give you your voucher card. And I
16 think it's -- as I understand has been mentioned to you,
17 use it like a debit card.

18 It's not good until Friday?

19 THE CLERK: Yes, sir.

20 THE COURT: And do not make any big plans. State law
21 does not provide adequate compensation for what jurors
22 have to go through, but it is what it is.

23 I'm going to come down. And I like to shake hands
24 with the jury.

25 Mr. Foreman, remain as you are because you will have

1 to sign the indictments.

2 Now, if any of you need an excuse for work --

3 THE CLERK: I'll just be outside.

4 THE COURT: She'll be outside for you.

5 (WHEREUPON, the jury was released at approximately
6 11:46 a.m.)

7 THE COURT: Mr. Hodges, do you need to put anything
8 on the record, sir?

9 MR. HODGES: And I was debating about whether that
10 would be ripe now or at the time of unsealing the
11 sentence.

12 THE COURT: I don't have an answer for that. But
13 I'll give you 10 days.

14 MR. HODGES: My thought off the top of my head is
15 this proceeding really doesn't conclude until he's
16 sentenced.

17 THE COURT: Right. Any post-trial motions would be
18 relative to the trial itself and not to the ultimate
19 sentencing. So I'll give you 10 days from today. But
20 you're more than welcome to have that if that's -- if
21 that's what you need.

22 MR. HODGES: Yes, please, Your Honor.

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

24 All right. Of course, as -- as you gentlemen know,
25 the sentence will be sealed. I will need to have the

1 amount of credit that Mr. Pride is entitled to. And then
2 I will -- after I seal the sentence, I will, actually,
3 show you the envelope before you leave. So hang around a
4 few minutes.

5 MR. HODGES: Judge, could I be heard briefly on the
6 issue of sentence?

7 THE COURT: You can. And you have the right to --
8 whoever unseals the sentence, you have the right to argue
9 aggravation, mitigation. And the unsealing Judge has the
10 right to -- to alter my -- my sentence.

11 But, yeah, I'll be glad to hear from you now on that.
12 Yes, sir.

13 MR. HODGES: Judge, the only thing I would mention is
14 that -- I mean, I know your hands are tied on the minimum
15 mandatory.

16 THE COURT: Right.

17 MR. HODGES: It appears that the most time
18 Mr. Pride's done was a four-year sentence. And that was
19 back in 2001, 17 years ago. I would just ask that you
20 consider the minimum and that you run the two charges
21 concurrent.

22 THE COURT: Okay.

23 MR. HODGES: And, obviously, give him credit for the
24 time he's entitled to.

25 THE COURT: All right. Very good.

1 And do you have certified copies of --

2 MR. DOWTIN: I do, Your Honor. I was going to make
3 three Court -- additional Court's Exhibits from all of his
4 previous drug convictions for drugs other than marijuana.

5 THE COURT: Okay. If you'll just have them marked
6 and then let me -- let me look at them.

7 And, Mr. Hodges, there's no dispute from you that --
8 that this would be a third or subsequent?

9 MR. HODGES: No. There's no dispute on it.

10 THE COURT: And the statute is 25 to 30 with a
11 \$50,000 fine. And, of course, one year on the resisting.

12 MR. HODGES: Correct.

13 (WHEREUPON, Court's Exhibit Nos. 8, 9, and 10 were
14 marked for identification and admitted into evidence.)

15 MR. HODGES: Judge, it's 147 days.

16 THE COURT: 147?

17 MR. HODGES: Yes, sir.

18 THE COURT: Wade, are y'all -- you good with that?
19 147?

20 MR. DOWTIN: Yes, sir.

21 THE COURT: Mr. Hodges, I'm sure you've seen these.

22 MR. HODGES: I have.

23 (Pause.)

24 THE COURT: Gentlemen, in light of the fact that the
25 trafficking is a violent offense pursuant to Section

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

16-23-500, that would prohibit any future possession or
ownership of firearms by Mr. Pride.

Thank you.

*****END OF TRANSCRIPT OF RECORD*****

STATE OF SOUTH CAROLINA
COUNTY OF GREENWOOD

EIGHTH JUDICIAL CIRCUIT
IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA,)
)
 PLAINTIFF,)
)
)
 -VS-)
 TREMAINE O'KEEFE PRIDE)
 DEFENDANT.)
 _____)

TRANSCRIPT OF RECORD
SENTENCING HEARING

APRIL 29, 2021
GREENWOOD, SOUTH CAROLINA

BEFORE:

THE HONORABLE FRANK R. ADDY, JR., JUDGE

APPEARANCES:

ATTORNEY FOR PLAINTIFF:
WADE DOWTIN, ASSISTANT SOLICITOR

ATTORNEY FOR DEFENDANT:
ANDREW HODGES, ESQUIRE

TARA T. SCOTT, CVR
CIRCUIT COURT REPORTER

INDEX

<u>WITNESS</u>	<u>PAGE NO.</u>
HEARING	3
CERTIFICATE OF REPORTER	6

(THERE WERE NO EXHIBITS INTRODUCED DURING THIS HEARING.)

1 THE COURT: Solicitor?

2 MR. DOWTIN: Judge, this is Tremaine O'Keefe Pride,
3 represented by Andrew Hodges. He's here on true bill
4 indictment numbers 2018-GS-24-1480 for resisting arrest and
5 -1481 for trafficking crack cocaine 28 to 100 grams, third
6 or subsequent offense.

7 He was tried before Judge Hocker back in December of
8 2018. He was found guilty December 12, 2018. We had to try
9 him in his absence, Your Honor. The issue of notice was
10 addressed, and ultimately Mr. Hodges put on the record that
11 he notified Mr. Pride of his trial, met with him in his
12 office, but he did not show up for his trial the following
13 Monday. We're just here to have the sentence read, Your
14 Honor.

15 THE COURT: Mr. Hodges, you did meet briefly with me in
16 the hallway indicating that Mr. Pride, or his family, had
17 been in touch with Mr. Wise and Mr. Jones about possibly
18 retaining them for purposes of a motion for reconsideration
19 and for the ultimate appeal on the trial; am I correct?

20 MR. HODGES: That is correct, Your Honor. Mr. Pride
21 has asked for some period of time to be able to do that and
22 to hold off on sentencing today. I think they are prepared
23 to hire private counsel today to do that, and that was the
24 conference we had, was me requesting to delay this.
25 Obviously, Mr. Pride is not going anywhere.

1 THE COURT: I understand. Logistically, any Motion for
2 Reconsideration would have to be addressed to the trial
3 court, or the trial judge rather, that heard the case.
4 Since I am not empowered to change Judge Hocker's sentence,
5 at least under my reading of the law, so he would be able to
6 file that, I would presume, within ten days of today's date
7 should he decide that the sentence that is imposed, which I
8 have not unsealed yet, should he decide that that is a
9 sentence he wants to have reconsidered. So, of course, he
10 would be at liberty to go ahead and do that, but I see no
11 reason since you represented him at trial I see no reason to
12 delay the opening of the sealed sentence.

13 We'll move forward with that today, and he'll be at
14 liberty of course to file any Motion for Reconsideration
15 and, of course, Notice of Intent to Appeal also has to be
16 filed within ten days. Very good.

17 The Court will proceed to open the sealed sentence.
18 I've got a manilla envelope. Judge Hocker has written his
19 name across the seal and I recognize his signature. It is
20 case 2018-GS-24-1480 and -1481, guilty verdict rendered
21 December 12, 2018. (OPENS ENVELOPE)
22 Mr. Pride, before I impose sentence, is there anything you
23 would like to say, sir?

24 DEFENDANT: No.

25 THE COURT: No. Mr. Pride, on indictment 18-1480,

1 that's the resisting arrest charge, Judge Hocker sentenced
2 you to one year, credit for 147 days in jail. On the
3 trafficking crack cocaine 28 grams or more third or
4 subsequent offense, that's indictment -1481, Judge Hocker
5 sentenced you to the Department of Corrections for twenty-
6 five years, credit 147 days in jail. The sentences are to
7 be served concurrently, Mr. Pride.

8 That may very well be the mandatory minimum; correct?

9 MR. DOWTIN: That's correct, Your Honor.

10 THE COURT: Mr. Pride, as I told your attorney a moment
11 ago, of course, you're at liberty to retain Mr. Jones for
12 any reconsideration of this sentence, and Mr. Jones and/or
13 Mr. Wise for any appellate issues that you might want to
14 file, but it has to be done within 10 days.

15 Do you understand that, sir?

16 DEFENDANT: Yes, sir.

17 THE COURT: Very good. The sentence has been imposed.
18 Mr. Pride, good luck to you, sir.

19 (END OF REQUESTED TRANSCRIPT OF RECORD.)

20

21

22

23

24

25

THE STATE OF SOUTH CAROLINA

COUNTY OF GREENWOOD

COURT OF GENERAL SESSIONS

August Term, 2018

Indictment #2018GS24-1480

THE STATE

vs.

TREMAINE OKEEFE PRIDE

INDICTMENT FOR

Resisting Arrest

SC Code: § 16-09-0320(A)

CDR: 0326

I hereby waive presentment to the Grand Jury.

Defendant

Witness:

209

WITNESSES

Wesley McClinton
Greenwood Police Department

WARRANT NUMBER

2018A2420100386

TRUE BILL

Mi Wideman
Foreman of the Grand Jury
8-17-18

VERDICT

Guilty
ii
12-12-18

THE STATE OF SOUTH CAROLINA

COUNTY OF GREENWOOD

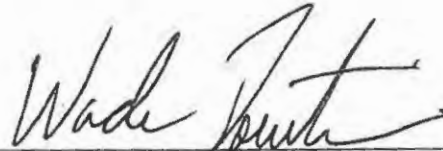
INDICTMENT FOR

**Resisting Arrest
§16-09-0320(A)**

At a Court of General Sessions, convened on the 17th day of August, 2018, the Grand Jurors of Greenwood County present upon their oath:

The defendant, Tremaine Okeefe Pride, did in Greenwood County, on or about April 18, 2018, knowingly, willfully and unlawfully oppose Wesley McClinton while serving, executing, or attempting to serve or execute a legal writ or process or did resist an arrest being made by Wesley McClinton with the Greenwood Police Department whom he knew or reasonably should have known was a law enforcement officer, in violation of Section 16-9-320(A) of 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 cases made and provided.



M. Wade Downtin
Assistant Solicitor

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF GREENWOOD
STATE VS.

TREMAINE OKEEFE PRIDE

AKA: Papa Smurf, Papa Smurf
Race: Black Sex: M Age: 40
DOB: [redacted] SS#: [redacted]
Address: [redacted]
City, State, Zip: [redacted]
DL# [redacted] SID# [redacted]

INDICTMENT/CASE#: 2018GS24-1480
A/W: 2018A2420100386
Date of Offense: 04/18/2018
S.C. Code §: 16-09-0320(A)
CDR Code #: 0326

SENTENCE SHEET

RECEIVED
MAY 03 2021
S.C. Court of Appeals

*CDL Yes No CMV Yes No Hazmat Yes No

In disposition of the said indictment comes now the Defendant who was
TO: Resisting Arrest

CONVICTED OF or PLEADS

In violation of § 16-09-0320(A) of the S.C. Code of Laws, bearing CDR Code # 0326

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS §17-25-45
(CSC w/minor 1st or CSC w/minor 3rd)

The charge is: As indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury, _____ (def.'s initials)
The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST:

Wade Downin 100359 Defendant 11715 Attorney for Defendant SC Bar #
M. Wade Downin, Assistant Solicitor SC Bar #

WHEREFORE, the Defendant is committed to the State Department of Corrections County Detention Center,
for a determinate term of 1 days/months/years or under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Service standard conditions of probation, which
are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on: 2018 GS 24-1481
 The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State
Department of Corrections. Credit 147 Days
 The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic
Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP _____
Total: \$ _____ plus 20% fee: \$ _____ days/hours Public Service Employment
Payment Terms: _____ Obtain GED

Set by SCDPPPS _____

Recipient: _____

*Fine:		\$
§14-1-206 (Assessments 107.5%)		\$
§14-1-211 (A)(1)(Conv. Surcharge)	\$100	\$ <u>100</u>
§14-1-211 (A)(2)(DUI Surcharge)	\$100	\$
§56-5-2995 (DUI Assessment)	\$12	\$
§56-1-286 (DUI Breath Test)	\$25	\$
Proviso (Public Def/Prob)	\$500	\$
§14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25</u>
§14-1-213 (Drug Court Surcharge)	\$150	\$
§50-21-114 (BUI Breath Test Fee)	\$50	\$
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)	\$	\$ <u>3.25</u>
TOTAL		\$ <u>128.25</u>

Attend Voc. Rehab. Or Job Corp. _____
May serve W/E beginning _____
Substance Abuse Counseling
Random Drug/Alcohol Testing
Fine may be pd. in equal consecutive weekly/monthly
pmts. of \$ _____ Beginning _____
\$ _____ Paid to Public Defender Fund

Other: _____

Appointed PD or appointed other counsel,
Proviso requires \$500 be paid to Clerk
during probation and shall be collected before
any other fees.

Presiding Judge: [Signature]
Judge Code: 2167
Sentence Date: 12/12/18

Clerk of Court/Deputy Clerk: Christy [Signature]
Court Reporter: Hollie Jenkins

212

WITNESSES

Wesley McClinton
Greenwood Police Department

WARRANT NUMBER

at Indictment

RUE BILL

Bill Wide man

Foreman of the Grand Jury

-17-18

VERDICT

culpy

ki

12-12-18

THE STATE OF SOUTH CAROLINA

COUNTY OF GREENWOOD

COURT OF GENERAL SESSIONS

August Term, 2018
Indictment #2018GS24- 1481

THE STATE

vs.

TREMAINE OKEEFE PRIDE

INDICTMENT FOR

Trafficking Crack Cocaine
SC Code: § 44-53-375(C)

CDR: 0349

I hereby waive presentment to the Grand Jury.

Defendant

Witness:

THE STATE OF SOUTH CAROLINA

COUNTY OF GREENWOOD

INDICTMENT FOR

Trafficking Crack Cocaine
§44-53-375(C)

At a Court of General Sessions, convened on the 17th day of August, 2018, the Grand Jurors of Greenwood County present upon their oath:

The defendant, Tremaine Okeefe Pride, did on or about April 18, 2018, in Greenwood County, South Carolina, knowingly sell, manufacture, deliver, purchase, or bring into this State, or did provide financial assistance or otherwise aid, abet, attempt, or conspire to sell, manufacture, deliver, purchase, or bring into this State, or was knowingly in actual or constructive possession or knowingly attempted to become in actual or constructive possession of twenty-eight (28) grams or more of crack cocaine, in violation of 44-53-375(C) of 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 cases made and provided.



