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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Supreme Court

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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

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APPENDIX INDEX

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RECORD ON APPEAL

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

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

EXHIBITS

	MARKED	ENTERED

NO EXHIBITS PROFFERED

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.

Pride.

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

THE COURT: Okay.

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

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

THE COURT: Okay.

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

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

THE COURT: Okay.

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

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

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

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

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

THE COURT: That's fine.

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

THE COURT: Right.

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

THE COURT: The most recent charge, the trafficking?

MR. HODGES: Correct.

THE COURT: Okay.

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

THE COURT: Okay.

MR. HODGES: Which is ---

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

MR. HODGES: Correct.

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

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

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

particular area.

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

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

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

So, you know, we were a little bit hamstrung

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

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

MR. HODGES: I think a different individual maybe.

THE COURT: Oh, maybe it's different?

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

THE COURT: Right.

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

THE COURT: Right.

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

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

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

THE COURT: Okay.

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

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

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

THE COURT: Right.

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

THE COURT: Right.

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

THE COURT: Right. Okay.

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

THE COURT: Sure.

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

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

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

MR. DOWTIN: Okay.

MR. HODGES: Okay.

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

MR. HODGES: Taggert Avenue, that's correct.

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

THE DEFENDANT: 920 Taggert Avenue.

THE COURT: 920. Who resides there?

THE DEFENDANT: My wife and kids.

THE COURT: Your wife and kids?

THE DEFENDANT: (Nods head up and down.)

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

MR. HODGES: Right. The Carolina Pride.

THE COURT: Carolina Pride?

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

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

MR. HODGES: Thank you, Your Honor.

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

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

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

MR. HODGES: Thank you, Your Honor.

MR. DOWTIN: Thank you, Your Honor.

THE COURT: Thank you.

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

--- THIS ENDS REQUESTED TRANSCRIPT ---

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

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 Dowtin, Assistant Solicitor
Demetri Andrews, Deputy Solicitor
Attorneys for the State

Andrew Hodges, Esq.
Attorney for the Defendant

Joy E. Holston
Official Court Reporter

E X H I B I T S

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

COURT REPORTER: Okay. Go ahead.

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

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

(Whereupon, a short break was taken.)

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

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

two offenses, trafficking in crack cocaine and resisting arrest. And I will read the allegations in the indictments to you. On the trafficking crack cocaine which is indictment 2018-GS-24-1481 reads as follows. The Defendant, Tremaine O'Keefe Pride did on or about April 18th, 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 and actual in constructive possession; or knowingly attempted to become in actual or constructive possession of 28 grams or more of crack cocaine in violation of section 44-53-375, subsection C, of the code of laws of South Carolina.

The resisting arrest indictment which is 2018-GS-24-1480 reads as follows. The Defendant, Tremaine O'Keefe Pride, did in Greenwood County on or about April 18th, 2018 knowingly, willfully and unlawfully oppose a Wesley McClinton while serving, executing or attempting to serve or execute a legal writ for process or did resist an arrest 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, subsection A, code of laws for South Carolina.

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

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

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

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

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

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

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

THE COURT: Was when?

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

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

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

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

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

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

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

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

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

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

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

COURT REPORTER: Judge, what was that?

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

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

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

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

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

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

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

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

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

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

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

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

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

THE COURT: Okay.

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

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

MR. HODGES: Yes.

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

MR. HODGES: Thank you, Your Honor.

*** END OF REQUESTED TRANSCRIPT OF RECORD ***

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENWOOD)

COURT OF GENERAL SESSIONS
2018-GS-24-01480
2018-GS-24-01481

STATE OF SOUTH CAROLINA,

vs.

TREMAINE OKEEFE PRIDE,
DEFENDANT.

TRANSCRIPT OF RECORD

ORIGINAL

December 11 and 12, 2018
Greenwood, South Carolina

B E F O R E:

THE HONORABLE DONALD B. HOCKER, JUDGE; and a jury.

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

DEMETRIOS G. ANDREWS, ESQ.
M. WADE DOWTIN, ESQ.
Assistant Solicitors

ANDREW M. HODGES, ESQ.
Attorney for the Defendant

HOLLIE M. JENKINS
Circuit Court Reporter

I N D E X

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

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E X H I B I T S

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

P R O C E E D I N G S

THE COURT: All right. We're on the record this morning in the State vs. Tremaine Pride.

PRE-TRIAL MOTIONS

THE COURT: We've have had a lot of discussion in chambers about some pre-trial issues. And we'll go on the record in just a little bit on those issues. But we have one remaining issue.

Mr. Hodges, I think you have moved to suppress the -- the drugs that are the -- the subject of this -- this case; is that correct?

MR. HODGES: That is correct, Your Honor.