M. Wade Dowtin
Assistant Solicitor

2018A2420100383

STATE OF SOUTH CAROLINA

County/ Municipality of GREENWOOD

THE STATE

against

PRIDE, TREMAINE OKEEFE

Address:

Phone: _____ SSN: _____
Sex: M Race: B Height 5 ft. 7 in. Weight 150
DL State: SC DL#: 1
DOB: _____ Agency ORI#: SC0240100
Prosecuting Agency: CITY OF GREENWOOD POLICE
Prosecuting Officer: MCCLINTON, WESLEY
Offense: DRUGS/TRAF-COCAINE 28G LESS 100G (3RD OFF)
Offense Code: 0148
Code/Ordinance Sec. 44-53-0370(e)(2)(b)(3)

This warrant is **CERTIFIED FOR SERVICE** in the
 County/ Municipality of
GREENWOOD. The Accused
is to be arrested and brought before me to be
Dealt with according to law.

Signature of Judge

Date: _____

RETURN

A copy of this arrest warrant was delivered to
Defendant PRIDE, TREMAINE OKEEFE
On 4-19-2018

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:
GREENWOOD MUNICIPAL COURT
520 MONUMENT STREET
PO BOX 40
GREENWOOD

Court date/Time 6-8-18

STATE OF SOUTH CAROLINA

County/ Municipality
GREENWOOD

Personally appeared before me the affiant WESLEY MCCLINTON who
being duly sworn deposes and says that defendant PRIDE, TREMAINE OKEEFE
did within this county and state on 4/18/2018 Violate the criminal laws of the
State of South Carolina (or ordinance of County/ Municipality of **GREENWOOD**
in the following particulars:

DESCRIPTION OF OFFENSE:
DRUGS/TRAF-COCAINE 28G LESS 100G (3RD OFF)

I further state that there is probable cause to believe that the defendant named above did commit
The crime set forth and that probable cause is based on the following facts:
TREMAINE OKEEFE PRIDE DID KNOWINGLY AND INTENTIONALLY TRAFFIC CRACK COCAINE, A SCHEDULE II
CONTROLLED SUBSTANCE, WITHOUT AUTHORITY OF LAW TO DO SO. ON 4-18-2018, AGENTS WITH THE GREENWOOD DEU
CONTACTED PRIDE ON THE FRONT PORCH OF 719 GRAY ST IN REFERENCE TO AN ACTIVE ARREST WARRANT. AS AGENTS
ATTEMPTED TO ARREST PRIDE, PRIDE FLED ON FOOT IN THE DIRECTION OF THE GREENWOOD CITY MAINTENANCE SHO
AFTER A SHORT FOOT CHASE, AGENTS WERE ABLE TO DETAIN PRIDE IN THE CREEK BEHIND 323 GRAY ST, BUT NOT
BEFORE HE THREW A GOLF BALL SIZE BAG CONTAINING A WHITE ROCK LIKE SUBSTANCE WHICH TESTED POSITIVE FOR
COCAINE. THE BAG OF CRACK COCAINE WAS IMMEDIATELY LOCATED AND LATER WEIGHED, HAVING AN APPROXIMATE
WEIGHT OF 30.84 GRAMS. A CRIMINAL HISTORY REVEALED THAT PRIDE HAS BEEN PREVIOUSLY CONVICTED OF TWO OR
MORE CRIMES OF THE SAME. THIS INCIDENT OCCURRED IN THE CITY LIMITS OF GREENWOOD AND IS IN VIOLATION OF
SOUTH CAROLINA CODE OF LAWS. 18-7337

Signature of Affiant

STATE OF SOUTH CAROLINA

County/ Municipality of
GREENWOOD

Affiant's
address 520 MONUMENT STREET
GREENWOOD
Affiant's Telephone (864) 942-8458

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that
on 4/18/2018 defendant PRIDE, TREMAINE OKEEFE
did violate the criminal laws of the State of South Carolina (or ordinance of

County/ Municipality of **GREENWOOD**) as set forth below:

DESCRIPTION OF OFFENSE:
DRUGS/TRAF-COCAINE 28G LESS 100G (3RD OFF)

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said
defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest warrant shall be delivered to
the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me

On 4-19-18

Signature of Issuing Judge

Judge Code: 6202

Judge's Address

520 MONUMENT STREET
GREENWOOD

Judge's telephone (864) 942-8458

Issuing court:

Magistrate Municipal Circuit

APR 27 2018

AFFIDAVIT

Form approved by
S.C. Attorney General
Apr 21, 2003
SCTA 618

214

213

FILED GENERAL SESSION
CITY OF GREENWOOD
APR 25 2018

ORIGINAL*** ORIGINAL*** ORIGINAL*** ORIGINAL*** ORIGINAL*** ORIGINAL*** ORIGINAL*** ORIGINAL

2018A2420100386

STATE OF SOUTH CAROLINA

County/ Municipality of GREENWOOD

THE STATE

against

PRIDE, TREMAINE OKEEFE

Address:

Phone: _____ SSN: _____

Sex: M Race: B Height 5 ft. 7 in. Weight 150

DL State: SC DL#:

DOB: _____ Agency ORI#: SC0240100

Prosecuting Agency: CITY OF GREENWOOD POLICE

Prosecuting Officer: MCCLINTON, WESLEY

Offense: RESISTING/RESISTING ARREST/OFF SERV PROCESS

Offense Code: 0326

Code/Ordinance Sec. 16-09-0320(A)

This warrant is **CERTIFIED FOR SERVICE** in the

County/ Municipality of

GREENWOOD

The Accused

is to be arrested and brought before me to be Dealt with according to law.

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to

Defendant PRIDE, TREMAINE OKEEFE

On 4-19-2018

Wesley McClinton
Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:
GREENWOOD MUNICIPAL COURT
520 MONUMENT STREET
PO BOX 40
GREENWOOD

Court date/Time 6-8-18

STATE OF SOUTH CAROLINA

County/ Municipality of GREENWOOD

Personally appeared before me the affiant WESLEY MCCLINTON who being duly sworn deposes and says that defendant PRIDE, TREMAINE OKEEFE did within this county and state on 4/18/2018 Violate the criminal laws of the State of South Carolina (or ordinance of County/ Municipality of GREENWOOD in the following particulars:

DESCRIPTION OF OFFENSE:
RESISTING/RESISTING ARREST/OFF SERV PROCESS

I further state that there is probable cause to believe that the defendant named above did commit The crime set forth and that probable cause is based on the following facts:
TREMAINE OKEEFE PRIDE DID WILLFULLY AND UNLAWFULLY RESIST A LAWFUL ARREST. ON 4-18-2018, AGENTS WITH THE GREENWOOD DEU CONTACTED PRIDE ON THE FRONT PORCH OF 719 GRAY ST IN REFERENCE TO AN ACTIVE ARREST WARRANT. PRIDE WAS ADVISED THAT HE HAD AN ACTIVE ARREST WARRANT AND WAS UNDER ARREST. AS AGENTS ATTEMPTED TO ARREST PRIDE, PRIDE PULL AWAY FROM AGENTS AND FLED ON FOOT IN THE DIRECTION OF THE GREENWOOD CITY MAINTENANCE SHOP. THIS INCIDENT OCCURRED IN THE CITY LIMITS OF GREENWOOD AND IS IN VIOLATION OF SOUTH CAROLINA CODE OF LAWS. 18-7337

Signature of Affiant

STATE OF SOUTH CAROLINA

County/ Municipality of GREENWOOD

Affiant's address 520 MONUMENT STREET GREENWOOD
Affiant's Telephone (864) 942-8458

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that on 4/18/2018 defendant PRIDE, TREMAINE OKEEFE did violate the criminal laws of the State of South Carolina (or ordinance of

County/ Municipality of GREENWOOD) as set forth below:

DESCRIPTION OF OFFENSE:
RESISTING/RESISTING ARREST/OFF SERV PROCESS

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this arrest warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.
Sworn to and subscribed before me

On 4-19-18

Wesley McClinton
Signature of Issuing Judge

Judge Code: 6202

Judge's Address 520 MONUMENT STREET GREENWOOD
Judge's telephone (864) 942-8458
Issuing court: Magistrate Municipal Circuit

BAIL PROCEEDING
FORM II

STATE OF SOUTH CAROLINA
COUNTY OF GREENWOOD

IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA

ORDER SPECIFYING METHODS AND CONDITIONS OF RELEASE

Tremaine O. Pride
NAME OF DEFENDANT

Offense Charged:

At a bail proceeding conducted by the undersigned judge, for the defendant named above, it was determined by the court (check one or both)

- The release of the defendant on recognizance will not reasonably assure his appearance as required.
- The release of the defendant on recognizance will result in an unreasonable danger to the community.

This determination was based upon the following findings of fact: Nature of offenses charged.

[Considerations: Nature and circumstances of the offense charged, the defendant's family ties, employment, financial resources, character and mental condition, the length of his residence in the community, his record of convictions, and any record of flight to avoid prosecution or failure to appear at other court proceedings.]

THEREFORE, IT IS HEREBY ORDERED:

1. That the above named defendant be released from custody on the condition that he will personally appear before the designated court at the place, date and time required to answer the charge made against him and do what shall be ordered by the court and not depart the State without the permission of the court and be of good behavior.
2. That the above named defendant be released from custody provided as follows (check all that apply):

CASH IN LIEU OF BOND

The defendant, acknowledges himself to be indebted to the State of South Carolina in the sum of _____ to secure his release from custody. Should the defendant fail to comply with all terms and conditions of this Order, this sum of money is subject to being forfeited to the State.

CASH PERCENTAGE IN LIEU OF BOND

The defendant, acknowledging himself to be indebted to the State of South Carolina in the full amount of _____, his release to be obtained by payment to the court of _____ % (not to exceed 10%) of the full amount of the bond, deposits _____ to secure his release from custody. Should the defendant fail to perform the conditions of this Order, the full amount shall be levied on his real and personal property for the use of the State.

APPEARANCE RECOGNIZANCE WITH SURETY

The defendant will provide good and sufficient surety approved by the court, in the form hereinafter set forth in this Order, acknowledging an indebtedness to the State in the amount of \$15,000.00

3. That the defendant shall appear at (check one):

- the term of COURT OF GENERAL SESSIONS beginning on See attorney at 9 o'clock, AM, at GREENWOOD COUNTY COURTHOUSE, 528 MONUMENT ST, GREENWOOD, SC 29646 and remain there throughout that term of court. If no disposition is made during that term, the defendant shall appear and remain throughout each succeeding term of court until final disposition is made of his case, unless otherwise ordered by the court.
- the session of MAGISTRATE COURT beginning on _____ at _____ o'clock, _____ at _____ If no final disposition is made during that session, the defendant shall appear at such other times and places as ordered by the court.

INITIALS OF DEFENDANT

4. That the defendant will notify the court promptly if he changes his address from the one contained in this order and he will comply with those conditions described hereinafter in the Order.

S/Donald B. Hocker
SIGNATURE OF JUDGE

9.5.18
DATE

ACKNOWLEDGEMENT BY DEFENDANT

I understand that if I violate any condition of this Order, a warrant for my arrest will be issued.

I understand and have been informed that I have a right and obligation to be present at trial and should I fail to attend the court, the trial will proceed in my absence.

It has been explained to me that if I fail to appear before the court as required, a warrant for my arrest will be issued.

Taggart Ave.
Greenwood, SC
9-11-18
Andrew Hodges

SPECIAL CONDITIONS OF RELEASE

a. Placement in custody. The defendant is placed in the custody of: NAME OF PERSON OR ORGANIZATION

who agrees (1) to supervise the defendant as set forth by the court, (2) to use every effort to assure the appearance of the defendant at all scheduled hearings before the court, and (3) to notify the court immediately in the event the defendant violates any conditions of his release or disappears.

Restrictions on Travel, Association or Residence. The defendant will comply with each of the following conditions: HOUSE ARREST
SEE ORDER.
Part-time Release. The defendant will be released from custody from o'clock, to o'clock, on condition that he return to the custody of as designated.
Other Conditions. The defendant will comply with the following other conditions of release: GPS MONITORING.

APPEARANCE RECOGNIZANCE WITH SURETY

On the 11th day of September, 2018, personally appeared before the undersigned judge the surety named below who acknowledged himself indebted to the State of South Carolina, in the sum of \$75,000, such sum to be levied on his real and personal property for the use of the State, should named defendant fail in performing the conditions of this Order.

The surety, being duly sworn, says that he is a resident and free holder within the State and is worth the sum acknowledged and underwritten herein, over all his debts and liabilities, and exclusive of property exempt from execution.

Matt Home Surety LLC
864-378-0633
108 Court Sq.
Abbeville SC 29620
International Fidelity INS
P.O. Box 9810
Celabesca GA 31532
S/ Donald B. Hacker (see over)
9-11-18

Filed GS 8th Jud Cir Greenwood, SC
2018 SEP 7 PM 2:14

Solicitor: *W* Dowtin
Attorney: A. Hodges

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENWOOD)
)
STATE OF SOUTH CAROLINA)
)
vs.)
)
Tremaine O Pride)
Defendant)

IN THE COURT OF GENERAL SESSIONS

BOND ORDER

Case Numbers/Charges: 2018A2420100383 Trafficking Crack 3rd
2018A2420100386 Resisting Arrest

The issue before the Court regarding Bond:

- This is an initial setting of Bond
- The Defendant/State seeks reconsideration of Bond set by Summary Court
- The Defendant/State seeks reconsideration of Bond set by Summary Court upon prima facie showing of a material change in circumstances since Circuit Court denied first reconsideration
Amount of Bond set by Summary Court _____
- The Defendant seeks reconsideration of Bond due to Defendant being held for trial more than six months
- The State seeks to revoke Bond
- Other: _____

#10383

II. The Court directs and so orders based upon the below:

Cash in Lieu of Bond in the total amount of \$75,000 (Non-cumulative to distribution charge bond), or

Surety Bond, acceptable to the Court, acknowledging an indebtedness to the State in the amount of \$75,000 (Non-cumulative to distribution charge bond).

The option of posting 10% cash in the amount of \$ _____ in Lieu of Bond is granted denied.

The above Bond is total/cumulative as to all charge(s). If the Clerk of Court is required to, for computer entry purposes, show a bond amount for each charge then an equal division for each charge, based upon the total/cumulative amount, shall be permitted. If prior to the posting of the total/cumulative Bond by the Defendant, a dismissal of any charge is made by the Solicitor or Court, the above total/cumulative amount of the Bond shall remain in full force and effect as to the remaining charge(s).

That the Defendant be held without Bond.

That the Defendant be held without Bond but Defendant can seek a review of this matter by any Circuit Court Judge if the case is not disposed of _____

That modification of Bond is denied but Defendant can seek a review of this matter by any Circuit Court Judge if the case is not disposed of _____

Personal Recognizance without cash or surety in the amount of _____.

Prior Bond _____ is revoked.

2
D B A

III. The Court has considered:

A. Allegations against the Defendant by the State:

Seriousness of Crime(s) charged: _____

Flight Risk: _____

Prior Record of Flight to Avoid Criminal Prosecution;

Prior Record of Failure to Appear in Court;

Defendant is an alien unlawfully in the United States and poses a substantial flight risk due to this status.

Danger to Community and/or Individual: _____

Prior Record: Significant

 Pending Charge(s) not subject to this Bond: _____

 Incident Report(s) _____

 Defendant appears in SLED state gang database: _____

 Defendant allegedly commits a violent crime (defined in Section 16-1-60) while out on bond for a previous violent crime and subsequent violent crime did not arise out of same series of events as prior crime:

Bond hearing on subsequent offense is held within thirty days of arrest on subsequent charge.

Other _____

#3 D3/A

B. The Defense has asserted:

- The Defendant is _____ years old;
- The Defendant resides at 920 Taggent Avenue, Greenwood SC
- The Defendant's education level is _____;
- The Defendant's work history is Carolina Pride;
- The Defendant arranged to surrender to law enforcement;
- The Defendant's Family Ties
- The Defendant's Character/Mental Condition
- The Defendant's Financial Resources
- The Defendant has been detained for _____;
- Other: Wants \$50,000 concurrent bond that is set on a distribution of crack 3rd

offense.

IV. The Court has also considered everything herein and so orders:

Existence of above evidence or factors showing that the Defendant is a danger to the community/individual and no conditions imposed will alleviate this danger and bond should be

_____ denied or _____ revoked.

Existence of above evidence or factors showing that the Defendant is a flight risk and no conditions imposed will alleviate this risk and bond should be _____ denied or _____ revoked.

That it is likely the Defendant is a danger to the community/individual and Bond should be granted as the following conditions should reasonably alleviate the existence of any danger.

That it is likely the Defendant is a flight risk and Bond should be granted as the following conditions should reasonably alleviate the existence of any risk.

Handwritten signature and initials, possibly reading "#4" and "BIA".

V. If Bond is granted, the following conditions apply that will reasonably assure the Defendants' appearance and/or reasonably alleviate any danger to community:

() The Defendant is to have no contact, directly or indirectly, with the victim or the victim's family. The Defendant may not use third parties to make contact directly or indirectly with the victim or the victim's family. The Defense attorney(s) may contact the victim or the victim's family, if necessary to defend the case;

() The Defendant cannot be within a _____ radius of the victim's or victim's family member's home or place of work;

() The Defendant is to have no contact, directly or indirectly, with the co-defendant(s). The Defense attorney(s) may contact the co-defendant(s), if necessary to defend the case but with the permission of the co-defendant's attorney(s);

(X) The Defendant must reside at 920 Taggent Ave, Greenwood SC.

(X) The Defendant is placed on curfew between the hours of 7 pm – 6 am.

(X) The Defendant is on house arrest and can leave the home only (house arrest does not automatically impose GPS monitoring) unless checked below:

(X) work

(X) doctor/dentist

(X) lawyer's office

(X) church

(X) court

() other _____

() Defendant must be accompanied by _____ for all of the above activities.

The Defendant is required to go directly to and from the above activities.

() The Defendant cannot be alone with any minor:

() female, except his/her own children;

() male, except his/her own children;

() and have appropriate adult supervision of in the presence of such minors.

The Defendant cannot exercise any supervisory role over any minor children, other than his/her own; may not teach religious/church school classes for minors; may not serve as a chaperone or advisor or supervisor or engage in a similar role for any youth group or individual minor, other than his/her own children.

The Defendant must adhere to any plan developed by the Department of Social Services.

The Defendant cannot consume any alcoholic beverage; nor be in or about any establishment that has as its primary function the sale or consumption of alcoholic beverages; nor be in the bar area of any restaurant.

The Defendant is not to consume any drug that is not prescribed for him/her by a licensed medical professional, except legitimate over-the-counter medications (this does not include any medications that contain ephedrine/pseudoephedrine) taken for an appropriate purpose and which is not a narcotic.

The Defendant cannot possess any firearm or ammunition, actually or constructively.

The Defendant must adhere to any mental health treatment regimen established, including attending counseling sessions and taking medications as prescribed.

The Defendant must attend and successfully complete the following program(s):

The Defendant cannot leave the State of South Carolina, except _____

Extradition is waived now and Defendant will not contest being returned to South Carolina if Defendant leaves the State. (Acknowledgment to be signed by Defendant).

The Defendant shall be subject to GPS Electronic Monitoring at his/her expense.

Other: _____

#6
[Signature]

() The Defendant must attend the next appearance date at the _____
County Courthouse/Judicial Center at _____ am/pm on
_____.

OR

() The Defendant must attend the next appearance date as instructed by the Magistrate and/or his/her attorney.

-THE DEFENDANT MUST REPORT AT ALL SUBSEQUENT HEARINGS AND TRIALS AND AT SUCH TIMES AND PLACES AS ARE DESIGNATED TO TRACK AND PREPARE THE CASE BY THE SOLICITOR'S OFFICE, DEFENSE COUNSEL, ANY BONDING COMPANY OR SURETY, OR THE COURT.

() Was there any information from Law Enforcement not available at the Hearing and the reason given for why such information was not available. If so, the Court finds no reason to postpone or delay the hearing.

() "Pursuant to Section 16-25-125 of the South Carolina Code of Laws, it is unlawful for a person who has been charged with or convicted of criminal domestic violence or criminal domestic violence of a high and aggravated nature, who is subject to an order of protection, or who is subject to a restraining order, to enter or remain upon the grounds or structure of a domestic violence shelter in which the person's household member resides or the domestic violence shelter's administrative offices. A person who violates this provision is guilty of a misdemeanor and, upon conviction, must be fined not more than three thousand dollars or imprisoned for not more than three years, or both. If the person is in possession of a dangerous weapon at the time of the violation, the person is guilty of a felony and, upon conviction, must be fined not more than five thousand dollars or imprisoned for not more than five years, or both."

-THIS ORDER SHALL BE SERVED ON/PROVIDED TO SOLICITOR, DEFENSE COUNSEL, DEFENDANT, AND MAGISTRATE AND SHALL BE ON FILE IN THE CLERK'S OFFICE.

ANY VIOLATION OF THIS ORDER CAN RESULT IN BOND FORFEITURE, BOND REVOCATION AND/OR CONTEMPT SANCTIONS.

FAILURE TO APPEAR AT TRIAL WILL RESULT IN A TRIAL IN DEFENDANT'S ABSENCE

Handwritten signature and initials, possibly reading "# 7 10 11" or similar, written in dark ink.

AND IT IS SO ORDERED.

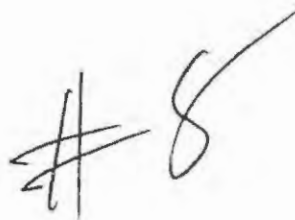


DONALD B. HOCKER
PRESIDING JUDGE

Laurel, SOUTH CAROLINA

DATE: 9-5-18

Note: Any Bond is subject to the standard conditions, as well as special conditions set forth herein, and the Magistrate shall complete the paperwork necessary to effect release.



Log Number: 32628

GREENWOOD POLICE DEPARTMENT

Storage Location: F-1/E-70A/Suff 34B TASTER Box

EVIDENCE/PROPERTY REPORT

Case Number: 18-7337

Date/Time Obtained: 4/18/18 Reason: X Evidence O Recovered O Found O Safekeeping O Seized Analysis Requested: X Yes O No

Location where property was obtained/found: Gray St., Greenwood, SC

Impounding Officer: McClinton ID#: 1458 Type Case: Trafficating Crack

Found By: Address: Phone:

Suspect(s): Tremaine Pride Address: Phone:

Victim/Owner: Address: Phone:

Table with 3 columns: Item Number, Quantity, Description of Articles (include model, serial number, etc.)

Chain of Custody

Table with 5 columns: Item#, Date/Time, Released By, Received By, Purpose/Reason

Property Release Section

Item(s) on this document, pertaining to this investigation (is) (are) no longer required and may be disposed of as indicated:

- Released to Court
Returned to Owner
Sold at Public Auction
Destroyed
Other

Witness To Destruction of Property

The article(s) listed as Item Number(s) (was) (were) destroyed by the Property Custodian in my presence on the date indicated above

Typed Name: Signature:

Audit Section

Table with 4 columns: Item#, Date/Time, Officer's Signature, Passed: O Yes O No

002506

NOTICE OF APPEAL FROM A SENTENCE IMPOSED BY THE COURT
OF GENERAL SESSIONS

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

MAY 03 2021

APPEAL FROM GREENWOOD COUNTY
Court of General Sessions

SC Court of Appeals

Donald B. Hocker, Circuit Court Judge

Case No. 2018-GS-24-1480; -1481

The State,

Respondent,

v.

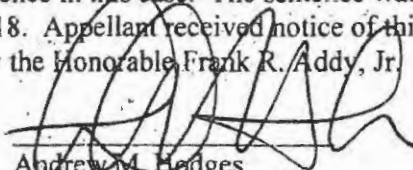
Tremaine O. Pride,

Appellant.

NOTICE OF APPEAL

Tremaine O. Pride appeals his conviction and sentence in this case. The sentence was imposed by the Honorable Donald B. Hocker on December 12, 2018. Appellant received notice of this sentence on April 29, 2021, when it was unsealed and published by the Honorable Frank R. Addy, Jr.

April 29, 2021


Andrew M. Hodges
P.O. Box 3094
Greenwood, South Carolina 29648
(864)538-4114
ahodges@hodges-law-firm.com
Attorney for Appellant

Other Counsel of Record:
Wade Downtin
Assistant Solicitor
P.O. Box 516
Greenwood, South Carolina 29648
(864)942-8800
Attorney for Respondent

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED
Jun 22 2022

APPEAL FROM GREENWOOD COUNTY
Court of General Sessions

SC Court of Appeals

Honorable Donald B. Hocker, Circuit Court Judge

Appellate Case No. 2021-000486
Lower Case Nos. 2018GS2401480, 2018GS2401481

The State, Respondent,

vs.

Tremaine O. Pride, Appellant

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

June 15th, 2022



C. RAUCH WISE
Attorney at Law
305 Main Street
Greenwood, SC 29646
(864) 229-5010
S.C. Bar No. 00188

Attorney for Appellant

**THE STATE OF SOUTH CAROLINA
In the Court of Appeals**

**APPEAL FROM GREENWOOD COUNTY
Court of General Sessions**

Honorable Donald B. Hocker, Circuit Court Judge

RECEIVED

JUN 21 2022

SC Court of Appeals

**Appellate Case No. 2021-000486
Lower Case Nos. 2018GS2401480, 2018GS2401481**

The State, Respondent,

vs.

Tremaine O. Pride, Appellant

FINAL BRIEF OF APPELLANT

**C. RAUCH WISE
Attorney at Law
305 Main Street
Greenwood, SC 29646
Bar № 06188
(864) 229-5010**

Attorney for Appellant

Index

Page:

Table of Authorities	i
Statement of Issues on Appeal	1
Statement of the Case	
Procedural History	2
Factual History	2
Standard of Review	5
Argument:	
Question I: Did the trial court err in failing to acknowledge that Tremaine O. Pride had been released on a bond order that cited the arrest warrant number for trafficking cocaine in violation of S.C. Code § 44-53-370(e)(2)(b)(3) when the State had indicted him for trafficking crack cocaine in violation of S. C. Code 44-53-376(C) and, therefore, the Court did not have the right to try him in his absence for a different charge?	5
Question II: Did the trial court err in failing to exclude the testimony of a witness that had violated the sequestration order issued by the judge when the state knew the witness would be called at trial to testify and permitted him to sit in the courtroom during the testimony of two other witnesses?	7
Question III: Did the trial court err in failing to give a reasonable doubt instruction that included the phrase "hesitate to act" as approved by prior decisions of this court?	10
Conclusion	13

Table of Authorities

Cases:	Page:
<i>Ellis v. Davidson</i> , 358 S.C. 509, 595 S.E.2d 817 (Ct. App. 2004)	9
<i>People v. Melendez</i> , 80 P.3d 883 (Colo. App. 2003)	8
<i>Smalls v. State</i> , 422 S.C. 174, 810 S.E.2d 836 (2018)	5
<i>State v. Clute</i> , 324 S.C. 584, 480 S.E.2d 85 (Ct. App. 1996)	11
<i>State v. Douglas</i> , 411 S.C. 307, 768 S.E.2d 232 (Ct. App. 2016)	5
<i>State v. Goode</i> , 299 S.C. 479, 385 S.E.2d 844 (1989)	6
<i>State v. Jenkins</i> , 408 S.C. 560, 759 S.E.2d 759 (Ct. App. 2014)	10
<i>State v. Johnson</i> , 315 S.C. 485, 445 S.E.2d 637 (1994)	11
<i>State v. Jones</i> , 343 S.C. 562, 541 S.E.2d 813, (2001)	11
<i>State v. Logan</i> , 405 S.C. 83, 747 S.E.2d 444 (2013)	12
<i>State v. Lowe</i> , 61 Conn. App. 291, 763 A.2d 680 (2001)	8
<i>State v. Manning</i> , 305 S.C. 413, 409 S.E.2d 372 (1991)	10
<i>State v. Robinson</i> , 230 Conn. 591, 646 A.2d 118 (1994)	7
<i>State v. Saltz</i> , 346 S.C. 114, 551 S.E.2d 240 (2001)	9
<i>State v. Washington</i> , 424 S.C. 374, 818 S.E.2d 459 (Ct. App. 2018)	9
<i>State v. Williamson</i> , 74 N.C. App. 114, 327 S.E.2d 319 (1985)	8
<i>Todd v. State</i> , 355 S.C. 396, 585 S.E.2d 305 (2003)	11

Statutes:

S. C. Code 44-53-376(C) 5

S.C. Code § 44-53-370(e)(2)(b)(3) 5

Statement of Issues on Appeal

Question I: Did the trial court err in failing to acknowledge that Tremaine O. Pride had been released on a bond order that cited the arrest warrant number for trafficking cocaine in violation of S.C. Code § 44-53-370(e)(2)(b)(3) when the State had indicted him for trafficking crack cocaine in violation of S. C. Code 44-53-376(C) and, therefore, the Court did not have the right to try him in his absence for a different charge?