THE COURT: Okay. Can you just -- and I've got a little bit of working knowledge about the basis for your suppression. But if you can just summarize where you're coming from for the record.

And I understand we need to take some testimony.

MR. HODGES: Judge, let me put my hands on this case. If I could approach.

THE COURT: Sure.

MR. HODGES: Essentially, where I'm coming from, Judge, is under the Fourth Amendment that the evidence in this trial would be fruit of the poisonous tree. The law enforcement officers in this particular matter had a warrant that they seized my client for. And then that led

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

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

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

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

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

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

MR. HODGES: It's still pending.

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

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

from the sheriff's office?

MR. HODGES: Correct.

THE COURT: Okay.

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

THE COURT: 361, what now?

MR. HODGES: S.C. 620.

THE COURT: 620.

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

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

MR. HODGES: Right.

THE COURT: Okay.

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

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

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

THE COURT: All right. Call your first --

MR. HODGES: I would call Captain Cody Bishop.

WHEREUPON,

CODY BISHOP,

after first having been duly sworn, testified as follows:

THE WITNESS: Good morning, Judge.

THE COURT: How are you doing?

THE WITNESS: Good.

How are you?

THE COURT: Good, good.

All right. You may proceed.

MR. HODGES: Thank you, Your Honor.

DIRECT EXAMINATION

BY MR. HODGES:

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

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

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

A Sure. Yes, sir.

Q And is the sheriff's office accredited?

A Yes, sir.
Q And the accreditation process requires that you have policies on, basically, everything to do with the operation of the sheriff's office?
A That's correct.
Q And those policies, I'm sure, are important. And they guarantee the safety of the public. Would that be fair to say?
A It would, yes, sir.
Q And, also, to ensure the trustworthiness of any investigations that the sheriff's office enters into?
A Yes, sir. Absolutely.
Q And you indicated that one of your duties is to discipline employees?
A Yes, sir.
Q As part of those duties, did you engage in an internal investigation with a former deputy by the name of Bryan Louis?
A Yes, sir, I did.
Q I'm going to hand you what's been previously marked as Court's Exhibit 2. I'll ask you to look at that document. Does that document contain the results of your internal investigation?
A Yes, sir.
MR. HODGES: Your Honor, I would offer Court's

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

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

BY MR. HODGES:

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

A He was a drug enforcement agent.

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

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

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

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

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

Q So, basically, that instead of the informants only

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

A Yes, sir. That was the allegation.

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

A I'm sorry.

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

A Yes, sir.

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

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

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

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

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

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

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

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

A Okay. Yes, sir.

Q Continuing investigation on Bryan Louis.

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

A Yes, sir.

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

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

throughout my career, yes, sir.
Q Okay. You indicate in your report that it appeared to you and to Lieutenant Russ that Agent Louis was being untruthful. What led you to that belief that he was not telling the truth about this investigation?
A The thing that caught my attention most is that he remembered all the fine details of all the investigations concerning this particular informant. But when it came to me asking him a question, he -- he couldn't remember, which was unusual.
Q And you -- you indicate later in there that it appeared that he was withholding pertinent information concerning --
A Yes, sir.
Q As a result of that, you set it up for him to take a polygraph; is that correct?
A I did. I, actually, you know, consulted with the sheriff, of course. And we set him up for a polygraph.
Q And one of the many policies that the sheriff's office has is that employees have to voluntary submit to those, if requested?
A That's correct.
Q Now, I'm not going to ask you what the results of the -- of the polygraph were. But you, actually, did not get any results from the polygraph; is that correct?

A I -- I think that that's correct in so many words, yes, sir.
Q All right. Your report indicates that, basically, he was using counter measures to prevent an accurate result from the polygraph exam?
A Yes, sir. Now -- now, my report just echos the report of the calligrapher.
Q Right. Which indicated that he was using some sort of breathing techniques or something to circumvent an accurate result?
A That's correct. It did.
Q The report -- or your investigation includes a document that is Policy 307 that indicates that you have to come to a disposition of the complaint. And that it can be unfounded, exonerated, not sustained, sustained, withdrawn, or misconduct not based on the complaint. What was the result? What was the disposition of this allegation?
A The disposition was that there was really not a formal disposition. There were several indicators showing, you know, untruthfulness. And that's what I reported back to the sheriff.
Q All right. And as -- as a result of this internal investigation, he was dismissed from the sheriff's office?
A Yes, sir.

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

A I am.

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

A Okay.

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

A It is.

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

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

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

undermined me.
Q Well, would you agree that his dishonesty is, certainly, not a trait that is desired by a police officer and you would hope to have officers that are being honest?
A Absolutely. It's not something I stand for, no, sir.
Q So, again, that -- that dishonesty in itself is a -- a factor that may undermine the investigations that he was involved in?
A Well, it's -- it's really hard for me to -- to answer that question with a "yes" or a "no." Because I -- I think that a human being can be dishonest on some things and honest on others.