Question II: Did the trial court err in failing to exclude the testimony of a witness that had violated the sequestration order issued by the judge when the state knew the witness would be called at trial to testify and permitted him to sit in the courtroom during the testimony of two other witnesses?

Question III: Did the trial court err in failing to give a reasonable doubt instruction that included the phrase “hesitate to act” as approved by prior decisions of this court?

Statement of the Case

Procedural History

Wesley McClinton of the Greenwood City Police Department arrested Tremaine O. Pride on April 18, 2018 on the charges of resisting arrest and trafficking what he believed to be crack cocaine. Rec. on App at 100. ll 8-10. An arrest warrant was issued for trafficking cocaine. On August 17, 2018, the Greenwood County Grand Jury indicted Mr. Pride on the resisting arrest charge and directly indicted him on the charge of trafficking crack cocaine.

On September 4, 2018, a bond hearing was held on the charges. The bond hearing transcript references indictment № 2018-GS-24-01481, which is the trafficking in crack cocaine charge. Mr. Pride was released on a bond of \$75,000 with electronic monitoring. The bond order references the arrest warrant number of 2018A2420100383, which is the trafficking in cocaine charge, and arrest warrant № 2018A240100386, which is the resisting arrest charge.

On December 10, 2018, the State called Mr. Pride's case for trial. He did not appear. He was then tried in his absence. On December 12, 2018, he was convicted of trafficking crack cocaine and resisting arrest. On April 29, 2021, after Mr. Pride was apprehended, the sentence was opened and read. He was sentenced to one year in prison for resisting arrest and 25 years for trafficking crack cocaine. The sentences are to run concurrently.

On April 29, 2021 a Notice of Intent to Appeal was filed and received by the Court of Appeals on May 3, 2021.

Factual History

On April 18, 2018, Officer Wesley McClinton, of the City of Greenwood Police Department, along with two other officers in other patrol cars, was patrolling the area of Gray

Street in the City of Greenwood based upon information that Tremaine O. Pride may be in the area. Rec. on App. at 95, ll 18-20. As they turned onto Gray Street, Officer McClinton saw Mr. Pride sitting on the front porch of 719 Gray Street. Rec. on App. at 95, l 22 to 96, l 1.

As the officers approached Mr. Pride, Officer McClinton informed him he was under arrest as the officers knew of an outstanding arrest warrant. After they told Mr. Pride he was under arrest, Mr. Pride took off running. Rec. on App. at 96, ll 14-21. Officer McClinton chased Mr. Pride from the apartment, to an area near the city shop and ultimately into a small creek running through the area. With the assistance of Agent Sammy Evans, Officer McClinton was able to control Mr. Pride. Before Agent Evans came to the assistance of Officer McClinton, Officer McClinton saw Mr. Pride pull an object from his sock and throw it away. Rec. on App at 97, ll 4-15.

After Agent Evans controlled Mr. Pride, Officer McClinton went in the direction of where the object was thrown and found a bag containing approximately 30 grams of crack cocaine. Rec. on App at 99, ll 8-17.¹ The bag was never checked for fingerprints nor tested for DNA. Rec. on App at 114, ll 10-23.

During the trial, the State called Officer Whitfield Brooks to testify. Rec. on App at 123. His name was read out as a potential witness at the beginning of the trial. Rec. on App at 31, l 5. Defense counsel objected to this witness testifying as he had been in the courtroom during the previous testimony of officers McClinton and Sammy Evans. The parties had agreed to sequester the witnesses. Rec. on App at 122, ll 10-23. The trial judge declined to bar the witness

¹ While the Officer McClinton testified he believed the substance to be crack cocaine, he signed an arrest warrant for trafficking cocaine. The reason for this discrepancy was never explained.

from testifying stating, "I think it would be in violation of the sequestration order if it's something different or something that has not been brought out." Rec. on App at 123, ll 8-10. Officer Brooks supported the testimony of Officer McClinton as to the bag of crack cocaine being placed in the police vehicle being used by Officer Brooks.

Trial counsel had also objected to the failure of the trial judge to charge the "hesitate to act" portion of the reasonable doubt charge. Rec. on App at 167, ll 19-23.

Standard of Review

As to Issues I and III, the standard of review is de novo as they both involve a question of law. “We review questions of law de novo, with no deference to trial courts.” *Smalls v. State*, 422 S.C. 174, 180–81, 810 S.E.2d 836, 839 (2018)

As to Issue II, the admission of the testimony of Officer Whitfield Brooks, the standard of review is abuse of discretion. “The admission or exclusion of evidence is also subject to an abuse of discretion standard of review.” *State v. Douglas*, 411 S.C. 307, 316, 768 S.E.2d 232, 237 (Ct. App. 2016)

Argument

Question I

Question I: Did the trial court err in failing to acknowledge that Tremaine O. Pride had been released on a bond order that cited the arrest warrant number for trafficking cocaine in violation of S.C. Code § 44-53-370(e)(2)(b)(3) when the State had indicted him for trafficking crack cocaine in violation of S. C. Code 44-53-376(C) and, therefore, the Court did not have the right to try him in his absence for a different charge?

The basic issue here is whether a defendant who is released on bond as to one charge can be tried in his absence for a separate charge from that listed in the bond? The obvious answer is no, even if the defendant were aware of the fact that he possessed a substance different from which he was released on bond. When the bond cites possession of a substance which the defendant knows the State cannot prove, then he knows that the State in the trial for the possession of the substance upon which he was released on bond, cannot prove the case and, therefore, he has no chance of being convicted. His failure to comply with the conditions of his

bond could not as a matter of law result in his conviction for the crime upon which he was released on bond. Under the conditions of the bond, the only charge for which he could be tried was trafficking cocaine. He was not tried for that charge. The State used the code section for trafficking cocaine in the warrant. The State used the arrest warrant number and not the indictment number in the bond order. While the State argued below that the body of the warrant says "crack cocaine," the State knew enough to direct indict Mr. Pride rather than make reference to an arrest warrant that contains a different crime. The trial judge dismissed the contradiction as being "nothing more than a scribbler's error." Rec. on App at 63, ll 3-4. The problem with this conclusion is that the trial judge never took any testimony to determine how the error occurred. Nor does the finding change the fact that the bond given to Mr. Pride made reference to the warrant that included the "scribbler's error."

The issue in this case is not what knowledge Tremaine O. Pride had as to what the nature of the substance was or even upon which charge he was indicted. The issue is upon what charge was Mr. Pride issued a bond which would require him to appear in court and answer to the crime set forth in the bond. As this Court has held, "The bond form only provided Goode with notice of the charge for breaking into a motor vehicle and that he would be tried in his absence if he failed to appear for his trial on that particular charge." *State v. Goode*, 299 S.C. 479, 482, 385 S.E.2d 844, 846 (1989). Here the bond form provides notice that Mr. Pride was being released on the charges contained in a specifically identified arrest warrant which has been served on Mr. Pride. Mr. Pride knew the charge was trafficking cocaine. The State knew the charge was trafficking cocaine. These two facts do not change the wording of the bond order.

The State may argue this is putting form over substance. A bond order is not difficult or

complicated to prepare. To say that a bond order releasing a defendant on a bond for one charge is a basis to try him in his absence with any other charge for which he has been arrested is to ignore the purpose of the bond order - to tell the defendant upon which charge he is being released and which charge he would be tried on if he did not show up for trial. The bond order, aside from special conditions such as no contact with a victim, serves no other purpose. If the State or the lower court made a mistake in preparing the bond order, that should not be a basis for ignoring the specific conditions of the bond.

Question II

Question II: Did the trial court err in failing to exclude the testimony of a witness that had violated the sequestration order issued by the judge when the state knew the witness would be called at trial to testify and permitted him to sit in the courtroom during the testimony of two other witnesses?

As the Connecticut Supreme Court has said, "The right to have witnesses sequestered is an important right that facilitates the truth-seeking and fact-finding functions of a trial." *State v. Robinson*, 230 Conn. 591, 598, 646 A.2d 118, 122 (1994). Against this standard, this issue must be judged. The facts establish that Officer Whitfield Brooks violated the sequestration order. When Officer Brooks was called to testify, defense counsel made a timely objection to the officer testifying. Rec. on App 122, ll 10-23.

Initially, after a brief discussion, the trial judge stated, "I think it would be in violation of the sequestration order if it's something different or something that has not been brought out." Rec. on App at 123, ll 8-10. This is the exact opposite as to the reason for sequestration of witnesses. The purpose is to prevent two witnesses who are testifying about the same incident or

observation from hearing the testimony of the other witness. As the North Carolina Court of Appeals has said, “The purpose of a sequestration order is to prevent the witnesses from hearing the testimony of other witnesses and colluding with each other.” *State v. Williamson*, 74 N.C. App. 114, 117, 327 S.E.2d 319, 321 (1985); *See, also State v. Lowe*, 61 Conn. App. 291, 297, 763 A.2d 680, 684 (2001)(“The primary purpose of a sequestration order is to ensure that the defendant receives a fair trial by preventing witnesses from shaping their testimony to corroborate falsely the testimony of others.”) and *People v. Melendez*, 80 P.3d 883, 885 (Colo. App. 2003), *aff’d*, 102 P.3d 315 (Colo. 2004) (“The purposes of a sequestration order are to prevent a witness from conforming his or her testimony to that of other witnesses and to discourage fabrication and collusion”)

If witnesses are testifying about different subjects, they could hardly collude or tailor their testimony to agree. When the witnesses are testifying about the same subject, the chances of a witness tailoring their testimony to agree with the testimony they heard is greatly increased. The need for the sequestration of the SLED chemist is generally not related to the illegal seizure of the drugs or the chain of custody prior to the drugs arriving at SLED. Here the testimony of the two officers related to the seizure and chain of custody of the seized items. Under such circumstance, prejudice can be and should be presumed. This is true because once a witness has heard the testimony of the other witness on the same subject, defense counsel will never be able to prove what the witness would have testified to had the witness not heard the other witness testify.

After Officer Brooks testified in camera, the trial judge then stated, “I’m going to find that, based upon what he’s testified to, the sequestration order has not been violated.” Rec. on

App at 127, ll 20-22. This is obviously an incorrect factual finding. This is important in determining if the trial judge abused his discretion in permitting Officer Brooks to testify.

Our Supreme Court has held, “The decision whether to waive a sequestration order for witnesses present during the trial rests in the sound discretion of the trial judge.” *State v. Saltz*, 346 S.C. 114, 126, 551 S.E.2d 240, 247 (2001). This Court has said, “An abuse of discretion occurs when there is an error of law or a factual conclusion that is without evidentiary support.” *Ellis v. Davidson*, 358 S.C. 509, 524, 595 S.E.2d 817, 825 (Ct. App. 2004). Here both are present. First the trial court erred in concluding that because Officer Brooks was testifying about the same subject, no violation of the rule occurred. This was an error of law. Second, when the trial court ruled, the sequestration rule was not violated, this was an error of fact. The facts in this record clearly show Officer Brooks was present in the courtroom during a substantial portion of the testimony of Officer McClinton. If he were in the courtroom during the testimony of Officer McClinton, then he was also in the courtroom during the testimony of Officer Sammy Evans, whose testimony followed Officer McClinton. The rule was violated as to two witnesses. The State knew who their witnesses were before the trial started.

In *State v. Washington*, 424 S.C. 374, 409, 818 S.E.2d 459, 477 (Ct. App. 2018), aff’d in part, vacated in part, rev’d in part, 431 S.C. 394, 848 S.E.2d 779 (2020), this Court affirmed a ruling where a defense witness was excluded for a violation of the sequestration rule. In so ruling this court said, “[T]he trial court found defense counsel, as an officer of the court, was responsible for enforcing the order involving its witnesses.” *Id.* at 409, 818 S.E.2d at 477. The exact same rule should apply to the State. The attorney for the State, as an officer of the court, had an obligation to control their witness so that the sequestration rule was not violated. They

failed in their obligation. And the trial court abused its discretion in permitting Officer Brooks to testify.

In reversing this case on this issue, this Court should issue an order barring Officer Whitfield Brooks from testifying at the re-trial. If such an order is not issued, the sequestration order would still be violated. The State should not benefit from its wrong.

Question III

Question III: Did the trial court err in failing to give a reasonable doubt instruction that included the phrase “hesitate to act” as approved by prior decisions of this court?

Trial counsel objected to the failure of the trial judge to include in his charge the statement that a reasonable doubt is a doubt that would cause a person to “hesitate to act.” Rec. on App at 167, ll 19-21. The request by trial counsel was in keeping with the law and prior decisions of our supreme court. “A reasonable doubt is the kind of doubt that would cause a reasonable person to hesitate to act.” *State v. Manning*, 305 S.C. 413, 417, 409 S.E.2d 372, 375 (1991). Thus, at the time of this trial, this had been the suggested definition of reasonable doubt in our state for 27 years. In *State v. Jenkins*, 408 S.C. 560, 759 S.E.2d 759 (Ct. App. 2014) this Court quoted a reasonable doubt instruction that included the hesitate to act clause. This Court then said, “We find this reasonable doubt instruction to be a correct statement of the law.” *Id.* at 573. 759 S.E.2d at 766. A defendant is entitled to have the jury instructed on a correct statement of the law. This is especially true when trial counsel requests a charge that has previously been approved by this Court in defining reasonable doubt. A defendant should not be convicted based upon an almost correct statement of the law. This is what occurred in this case.

This Court has further held that when a jury is charged that a reasonable doubt is a doubt

for which a reason can be given, this error is cured by a “hesitate to act” charge.² As this Court said, “Viewing the reasonable doubt charge as a whole, we find no reversible error given the court’s use of the suggested language in *Manning* that a reasonable doubt is ‘the kind of doubt that would cause a reasonable person to hesitate to act.’” *State v. Clute*, 324 S.C. 584, 595, 480 S.E.2d 85, 90 (Ct. App. 1996), overruled on other grounds by *State v. Aleksey*, 343 S.C. 20, 538 S.E.2d 248 (2000). This case is not like *State v. Johnson*, 315 S.C. 485, 445 S.E.2d 637 (1994) where our Supreme Court upheld a decision by the trial judge not to give a definition of reasonable doubt. Here the trial judge gave a definition of reasonable doubt. Trial counsel objected contending he did not give a complete definition of reasonable doubt. The trial judge erred in not charging the applicable law as requested by trial counsel. Granted our Supreme Court has approved more than one definition of reasonable doubt. The fact there is more than one definition does not mean trial counsel is not entitled to the definition that best suits his defense to the case. This Court has reversed cases where the “hesitate to act” charge was not given after the trial judge stated they would give the charge and then changed his mind after closing arguments. *State v. Jones*, 343 S.C. 562, 541 S.E.2d 813 (2001). In that case, in reliance upon the representation of the trial judge, defense counsel made this argument, “Well, when you go through this testimony and this evidence in this case, you’re gonna hesitate and you’re gonna hesitate and you’re gonna talk and it’s gonna get slow and you’re gonna hesitate and you’re finally gonna have to stop. And when you stop, you’re gonna have to say that, you know, he’s innocent. The State hasn’t carried their burden.” *Id.* at 576, 541 S.E.2d at 820-21. Because the trial judge

² Defining reasonable doubt as a doubt for which a reason can be given has not been reported in our state since 2003. *Todd v. State*, 355 S.C. 396, 585 S.E.2d 305 (2003)

elected not to charge a proper statement of the law, trial counsel in this case was not able to make such an argument. The difference between the two cases is not that the law has changed but that the judge decided before hand to tell trial counsel he was not going to charge a correct statement of the law. If Jones was entitled to have his lawyer make this argument, Mr. Pride was also entitled to have his trial lawyer make such an argument.

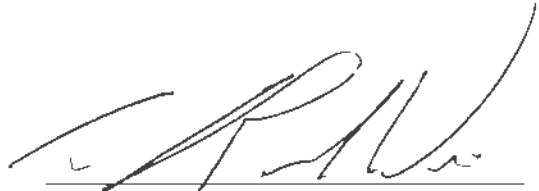
In *State v. Logan*, 405 S.C. 83, 747 S.E.2d 444 (2013) our Supreme Court permitted a specific charge on circumstantial evidence be given only when defense counsel specifically requested the charge. The court said, "Thus, we modify *Grippon* and *Cherry* to allow the additional language provided above if requested by a defendant." *Id.* 100, 747 S.E.2d at 453. This Court should adopt the same rule in this case. When defense counsel specifically requests the "hesitate to act" language be given as part of the definition of reasonable doubt, it should be given. Some defense lawyers may not like the "hesitate to act" language based upon either their personal preferences or the facts of the particular case. Others may always prefer the charge be given. The decision as to which definition of reasonable doubt is given should be the choice of the lawyer defending the accused and not the particular preference of the trial judge. It is the defense counsel who knows how he can best use the legal definition of reasonable doubt. Each defendant should be entitled to the same valid argument if their attorney so elects. An argument should not be precluded simply because the trial judge prefers another definition of reasonable doubt. The trial judge is not on trial.

Because the attorney for Mr. Pride was prohibited from making effective arguments, this case should be reversed and remanded for a new trial.

CONCLUSION

For the foregoing reasons, the conviction of Tremaine O. Pride should be reversed and remanded for a new trial. At the re-trial, Officer Whitfield Brooks should be barred from testifying.

June 16th, 2022



C. Rauch Wise
305 Main Street
Greenwood, SC 29646
(864) 229-5010
rauchwise@gmail.com
S. C. Bar No 06188

Attorney for Tremaine O. Pride

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENWOOD COUNTY
Court of General Sessions

Honorable Donald B. Hocker, Circuit Court Judge

RECEIVED

JUN 21 2022

SC Court of Appeals

Appellate Case No. 2021-000486
Lower Case Nos. 2018GS2401480, 2018GS2401481

The State. Respondent.

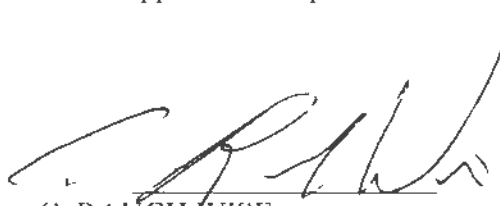
vs.

Tremaine O. Pride. Appellant

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Appellant complies with Rule 211(b), SCACR.

June 16th, 2022



C. RAUCHWISE
Attorney at Law
305 Main Street
Greenwood, SC 29646
(864) 229-5010
S.C. Bar No. 6188

Attorney for Appellant

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenwood County
The Honorable Donald B. Hocker, Circuit Court Judge

Appellate Case No. 2021-000486

THE STATE,

Respondent,

v.

TREMAINE O'KEEFE PRIDE,

Appellant.

FINAL BRIEF OF RESPONDENT

RECEIVED

Jul 05 2022

SC Court of Appeals

ALAN WILSON
Attorney General

WILLIAM M. BLITCH, JR.
Senior Assistant Deputy Attorney General
S.C. Bar No. 15608

Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

DAVID M. STUMBO
Solicitor, Eighth Judicial Circuit

ATTORNEYS FOR RESPONDENT

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

STATEMENT OF ISSUE ON APPEAL.....1

STATEMENT OF THE CASE.....2

STATEMENT OF FACTS3

STANDARD OF REVIEW5

ARGUMENT.....6

 I. The trial judge did not err in allowing Appellant’s trial to proceed in his absence because Appellant received written notice of his right to be present at trial and was warned that he would be tried in his absence should he fail to appear for trial via his bail form and the bond order. Furthermore, Appellant was notified of his trial date, both orally and in writing, by his trial attorney on three occasions6

 II. The trial judge did not abuse his discretion in allowing the testimony of Lieutenant Whitfield Brooks when Brooks’ testimony was not influenced by the testimony he overheard in violation of the sequestration order, and any error in the admission of the testimony was harmless in light of the evidence against Appellant and how Appellant used Brooks’ testimony10

 III. The trial judge did not err in refusing to instruct the jury using Appellant’s preferred definition of reasonable doubt, because the trial judge was not required to define the term or give a specific definition. Nonetheless, the trial judge provided a thorough and correct definition of reasonable doubt that did not prejudice Appellant.....13

CONCLUSION.....18

TABLE OF AUTHORITIES

Cases:

City of Aiken v. Koontz, 368 S.C. 542, 629 S.E.2d 686 (Ct. App. 2006)..... 7

Constant v. Spartanburg Steel Prods. Inc., 316 S.C. 86, 447 S.E.2d 194 (1994) 5

Gattison v. South Carolina State College, 318 S.C. 148, 456 S.E.2d 414 (Ct. App. 1995) 11

Holland v. United States, 348 U.S. 121 (1954) 14

State v. Aleksey, 343 S.C. 20, 538 S.E.2d 248 (2000) 5

State v. Banda, 371 S.C. 245, 639 S.E.2d 36 (2006) 5

State v. Brandt, 393 S.C. 526, 713 S.E.2d 591 (2011) 5

State v. Douglas, 369 S.C. 424, 632 S.E.2d 845 (2006) 11

State v. Fairey, 374 S.C. 92, 646 S.E.2d 445 (Ct. App. 2007) 7

State v. Jackson, 297 S.C. 523, 377 S.E.2d 570 (1989)..... 5

State v. Johnson, 315 S.C. 485, 445 S.E.2d 637 (1994) 14

State v. Jones, 343 S.C. 562, 541 S.E.2d 813 (2001) 16, 17

State v. Mattison, 388 S.C. 469, 697 S.E.2d 578 (2010) 14

State v. McDonald, 343 S.C. 319, 540 S.E.2d 464 (2000) 5

State v. Needs, 333 S.C. 134, 508 S.E.2d 857 (1998) 14, 15

State v. Ravenell, 387 S.C. 449, 692 S.E.2d 554 (Ct. App. 2010) 7

State v. Stewart, 435 S.C. 405, 867 S.E.2d 33 (Ct. App. 2021) 6

State v. Sweet, 374 S.C. 1, 647 S.E.2d 202 (2007)..... 12

State v. Taylor, 360 S.C. 18, 598 S.E.2d 735 (Ct. App. 2004)..... 12

State v. Tisdale, 338 S.C. 607, 527 S.E.2d 389 (Ct. App. 2000)..... 11

State v. Wrapp, 421 S.C. 531, 808 S.E.2d 821 (2017) 9

Victor v. Nebraska, 511 U.S. 1 (1994) 14

Rules:

Rule 16 SCRCrimP 7

Rule 615 SCRE 10

STATEMENT OF ISSUE ON APPEAL

I.

Did the trial judge err in allowing Appellant's trial to proceed in his absence when Appellant received written notice of his right to be present at trial and was warned that he would be tried in his absence should he fail to appear for trial via his bail form and the bond order, and when Appellant was notified of his trial date, both orally and in writing, by his trial attorney on three occasions?

II.

Did the trial judge abuse his discretion in allowing the testimony of Lieutenant Whitfield Brooks when Brooks' testimony was not influenced by the testimony he overheard in violation of the sequestration order, and any error in the admission of the testimony was harmless in light of the evidence against Appellant and how Appellant used Brooks' testimony?

III.

Did the trial judge err in refusing to instruct the jury using Appellant's preferred definition of reasonable doubt when the trial judge was not required to define the term or give a specific definition, yet the trial judge nonetheless provided a thorough and correct definition of reasonable doubt that did not prejudice Appellant?

STATEMENT OF THE CASE

In August 2018, a Greenwood County Grand Jury indicted Appellant for one count of trafficking cocaine base of twenty-eight grams or more, 3rd offense and one count of resisting arrest. On December 11-12, 2018, a jury trial was held in the Greenwood County Court of General Sessions with the Honorable Donald B. Hocker presiding. Appellant was represented by Andrew M. Hodges, Esq. The State was represented by Deputy Solicitor Demetrios Andrews and Assistant Solicitor Wade Downtin of the Eighth Circuit Solicitor's Office. Appellant did not appear for the trial and was tried in his absence. At the conclusion of trial, the jury convicted Appellant of both offenses. Appellant's sentence was sealed by Judge Hocker. On April 29, 2021, Judge Hocker's sentence was read to Appellant by the Honorable Frank R. Addy. Judge Hocker sentenced Appellant to twenty-five years' imprisonment for trafficking cocaine base and one year imprisonment for resisting arrest. Each of those sentences were to run concurrently with each other, resulting in an aggregate total of twenty-five years' imprisonment. Appellant timely filed a notice of appeal and an initial brief.

STATEMENT OF FACTS

On April 18, 2018, agents with the City of Greenwood Police Department attempted to serve an active arrest warrant on Appellant. (R. 93-95). As Agent Wesley McClinton, Lieutenant Whitfield Brooks and Agent Sammy Evans turned onto Gray Street, they witnessed Appellant sitting in a chair leaning against one of the apartment buildings. (R. 95-96). When McClinton advised Appellant he was under arrest, Appellant immediately ran behind the apartment building. (R. 96). McClinton attempted to use his taser to subdue Appellant, but was unsuccessful. (R. 96-97). Just before Agent Evans was able to catch up to Appellant, Appellant reached into his sock and pulled out “a golf size bag of narcotics” and threw it. (R. 97, lines 13-15). Evans detained Appellant while McClinton retrieved the suspected bag of narcotics. (R. 97). McClinton’s interaction with Appellant was recorded on his body camera and played for the jury at trial. (R. 105, State’s Exhibit #5 and #6). McClinton took the suspected drugs and secured them in Brooks’ vehicle. (R. 99). During the arrest, law enforcement also collected a set of digital scales and approximately \$380 in cash off of Appellant’s person. (R. 100, 120). McClinton took the suspected drugs back to the Police Department, weighed them, and did an initial field test which confirmed the substance was cocaine base or crack cocaine. (R. 100). McClinton packaged the drugs in a BEST kit and placed the drugs in the evidence locker at the police department. (R.101).

After the drugs were placed in the evidence locker, they were retrieved the following day by Evidence Technician Kenya Griffin. (R. 134). Griffin took the drugs to SLED on April 27, 2018. (R. 135). Once the drugs were at SLED, Forensic Chemist Shannon Sorrells weighed and analyzed the substance. Sorrells opined the substance was 29.06 grams of cocaine base. (R. 150).

Griffin received the drugs back from SLED on July 19, 2018. (R. 136). At the conclusion of trial, Appellant was convicted of trafficking cocaine base 3rd offense and resisting arrest.

STANDARD OF REVIEW

I.

“In criminal cases, an appellate court sits to review errors of law only. Therefore, an appellate court is bound by the trial court’s factual findings unless they are clearly erroneous.” State v. Banda, 371 S.C. 245, 251, 639 S.E.2d 36, 39 (2006).

II.

“Whether a witness should be exempted from a sequestration order is within the trial court’s discretion.” Constant v. Spartanburg Steel Prods. Inc., 316 S.C. 86, 91, 447 S.E.2d 194, 197 (1994). “An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law.” State v. McDonald, 343 S.C. 319, 325, 540 S.E.2d 464, 467 (2000).

III.

“Jury instructions must be considered as a whole and, if as a whole, they are free from error, any isolated portions which might be misleading do not constitute reversible error.” State v. Jackson, 297 S.C. 523, 526, 377 S.E.2d 570, 572 (1989). “A jury charge that is substantially correct and covers the law does not require reversal.” State v. Brandt, 393 S.C. 526, 549, 713 S.E.2d 591, 604 (2011). “The standard of review of an ambiguous jury instruction is whether there is a reasonable likelihood that the jury applied the challenged instruction in a way that violates the Constitution.” State v. Aleksey, 343 S.C. 20, 27, 538 S.E.2d 248, 251 (2000).

ARGUMENT

I.

The trial judge did not err in allowing Appellant’s trial to proceed in his absence because Appellant received written notice of his right to be present at trial and was warned that he would be tried in his absence should he fail to appear for trial via his bail form and the bond order. Furthermore, Appellant was notified of his trial date, both orally and in writing, by his trial attorney on three occasions.

Appellant argues the trial court erred in allowing Appellant to be tried in his absence when Appellant’s bond order¹ listed an arrest warrant number, 2018A2420100383, that corresponded with the offense of trafficking in cocaine, 3rd offense rather than the offense of trafficking in cocaine base, 3rd offense that Appellant ultimately stood trial for in absentia. Appellant frames this issue as a question of “whether a defendant who is released on bond as to one charge can be tried in his absence for a separate charge from that listed in the bond?” (Initial Brief of Appellant 5). As an initial matter, the premise that Appellant’s argument is based on is fundamentally flawed. Appellant was not released on a bond order for trafficking cocaine, 3rd offense. Rather, Appellant was clearly notified that he faced a charge of trafficking crack cocaine, 3rd offense in the text of the bond order, the body of his arrest warrant, and at his bond hearing. (R. 4, 213, 217). However, even if this Court accepts the flawed premise upon which Appellant’s argument is based, Appellant’s framing of the issue obscures the true question that faced the trial judge and faces this Court: did Appellant waive his right to be present at trial? The answer to this question is yes. Appellant received written notice of his right to be present at trial and was warned he would be tried in his absence should he fail to attend via his bond form and

¹ Curiously, despite Appellant’s bond order being essential to Appellant’s argument, Appellant did not designate the bond form or the bail form to be included as part of the record on appeal for this Court’s consideration. (Appellant’s designation of matter). See State v. Stewart, 435 S.C. 405, 413, 867 S.E.2d 33, 37 (Ct. App. 2021) (holding an appellant has a duty to provide an appellate court with a record sufficient to review the issues on appeal).

bail form. (R. 216, 223). Even if notice via the written bond order was not sufficient to notify Appellant he would be tried in his absence, trial counsel stated he gave Appellant oral notice of his trial date on two occasions and written notice on a third occasion. Therefore, the trial judge properly determined that Appellant waived his right to be present at trial and the trial judge's decision was supported by facts in the record.

“It is well established that, although the Sixth Amendment of the United States Constitution guarantees the right of an accused to be present at every stage of his trial, this right may be waived, and a defendant may be tried in his absence.” State v. Ravenell, 387 S.C. 449, 455, 692 S.E.2d 554, 557 (Ct. App. 2010). However, “before a defendant may be tried in absentia, the trial court must determine a defendant voluntarily waived his right to be present at trial.” State v. Fairey, 374 S.C. 92, 100, 646 S.E.2d 445, 448 (Ct. App. 2007). “The Judge must make findings of fact on the record that the defendant (1) received notice of his right to be present and (2) was warned he would be tried in his absence should he fail to attend. Ravenell, 387 S.C. at 456, 692 S.E.2d at 558. See also Rule 16 SCRCrimP (“...a person indicted for misdemeanors and/or felonies may voluntarily waive his right to be present and may be tried in his absence upon a finding by the court that such person has received notice of his right to be present and that a warning was given that the trial would proceed in his absence upon a failure to attend the court.”). “Notice of the term of court for which the trial is set constitutes sufficient notice to enable a criminal defendant to make an effective waiver of his right to be present.” City of Aiken v. Koontz, 368 S.C. 542, 547, 629 S.E.2d 686, 689 (Ct. App. 2006). “Further, a bond form that provides notice that a defendant can be tried in absentia may serve as the requisite warning that he may be tried in his absence should he fail to appear.” Ravenell, 387 S.C. at 456, 692 S.E.2d at 558.

Appellant's argument fails for three reasons. First and foremost, Appellant's assertion that he was released on a bond order that listed the offense of trafficking cocaine, 3rd offense is plainly contradicted by the text of the bond order. (R. 217). The very first page of Appellant's bond order states that he is facing a charge of "Trafficking Crack 3rd". (R. 217). Additionally, the body of Appellant's arrest warrant lists "crack cocaine" as the substance that Appellant is accused of trafficking and Appellant was informed at the very outset of his bond hearing that he was before the court on a motion seeking bond for "a trafficking crack third offense." (R. 4, line 7, R. 213). The trial judge was keenly aware of these facts when he ruled: "And I'm going to deny your motion based upon the fact that the body of the warrant sufficiently states the drug involved was crack cocaine. The—the bond order and the bond hearing all reference crack cocaine." (R. 62, line 23-R.63, line 2). Therefore, Appellant's assertion that he was released on a bond order for a different offense or that he was somehow unaware of what offense he was being charged with is specious, at best.

Second, even if the flawed premise of Appellant's argument is accepted, Appellant's argument still fails because Appellant received written notice of his right to be present for trial and was warned that he would be tried in his absence should he fail to attend. Appellant's bail form stated the following: "I understand and have been informed that I have a right and obligation to be present at trial and should I fail to attend the court, the trial will proceed in my absence. (R. 216). Appellant indicated his consent to this statement by his signature. (R. 216). Furthermore, Appellant's bond order states "FAILURE TO APPEAR AT TRIAL WILL RESULT IN A TRIAL IN DEFENDANT'S ABSENCE." (R. 223)(all caps in original).

Finally, even if the written notice provided in the bail form and bond order were insufficient to advise Appellant that he would be tried in his absence, Appellant was notified by

his trial attorney of his trial date on three separate occasions. When asked by the trial judge, trial counsel for Appellant stated: “Your Honor, I had a conversation with my client on October 4th, which I orally notified him of the trial date. Another oral conversation with him on November 26th. And then written communication on November the 28th.” (R. 65, lines 12-16). The trial judge appropriately took evidence of the written and verbal notices Appellant received of his trial date into consideration and rendered the following ruling;

The Court: So, again, I’m going to revisit the two specific findings that I must make under the Wrapp² case, one, did [Appellant] receive notice of a specific term of court that he needed to be present? I find that he did, based upon Mr. Hodges’ oral communication on October 4th and November 26th to [Appellant], and his written communication on November 28th.

Secondly, was [Appellant] sufficiently apprised of the fact that if he did not attend his trial that he would be tried in his absence? And based upon Court’s Exhibit No. 3³, he signed an acknowledgement on the second page, which indicates—I’m just going to quote from the acknowledgement that he signed on September 11th of 2018, I understand and have been informed that I have a right and obligation to be present at trial. And should I fail to attend the Court, the trial will proceed in my absence. So the motion to continue is denied. And we will proceed forward with a trial in [Appellant]’s absence.

(R. 65, line 25-R.66, line 17). The trial judge did not err in allowing Appellant’s trial to proceed in his absence. Appellant’s convictions and sentences should be affirmed.

² State v. Wrapp, 421 S.C. 531, 808 S.E.2d 821 (2017).

³ The trial judge seems to be referring to Appellant’s Bail Form, although the transcript does not show when it was marked as Court’s Exhibit #3.

II.

The trial judge did not abuse his discretion in allowing the testimony of Lieutenant Whitfield Brooks when Brooks' testimony was not influenced by the testimony he overheard in violation of the sequestration order, and any error in the admission of the testimony was harmless in light of the evidence against Appellant and how Appellant used Brooks' testimony.

Appellant next argues the trial judge erred in failing to exclude the testimony of Lieutenant Whitfield Brooks who violated the trial judge's sequestration order. In support of his argument Appellant asserts: "Here the testimony of the two officers related to the seizure and chain of custody of the seized items. Under such circumstance, prejudice can be and should be presumed." (Initial Brief of Appellant 8). Appellant's argument fails for two reasons. First, the trial judge did not abuse his discretion in allowing Brooks to testify. Before Brooks was allowed to testify, the trial judge allowed Brooks to testify *in camera*. Brooks testified that while he overheard the testimony of two prior witnesses, their testimony had no effect or influence on his testimony. (R. 127). Additionally, Brooks did not handle or move the items after they were placed in his car. (R. 127, 131). Therefore, Brooks was not a part of the chain of custody. (R. 225). Second, even if the trial judge admitted Brooks' testimony in error, any error was entirely harmless. Far from being prejudiced by Brooks' testimony, Appellant used it to his advantage in closing argument to suggest the absence of Brooks' name from the chain of custody form raised reasonable doubt about the authenticity of the drugs. (R. 180). For both of the aforementioned reasons, the trial judge's decision to allow Brooks to testify was not reversible error.

"At the request of a party the court may order witnesses excluded so that they cannot hear the testimony of other witnesses, and it may make the order of its own motion." Rule 615 SCRE. However, "a party is not entitled to the sequestration of witnesses as a matter of right. The

decision to sequester witnesses is left to the sound discretion of the trial judge.” State v. Tisdale, 338 S.C. 607, 616, 527 S.E.2d 389, 394 (Ct. App. 2000). “Whether a witness should be exempted from a sequestration order is within the trial court’s sound discretion.” Gattison v. South Carolina State College, 318 S.C. 148, 151, 456 S.E.2d 414, 415 (Ct. App. 1995). “The admission or exclusion of evidence is a matter addressed to the sound discretion of the trial court and its ruling will not be disturbed in the absence of a manifest abuse of discretion accompanied by probable prejudice.” State v. Douglas, 369 S.C. 424, 429, 632 S.E.2d 845, 847-48 (2006).

Here, Appellant made a motion to sequester witnesses before trial. (R. 73). Prior to Brooks testifying, Appellant moved to exclude Brooks’ testimony because he was present for the testimony of Wesley McClinton and Sammy Evans. (R. 122). The trial judge appropriately asked Brooks to testify *in camera* to determine the extent to which, if any, Brooks’ testimony was influenced by his presence during the testimony of McClinton and Evans. During Brooks *in camera* testimony, the following exchange with the trial judge occurred:

The Court: Officer Brooks, did the drugs ever change location from where Officer McClinton put them in the vehicle?

Brooks: No, sir.

The Court: Okay. Has any of the testimony from the prior two witnesses had any influence whatsoever on the testimony you’ve given today?

Brooks: No, sir.

(R. 127, lines 8-14). As the preceding exchange indicates, the trial judge properly determined during the *in camera* hearing that Brooks was not part of the chain of custody, nor was he influenced the testimony he overheard.

Even if the trial judge erred in allowing Brooks to testify, any error was entirely harmless. Brooks was not part of the chain of custody, thus his testimony was cumulative to the

testimony of the State's other witnesses. (R. 127, 131, State's Exhibit #9). However, even if Brooks were part of the chain of custody, his testimony was not necessary to admit the drugs that Appellant discarded from his sock. See State v. Sweet, 374 S.C. 1, 7, 647 S.E.2d 202, 206 (2007)("Testimony from each custodian of fungible evidence, however, is not a prerequisite to establishing a chain of custody sufficient for admissibility." See also State v. Taylor, 360 S.C. 18, 26, 598 S.E.2d 735, 738 (Ct. App. 2004)("If the identity of each person in the chain handling the evidence is established, and the manner of handling is reasonably demonstrated, no abuse of discretion is shown in the admission, absent proof of tampering, bad faith, or ill-motive.")). Because the State did not require Brooks' testimony to complete the chain of custody, Appellant was not prejudiced by the trial judge's ruling.

Brooks' testimony ultimately had no bearing on the outcome of Appellant's trial. The jury was convinced of Appellant's guilt by the testimony of Officer McClinton and his body camera footage which showed Appellant throwing crack cocaine from his sock as he fled law enforcement; not by Brooks' limited testimony regarding who had access to his car. (State's Exhibit #5 and #6). Furthermore, Appellant used Brooks' testimony to his advantage in the following argument to the jury:

Mr. Hodges: Who's the next witness that you heard from? Lieutenant Brooks. And the first question the solicitor was asking him, Did you expect to testify today?

No.

How long have you known you were going to testify?

About 10 minutes.

I submit to you, the State was scrambling around to try to plug that hole in their chain of custody. And I would invite you to look at the paperwork that was submitted to you about the chain of custody. There's a form here certifying who's in the physical chain of custody. Lieutenant Brooks' name is not anywhere on the

paperwork. Which then begs the question, you know, is there anybody else that had custody of this that's no on the paperwork that we don't know about? I mean, we discovered the one because it happened to be on the video. But, you know, who else's hands did this go through?

(R. 180, lines 5-21). Because the trial judge determined that Brooks' testimony was not influenced by the testimony that he overheard, the trial judge did not abuse his discretion in allowing Brooks to testify. And because Brooks' testimony was not necessary to establish a chain of custody and was even used to Appellant's advantage in closing, any error in its admission is harmless.

III.

The trial judge did not err in refusing to instruct the jury using Appellant's preferred definition of reasonable doubt, because the trial judge was not required to define the term or give a specific definition. Nonetheless, the trial judge provided a thorough and correct definition of reasonable doubt that did not prejudice Appellant.

Appellant finally argues that the trial judge erred in refusing to instruct the jury that a reasonable doubt is the kind of doubt that would cause a reasonable person to hesitate to act. Because the aforementioned language was not read to the jury, Appellant asserts he was "prohibited from making effective arguments." (Initial Brief of Appellant 12). Contrary to Appellant's argument, the trial judge was not required to give any definition of reasonable doubt, let alone Appellant's preferred definition. Instead, the trial judge gave a thorough definition of reasonable doubt that effectively mirrored a definition of reasonable doubt that has been explicitly approved by our Supreme Court. Furthermore, Appellant was in no way limited or prohibited from making an effective argument by the trial judge's jury instruction. Despite the trial judge's ruling, Appellant nonetheless argued in closing argument that if the jurors hesitated to convict then they would have a reasonable doubt. (R. 85-86, 182). Thus, the trial judge's instruction was correct and did not hinder Appellant's ability to defend himself.

“The beyond a reasonable doubt standard is a requirement of due process, but the Constitution neither prohibits trial courts from defining reasonable doubt nor requires them to do so as a matter of course.” Victor v. Nebraska, 511 U.S. 1, 5 (1994). “Indeed, so long as the court instructs the jury on the necessity that the defendant’s guilt be proven beyond a reasonable doubt, the Constitution does not require that any particular form of words be used in advising the jury of the government’s burden of proof.” Id. “Rather, ‘taken as a whole, the instructions [must] correctly convey the concept of reasonable doubt to the jury.’” Victor 511 U.S. at 5 (quoting Holland v. United States, 348 U.S. 121, 140 (1954)).

“The trial court is required to charge only the current and correct law of South Carolina.” State v. Mattison, 388 S.C. 469, 479, 697 S.E.2d 578, 583 (2010). In South Carolina, a trial judge is not required to instruct the jury on the meaning of reasonable doubt, let alone provide a specific definition for the term. State v. Johnson, 315 S.C. 485, 487, 445 S.E.2d 637, 637 (1994). However, if a trial judge chooses to instruct the jury on the meaning of reasonable doubt, our Supreme Court has expressly recognized two appropriate ways for reasonable doubt to be defined. State v. Needs, 333 S.C. 134, 155, 508 S.E.2d 857, 868 (1998).

Under the first accepted jury charge, the trial judge could choose to instruct the jury that “[a] reasonable doubt is the kind of doubt that would cause a reasonable person to hesitate to act.” Id. at 155, n.12, 508 S.E.2d at 868. However, under the second accepted jury charge, the trial judge could instruct the jury as follows:

The State has the burden of proving the Defendant guilty beyond a reasonable doubt. Some of you may have served as jurors in civil cases where you were told [it] is only necessary to prove the fact is more likely true than not, such as by the greater weight or preponderance of the evidence. In criminal cases, the State’s proof must be more powerful than that. It must be beyond a reasonable doubt.

Ladies and gentlemen, proof beyond a reasonable doubt is proof that leaves you firmly convinced of the Defendant’s guilt. There are very few things in this world

that we know with absolute certainty. And in criminal cases, the law does not require proof that overcomes every possible doubt. The law doesn't require that.

If, based on your consideration of the evidence, you are firmly convinced that the Defendant is guilty of the crime charged, you must find him guilty. If on the other hand you think there is a real possibility that he is not guilty, you must give him the benefit of the doubt and find him not guilty.

Id. However, neither of the accepted charges is mandatory, and the decision as to whether to define reasonable doubt at all rests entirely in each individual trial judge's discretion. Id.

Here, Appellant requested the trial judge included the "hesitate to act" language in his instructions to the jury. (R. 167). However, the trial judge declined and instead read the following reasonable doubt instruction to the jury:

The defendant has plead not guilty to these indictments. And that pleas puts the burden on the State to prove the Defendant guilty. A person charged with committing a criminal offense in South Carolina is never required to prove himself innocent.

I charge you that it is an important rule of the law that the Defendant in a criminal trial, no matter what the seriousness of the charge may be, will always be presumed to be innocent of the crime for which the indictment was issued, unless guilty has been proven by evidence satisfying you of that guilt beyond a reasonable doubt.

Now, this presumption of innocence does not end when you begin your deliberations, but it accompanies the Defendant throughout the trial until you reach or unless you reach a verdict of guilt based on evidence satisfying you of that guilt beyond a reasonable doubt.

The presumption of innocence is like a robe of righteousness placed about the shoulders of the Defendant, which remains with the Defendant until or unless it has been stripped from the Defendant by evidence satisfying you of the Defendant's guilt beyond a reasonable doubt.

The presumption of innocence is not mere legal theory. It's not just a legal phrase. It is a substantial right to which every defendant is entitled, unless you, the jury, are satisfied from the evidence of the Defendant's guilt beyond a reasonable doubt.

Now some of you may have served as jurors in civil cases where you were told that it is only necessary to prove that a fact is more likely true than not true, such

as by the greater weight or the preponderance of the evidence. In criminal cases, the State's proof must be more powerful than that. It must be beyond a reasonable doubt. Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the Defendant's guilt.

Now, there are very few things in this world that we know with absolute certainty. And in criminal cases, the law does not require proof that overcomes every possible doubt. If based on your consideration of the evidence, you are firmly convinced the Defendant is guilty of the crimes charged, you must find the Defendant guilty. If, on the other hand, you think there's a real possibility that the Defendant is not guilty, you must give the Defendant the benefit of the doubt and find him not guilty.

(R. 184, lines 11-15- R.186, line 4).

The trial judge's definition of reasonable doubt was nearly identical to the definition explicitly approved by our Supreme Court in Needs. Therefore, the trial judge provided the jury with a thorough and correct definition of reasonable doubt. Just because the trial judge refused to include Appellant's preferred language does not mean Appellant is entitled to have his conviction reversed. Appellant was not entitled to have any definition of reasonable doubt read to the jury, let alone his preferred definition.

Furthermore, Appellant was not prejudiced by the trial judge's ruling in any way. Appellant asserts his case is similar to our Supreme Court's holding in State v. Jones, and that he suffered the same kind of prejudice from the trial judge's refusal to charge the requested reasonable doubt definition that Jones did. Appellant's reliance on Jones is misplaced. In Jones, our Supreme Court held the trial court erred in removing "hesitate to act" language after Jones had already made his closing argument. State v. Jones, 343 S.C. 562, 577-578, 541 S.E.2d 813, 821 (2001). The Supreme Court found the removal of the language was unfair to Jones because Jones had explicitly told the jury that the trial judge would instruct them that a reasonable doubt is one that causes a reasonable person to hesitate to act. Id. The trial judge's decision to amend

his instruction after Jones had already argued had the effect of diminishing his credibility in the eyes of the jury. Id.

Unlike in Jones, the trial judge informed Appellant what definition of reasonable doubt he intended to charge before closing argument. Therefore, Appellant was free to tailor his closing argument to adhere to the trial judge's intended instruction. Also, unlike in Jones, the trial judge adhered to his proposed instruction and did not undercut or diminish Appellant's credibility with a revised definition that contradicted Appellant's closing argument. Appellant was not prohibited or hindered from telling the jury that a reasonable doubt is one that causes a reasonable person to hesitate to act. Indeed, both the State and Appellant had already told the jury in opening statements that a reasonable doubt is one which would cause a reasonable person to hesitate to act. (R. 82, 85-86). Far from being prohibited from making this argument in closing, Appellant essentially repeated his preferred definition when he told the jury "If you've got that inkling of doubt, if when you go back there and you **hesitate** to convict, that's reasonable doubt talking to you." (R. 182, lines 22-25)(emphasis added). Because the trial judge's definition of reasonable doubt was a correct statement of law that did not prejudice Appellant, Appellant's convictions and sentences should be affirmed.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgments and convictions of the lower court should be affirmed.

Respectfully submitted,

ALAN WILSON
Attorney General

WILLIAM M. BLITCH, JR.
Senior Assistant Deputy Attorney General
S.C. Bar No. 15608

DAVID M. STUMBO
Solicitor, Eighth Judicial Circuit

BY: 

William M. Blitch, Jr.

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

July 5, 2022

RECEIVED

Jul 05 2022

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenwood County
The Honorable Donald B. Hocker, Circuit Court Judge

Appellate Case No. 2021-000486

THE STATE,

Respondent,

v.

TREMAINE O'KEEFE PRIDE,

Appellant.

CERTIFICATE OF COMPLIANCE

The undersigned certifies that the Final Brief of Respondent filed July 5, 2022, complies with Rule 211(b), SCACR, and does not include, or partially redacts, personal data identifiers, Re Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings, 407 S.C. 607, 607, 757 S.E.2d 421 (2014) (requiring redaction of social security numbers, names of minor children, financial account numbers, home addresses, and date of birth).

This July 5, 2022.



WILLIAM M. BLITCH, JR.
Senior Assistant Deputy Attorney General
S.C. Bar No. 15608

**THE STATE OF SOUTH CAROLINA
In the Court of Appeals**

RECEIVED

**APPEAL FROM GREENWOOD COUNTY
Court of General Sessions**

JUN 21 2022

SC Court of Appeals

Honorable Donald B. Hocker, Circuit Court Judge

**Appellate Case No. 2021-000486
Lower Case Nos. 2018GS2401480, 2018GS2401481**

The State, Respondent,

vs.

Tremaine O. Pride, Appellant

FINAL REPLY BRIEF OF APPELLANT

**C. RAUCH WISE
Attorney at Law
305 Main Street
Greenwood, SC 29646
Bar № 6188
(864) 229-5010**

Attorney for Appellant

Index

Table of Authorities	ii
Argument:	
Question I: Did the trial court err in failing to acknowledge that Tremaine O. Pride had been released on a bond order that cited the arrest warrant number for trafficking cocaine in violation of S.C. Code § 44-53-370(e)(2)(b)(3) when the State had indicted him for trafficking crack cocaine in violation of S. C. Code 44-53-376(C) and, therefore, the Court did not have the right to try him in his absence for a different charge?	1
Question II: Did the trial court err in failing to exclude the testimony of a witness that had violated the sequestration order issued by the judge when the state knew the witness would be called at trial to testify and permitted him to sit in the courtroom during the testimony of two other witnesses?	1
Question III: Did the trial court err in failing to give a reasonable doubt instruction that included the phrase “hesitate to act” as approved by prior decisions of this court?	2
Conclusion	5

Index

Cases:	Page:
<i>Ellis v. Davidson</i> , 358 S.C. 509, 595 S.E.2d 817 (Ct. App. 2004)	2
<i>State v. Belcher</i> , 385 S.C. 597, 685 S.E.2d 802 (2009)	1
<i>State v. Bigham</i> , 133 S.C. 491, 131 S.E. 603 (1926).	3
<i>State v. Blackmon</i> , 304 S.C. 270, 403 S.E.2d 660 (1991)	1
<i>State v. Dent</i> , 434 S.C. 357, 863 S.E.2d 478 (Ct. App. 2021), reh'g denied (Oct. 18, 2021)	4
<i>State v. Herndon</i> , 430 S.C. 367, 845 S.E.2d 499 (2020)	4
<i>State v. Johnson</i> , 315 S.C. 134, 508 S.E.2d 857 (1998)	3
<i>State v. Logan</i> , 405 S.C. 83, 747 S.E.2d 444 (2013)	4

Question I

Question I: Did the trial court err in failing to acknowledge that Tremaine O. Pride had been released on a bond order that cited the arrest warrant number for trafficking cocaine in violation of S.C. Code § 44-53-370(e)(2)(h)(3) when the State had indicted him for trafficking crack cocaine in violation of S. C. Code 44-53-376(C) and, therefore, the Court did not have the right to try him in his absence for a different charge?

The bond order of September 18, 2018 signed by Judge Hocker is confusing at best. The “Case number/charges” reflects the arrest warrant number for trafficking cocaine but has after it “Trafficking Crack 3rd.” Rec. on App. at 217 (Bond Order). Thus, a conflict exists between the two statements. A bond order, as with a jury charge, “is no place for purposeful ambiguity.” *State v. Belcher*, 385 S.C. 597, 611, 685 S.E.2d 802, 809 (2009). As with statutes, ambiguous orders when drawn by the State should be interpreted in favor of the defendant. “Finally, when a statute is penal in nature, it must be construed strictly against the State and in favor of the defendant.” *State v. Blackmon*, 304 S.C. 270, 273–74, 403 S.E.2d 660, 662 (1991)

In arguing that Mr. Pride had notice that he would be tried in his absence, the State does not discuss the question of “tried upon what charge?” The State treats the notice in the bond papers as a notice by the State to try him for any charge they desire. Because the warrant numbers are used, the charges referenced in the bond papers are resisting arrest and trafficking cocaine. (Bail proceedings.) Mr. Pride had the right to rely upon the fact that he could only be tried in his absence for one or both of those charges and no others.

Question II

Did the trial court err in failing to exclude the testimony of a witness that had violated the sequestration order issued by the judge when the state knew the witness would be called at trial to testify and permitted him to sit in the courtroom during the testimony of two other witnesses?

The State argues as to this issue that Mr. Pride was not prejudiced by the violation of the sequestration order. This argument ignores the purpose of the sequestration order. As Officer Whitfield Brooks heard the testimony of the other two officers, the record can never reflect what the testimony of Officers would have been had he not heard the other testimony. The purpose of sequestration is to prevent witnesses from hearing each others testimony. While the testimony as given may not have been prejudicial, one will never know if the exact same testimony would have been given if the sequestration order had been followed. Prejudice from a violation of the sequestration rule simply cannot be judged by looking backwards.

The State has failed to discuss that the trial judge abused his discretion when permitting Officer Brooks to testify. As noted in the opening brief, "An abuse of discretion occurs when there is an error of law or a factual conclusion that is without evidentiary support." *Ellis v. Davidson*, 358 S.C. 509, 524, 595 S.E.2d 817, 825 (Ct. App. 2004). Simply saying, as the State does, that whether to permit the testimony of a witness who has violated the sequestration order is in the sound discretion of the trial judge, does not counter Mr. Pride's argument that the trial judge abused his discretion. As noted in the opening brief, the trial judge erred as a matter of law in permitting Officer Brooks to testify and erred in making a factual determination that was without any factual basis. The trial judge erred as a matter of law in permitting Officer Brooks to testify.

Question III

Did the trial court err in failing to give a reasonable doubt instruction that included the phrase "hesitate to act" as approved by prior decisions of this court?

The real question on this issue is whether the trial judge or defense counsel gets to choose

which of two reasonable doubt charges should be given. Common sense tells any lawyer that when his closing argument tracks the judge's charge to the jury, the credibility of the argument is enhanced. Thus, while the State is correct in saying defense counsel was not limited or prohibited from making an effective argument, this begs the question. While trial counsel did argue the hesitate to act argument to the jury, such argument would have been more powerful had the trial judge also told the jury the same thing.

The State is correct when it says a trial judge is not required to give a definition of reasonable doubt. *State v. Johnson*, 315 S.C. 134, 508 S.E.2d 857 (1998). This is not what happened in this case. The trial judge elected to give one of two correct charges to the jury. The real question here, is whether the trial judge or the defense counsel get to elect which of two proper charges as to reasonable doubt is to be given to the jury. No logical reason can be given for favoring the choice of the trial judge over the choice of the defense counsel. The defense counsel knows the case and knows which definition he believes will assist him in representing his client. Here defense counsel asked for the charge that he believed would assist him best in representing his client. The trial judge should not be given the right to veto that decision.

This Court almost 100 years ago stated, "It certainly will not be questioned for a moment that under the guaranties of state and federal Constitutions every man on trial in a criminal prosecution, however humble or guilty he may be, is entitled to a fair and impartial trial." *State v. Bigham*, 133 S.C. 491, 131 S.E. 603, 607 (1926).¹ When a defense lawyer requests a correct statement of the law as to the definition of reasonable doubt, the right to a fair trial is violated

¹ This is a rather bizarre case where a witness died on the stand after direct examination and before cross-examination.

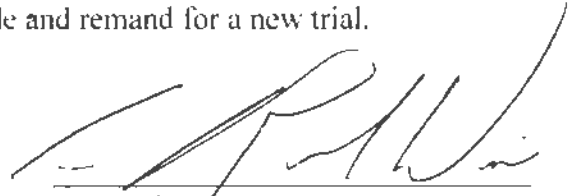
when the trial judge declines to give the requested definition. A trial judge should not be permitted to use their discretion to deprive a defendant of a correct statement of the law.

The South Carolina Supreme Court has given the defense lawyer the choice as to which circumstantial evidence charge to use. The court stated, “Thus, we modify *Grippon* and *Cherry* to allow the additional language provided above if requested by a defendant.” *State v. Logan*, 405 S.C. 83, 100, 747 S.E.2d 444, 453 (2013). The court in *Logan* recognized that the defense lawyer best knows which charge would give his client a fair trial. “When requested, the *Logan* charge must be given in cases based in whole or part on circumstantial evidence.” *State v. Herndon*, 430 S.C. 367, 371, 845 S.E.2d 499, 501 (2020). This Court has also said, “We find the trial court erred in failing to grant Dent’s request to charge the jury with the *Logan* instruction on circumstantial evidence.” *State v. Dent*, 434 S.C. 357, 362–63, 863 S.E.2d 478, 481 (Ct. App. 2021), reh’g denied (Oct. 18, 2021). The same principle should be applied in this case. When a request is made by defense counsel for a definition of reasonable doubt that has been previously approved by our appellate courts, that request should be honored.

CONCLUSION

For the foregoing reasons and for the reasons set forth in the opening brief, this court should reverse the conviction of Tremaine O'Keefe Pride and remand for a new trial.

June 16th, 2022



C. Rauch Wise
305 Main Street
Greenwood, SC 29646
(864) 229-5010
rauchwise@gmail.com
S. C. Bar № 6188

Attorney for
Tremaine O'Keefe Pride

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED
JUN 21 2022
SC Court of Appeals

APPEAL FROM GREENWOOD COUNTY
Court of General Sessions

Honorable Donald B. Hocker, Circuit Court Judge

Appellate Case No. 2021-000486
Lower Case Nos. 2018GS2401480, 2018GS2401481

The State, Respondent,

vs.

Tremaine O. Pride, Appellant

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Reply Brief of Appellant complies with Rule 21 (b), SCACR.

June 16th, 2022



C. RAUCH WISE
Attorney at Law
305 Main Street
Greenwood, SC 29646
(864) 229-5010
S.C. Bar No. 6188

Attorney for Appellant

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Tremaine O'Keefe Pride, Appellant.

Appellate Case No. 2021-000486

Appeal From Greenwood County
Donald B. Hocker, Circuit Court Judge

Unpublished Opinion No. 2024-UP-389
Submitted September 1, 2024 – Filed November 27, 2024

AFFIRMED

Clarence Rauch Wise, of Greenwood, for Appellant.

Attorney General Alan McCrory Wilson and Senior
Assistant Deputy Attorney General Mark Reynolds
Farthing, both of Columbia; and Solicitor David Matthew
Stumbo, of Greenwood, all for Respondent.

PER CURIAM: Tremaine O'Keefe Pride was convicted of trafficking
twenty-eight grams or more of crack cocaine and resisting arrest. The trial court
imposed concurrent sentences of twenty-five years' imprisonment for trafficking
crack cocaine and one-year imprisonment for resisting arrest. On appeal, Pride

argues the trial court erred in (1) denying his motion for continuance and trying him *in absentia* for the indicted offense of trafficking crack cocaine because the order releasing Pride on bond, which provided him with notice that he would be tried *in absentia*, cited the arrest warrant number that alleged Pride violated a different statute than the one in the indictment; (2) failing to exclude the testimony of a witness who violated the sequestration order; and (3) failing to include the language "hesitate to act" during its reasonable doubt jury instructions. We affirm.

1. We hold the trial court did not abuse its discretion in denying Pride's motion to continue the trial and trying him *in absentia* for trafficking crack cocaine—although his bond form cited a different statutory offense than his indictment—because he had proper notice that he would be tried in his absence for trafficking crack cocaine. *See State v. Ravenell*, 387 S.C. 449, 455, 692 S.E.2d 554, 557 (Ct. App. 2010) ("The trial court's denial of a motion for a continuance will not be disturbed on appeal absent a clear abuse of discretion."); *id.* ("It is well established that, although the Sixth Amendment of the United States Constitution guarantees the right of an accused to be present at every stage of his trial, this right may be waived, and a defendant may be tried in his absence."); *id.* at 455, 692 S.E.2d at 557-58 ("A trial judge must determine a criminal defendant voluntarily waived his right to be present at trial in order to try the defendant in his absence."); *id.* at 456, 692 S.E.2d at 558 ("The judge must make findings of fact on the record that the defendant (1) received notice of his right to be present and (2) was warned he would be tried in his absence should he fail to attend."). Pride received sufficient notice he would be tried in his absence of the charges against him because: (1) the arrest warrant affidavit to support probable cause stated "Pride did knowingly and intentionally traffic crack cocaine," (2) the grand jury indicted Pride for trafficking crack cocaine in violation of section 44-53-375(C) of the South Carolina Code (2018), and (3) the State calling Pride's charges "trafficking crack third offense, charge 28 to 100 grams" at his bond hearing. The trial court also made specific findings that "Mr. Pride did receive notice of this actual term of court where his trial would be conducted. And that he knew that - - secondly, he knew that he would be tried in his absence if he failed to attend." We hold the trial court's reliance on this evidence supported its denial of his motion for a continuance. *Cf. State v. Wrapp*, 421 S.C. 531, 536-37, 808 S.E.2d 821, 823-24 (Ct. App. 2017) (finding no evidence in the record, other than the bond acknowledgment form, that defendant had notice of his trial); *State v. Goode*, 299 S.C. 479, 482, 385 S.E.2d 844, 846 (1989) (holding the State "failed to prove that Goode had any notice, either actual or constructive, as to his indictment for grand larceny or the subsequent trial" because it only produced Goode's bond form releasing him for breaking into a motor vehicle).

2. We hold that although the trial court erred in finding the witness did not violate the sequestration order, the trial court did not abuse its discretion in allowing the witness to testify before the jury in light of the witness's testimony during a proffer that he was not influenced by the testimony of the witnesses he observed in violation of the sequestration order. *See State v. Huckabee*, 388 S.C. 232, 241, 694 S.E.2d 781, 785 (Ct. App. 2010) ("[T]he decision to sequester a witness is within the sound discretion of the [trial] court."); *State v. Moorer*, 439 S.C. 525, 548, 888 S.E.2d 725, 737 (Ct. App. 2023), *reh'g denied* (July 24, 2023) ("The purpose of the exclusion rule is . . . to prevent the possibility of one witness shaping his testimony to match that given by other witnesses at the trial; and if a witness violates the order he may be disciplined by the court." (quoting *State v. Washington*, 424 S.C. 374, 409, 818 S.E.2d 459, 477 (Ct. App. 2018), *aff'd in part, vacated in part, rev'd in part on other grounds*, 431 S.C. 394, 848 S.E.2d 779 (2020))); *State v. Simmons*, 384 S.C. 145, 173-74, 682 S.E.2d 19, 34 (Ct. App. 2009) (holding the trial court did not abuse its discretion in permitting a witness to testify because it found the statements made by the other witness could not have influenced his subsequent testimony).

Furthermore, we determine that even if the admission of the witness's testimony was an error, it was harmless because the State established the chain of custody of the drugs as far as practicable without his testimony and his testimony had no effect on the result of the trial. *See State v. Collins*, 409 S.C. 524, 537, 763 S.E.2d 22, 29 (2014) ("The harmless error rule generally provides that an error is harmless beyond a reasonable doubt if it did not contribute to the verdict obtained."); *State v. Brown*, 344 S.C. 70, 75, 543 S.E.2d 552, 554-55 (2001) ("Whether an error in the admission of evidence is harmless generally depends upon its materiality in relation to the case as a whole."); *State v. Johnson*, 298 S.C. 496, 499, 381 S.E.2d 732, 733 (1989) ("The admission of improper evidence is harmless where it is merely cumulative to other evidence."); *State v. Black*, 400 S.C. 10, 27, 732 S.E.2d 880, 890 (2012) ("An appellate court generally will decline to set aside a conviction due to insubstantial errors not affecting the result."); *Brown*, 344 S.C. at 75, 543 S.E.2d at 554-55 ("Whether an error in the admission of evidence is harmless generally depends upon its materiality in relation to the case as a whole."). Additionally, Pride had the opportunity to cross-examine the witness and used his trial testimony to his benefit—arguing during closing "the State was scrambling around to try to plug th[e] hole in their chain of custody" by calling the witness because his role in the chain was unknown previously due to his name not appearing on the chain of custody form. *See State v. Fossick*, 333 S.C. 66, 70, 508 S.E.2d 32, 34 (1998) ("In determining harmless error regarding any issue of witness credibility, we will consider the importance of the witness's testimony to the prosecution's case, whether the witness's

testimony was cumulative, whether other evidence corroborates or contradicts the witness's testimony, the extent of cross-examination otherwise permitted, and the overall strength of the State's case.").

3. Finally, we hold the trial court did not abuse its discretion by declining Pride's request for the trial court to use the language "hesitate to act," as used in *State v. Manning*,¹ in its reasonable doubt instructions to the jury. *See Clark v. Cantrell*, 339 S.C. 369, 389, 529 S.E.2d 528, 539 (2000) ("An appellate court will not reverse the trial court's decision regarding jury instructions unless the trial court abused its discretion."); *State v. Patterson*, 367 S.C. 219, 231, 625 S.E.2d 239, 245 (Ct. App. 2006) (explaining a "trial court is required to charge only the current and correct law of South Carolina"). The trial court's instructions adequately defined "reasonable doubt" because they were nearly identical to those identified by our supreme court in *Needs*. *See State v. Needs*, 333 S.C. 134, 155 n.12, 508 S.E.2d 857, 868 n.12 (1998) (identifying two appropriate definitions of reasonable doubt for trial courts to utilize, one of which includes "hesitate to act" verbiage and the other without). Furthermore, we hold Pride's argument that the defendant, not the trial court, should determine the language of the reasonable doubt instruction to allow the defendant to make an effective closing argument is meritless because the trial court has the discretion to charge the jury with the law. *See Clark*, 339 S.C. at 389, 529 S.E.2d at 539 ("An appellate court will not reverse the trial court's decision regarding jury instructions unless the trial court abused its discretion.").

AFFIRMED.²

WILLIAMS, C.J., and MCDONALD and TURNER, JJ., concur.

¹ 305 S.C. 413, 417, 409 S.E.2d 372, 375 (1991).

² We decide this case without oral argument pursuant to Rule 215, SCACR.

RECEIVED

Dec 11 2024

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State, Respondent,

v.

Tremaine O'Keefe Pride, Appellant,

Appellate Case № 2021-000486

Appeal from Greenwood County
Donald B. Hocker, Circuit Court Judge

Unpublished Opinion № 2024-UP-389
Submitted September 1, 2024 - Filed November 27, 2024

Petition for Rehearing

Pursuant to Rule 221 of the South Carolina Rules of Appellate Practice, Tremaine O'Keefe Pride respectfully requests that this Court rehear this matter to correct the following errors and omissions:

1. This Court erred in holding, “[A]lthough his bond form cited a different statutory offense than his indictment because he had proper notice that he would be tried in his absence for trafficking crack cocaine.” *State v. Price*, Op. № 2024-UP-389 (S.C. Ct. App. filed November 27, 2024) at 2. The error being that Mr. Pride was entitled to relay upon the statute stated in his bond notice to provide him knowledge as to what charge upon which he would be tried in his absence. The Court further erred in saying the State called, “trafficking crack third offence,

charge 28 to 100 grams' at his bond hearing." *Id.* at 2. The transcript at the bond hearing was not part of the Record on Appeal. The notation referred to by the court is a reference that appeared on the bond papers. Nothing in the record suggests that this notation was called to the attention of Mr. Pride and therefore proper notice was not provided to him.

2. This Court erred in holding the failure of the trial judge to exclude the witness who should have been sequestered to be harmless. As noted in the opening brief, "The purpose of a sequestration order is to prevent the witnesses from hearing the testimony of other witnesses and colluding with each other." *State v. Williamson*, 74 N.C. App. 114, 117, 327 S.E.2d 319, 321 (1985). Neither this court nor the trial judge is in any positions to determine if the witness would have testified the same as his testimony at trial had he not heard the testimony of the other witnesses. The purpose of sequestration is to prevent a witness from tailoring his testimony.

3. This Court further erred in holding that Mr. Pride was not prejudiced because, "[T]he State established the chain of custody of the drugs as far as practicable without his testimony and his testimony had no effect on the result of the trial." *Id.* at 3. The problem with this analysis is that neither this court nor the trial court knows what the testimony of the witness would have been had he not heard the testimony of the other officers. "The primary purpose of a sequestration order is to ensure that the defendant receives a fair trial by preventing witnesses from shaping their testimony to corroborate falsely the testimony of others." *State v. Lowe*, 61 Conn. App. 291, 297, 763 A.2d 680, 684 (2001). This Court should not hold Mr. Pride received a fair trial as a matter of law when a witness violated the sequestration rule. In addition, having the opportunity to cross-examine a witness who violated the sequestration does not remedy the problem caused by a witness violating the order.

4. This Court erred in failing to hold that this case should have been controlled by *State v. Washington*, 424 S.C. 374, 409, 818 S.E.2d 459, 477 (Ct. App. 2018), *aff'd in part, vacated in part, rev'd in part*, 431 S.C. 394, 848 S.E.2d 779 (2020) In the case, this Court affirmed a ruling where a defense witness was excluded for a violation of the sequestration rule. In so ruling this court said, “[T]he trial court found defense counsel, as an officer of the court, was responsible for enforcing the order involving its witnesses.” *Id.* at 409, 818 S.E.2d at 477. By not reversing the case, this Court has said that a higher standard is applied to the defense side than the prosecution side. The assistant solicitor is as much an officer of the court as defense counsel. By the ruling in this case, the Court is not placing any sanction upon the prosecutor for failing to enforce the sequestration rule. Would this court have reversed the conviction in *Washington* had defense counsel argued the state would have the opportunity to cross-examine the witness or that the witness was not necessary to the defense case? The State elected to put the witness on the stand because they decided they needed the witness to completely explain the chain of custody to the court and the jury. The State did believe the testimony was necessary to complete the chain of custody. This Court should not now second-guess the State.

5. This Court erred in holding that the trial court was not required to charge the “hesitate to act” definition of reasonable doubt. The opinion in this case fails to recognize that trial counsel is the person in the best position to determine the closing argument they elect to make that gives their client the best chance for a successful out come. Here trial counsel wanted a particular definition of reasonable doubt, which has been recognized by the court, to enhance his closing argument. The trial judge denied this simple request. The trial judge specifically declined the request by defense counsel to charge “hesitate to act.” *Rec. on App.* at 167, ll 19-21.

This Court has acknowledged that the request of defense counsel was a correct statement of the law. When defense counsel requests a correct statement of the law to give his client the best chance of a successful outcome, this court should require the trial judge to give the requested charge. The law should be that the trial judge is required to give a legally correct charge that gives defense counsel the best opportunity for a successful outcome. Due process demands no less.

CONCLUSION

For the foregoing reasons this Court should rehear this matter and issue an order reversing the conviction of Tremaine O'Keefe Pride.

December 11, 2024



C. Rauch Wise
305 Main Street
Greenwood, SC 29646
(864) 229-5010
rauchwise@gmail.com
S. C. Bar № 6188

Attorney for
Tremaine O'Keefe Pride

The South Carolina Court of Appeals

The State, Respondent,

v.

Tremaine O'Keefe Pride, Appellant.

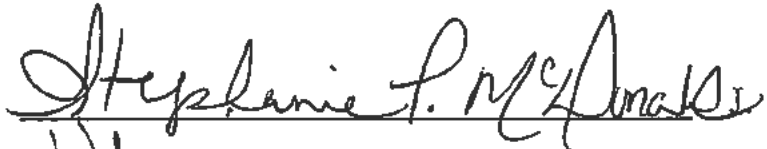
Appellate Case No. 2021-000486

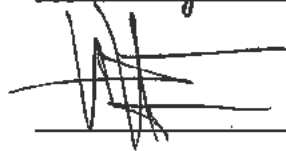
ORDER

After careful consideration of the petition for rehearing, the court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.



C.J.





J.

Columbia, South Carolina

cc:

Alan McCrory Wilson, Esquire
Clarence Rauch Wise, Esquire
David Matthew Stumbo, Esquire
Mark Reynolds Farthing, Esquire
The Honorable Donald B. Hocker