So for me to say every investigation, it would be very difficult for me to testify to that. But he was dishonest in this circumstance I have reasons to believe.
Q And, specifically, dishonest about his use of informants in drug investigations?
A Yes, sir. You're correct.
Q I assume being the head of the drug enforcement unit, you are familiar with the investigations that occur under your watch?
A Yes, sir.
Q And the -- the investigation of the case that led to the ultimate arrest of Tremaine Pride that resulted in these charges was a distribution case that was made by

Bryan Louis; is that correct?
A That's -- yes, sir. That's correct. I know he was one of the agents. I don't think he was the only agent. But I -- I -- he was there, yes, sir.
Q Okay. So he -- he was -- Tremaine Pride was arrested on a warrant, I believe, signed by Agent Louis that then led to the discovery of the drugs that he's charged with in this case?
A Yes, sir. I believe you're correct.
MR. HODGES: All right. Please answer any questions that the Solicitor may have.
THE WITNESS: Yes, sir.
THE COURT: Okay. Solicitor Andrews.
MR. ANDREWS: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. ANDREWS:
Q Captain Bishop, good morning, sir.
A Good morning.
How are you?
Q This is a bizarre kind of arrangement. I've never had to cross-examine you before.
A Yes, sir.
Q So I'll try to be very gentle.
Sir, during the course of your investigation, did Bryan Louis ever admit to any misconduct?

A Well, he -- he made a statement that he didn't knowingly do anything wrong. But if he did, it was with no intentions. I don't know how you take that statement. But that's about the only thing that he said as admitting to any misconduct.
Q So is it fair to say that he -- he may have admitted to being negligent, but not doing something deliberately or intentionally?
A That's fair to say.
Q And even then, that was kind of hedged along the lines of if I did something, I didn't do it intentionally; is that correct?
A That's correct. Yes, sir.
Q Out of all this, did you ever refer the case for criminal investigation?
A No, sir.
Q Are you aware of -- where did Mr. Louis wind up? What's his current position? Do you know?
A He is working with Ware Shoals Police Department.
Q Do you know if he's -- he remains a certified officer?
A He does.
Q Okay. Do you have any familiarity with the case that we're trying today against Mr. Pride?
A I do. It's -- it's brief. I didn't have any

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

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

A Yes, sir.

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

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

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

A The case you're trying today.

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

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

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

A A minimum of two. Most of the time, we try to utilize, at least, half the unit.
Q Okay. Do you know if multiple officers would have been involved in the buy that Mr. Louis was involved in?
A Yes, sir, there was.
Q Okay. Who was the other officer involved in that?
A I believe it was Wesley McClinton.
Q All right. But you're not sure?
A I -- I'm not, to be honest with you. I know several guys had their hands in and out of that at some point or another. But I can't, specifically, name which ones were involved, no, sir.
Q All right. Well, let me -- let me be more specific. Sir, I'm going to show you -- and I wish I -- I had had the foresight to print this out. I'm going to show you a copy of warrant 20188241020035. If you would, just review that briefly.
A Yes, sir.
Q All right. Do you have any familiarity with this particular case?
A I don't.
Q Okay. How long have you been a captain over the sheriff's office?
A Since July of 2017, mid July. I want to say around the 17th, to be exact.

Q Okay. And it is -- is it sheriff's office policy to have, at least, two officers on a controlled buy?
A It is, yes, sir.
Q So based on the date of this incident, which would have been between April 3rd and April 4th, it's fair to say there would have been two officers on that controlled buy?
A Yes, sir.
MR. ANDREWS: Thank you.
Your Honor, no additional questions.
THE COURT: Any redirect, Mr. Hodges?
MR. HODGES: Very briefly.

REDIRECT EXAMINATION

BY MR. HODGES:
Q Would it be fair to say that your investigation was not specific to Mr. Pride's case, but more specific to the -- the general activities of Agent Louis as it related to his use of informants?
A Yes, sir. I think that would be fair to say.
MR. HODGES: That's all I have, Your Honor.
MR. ANDREWS: Just -- just very quickly.

RECROSS EXAMINATION

BY MR. ANDREWS:
Q Well, I mean, in fact, your investigation was very specific to a certain person, wasn't it? To a certain

informant; correct?
A It was, yes, sir.
Q Okay. Did that informant -- was that informant involved in these cases at all?
A Not to my knowledge at all, no, sir.
MR. ANDREWS: Thank you.
THE COURT: That was a female confidential informant, was it not --
THE WITNESS: Yes, sir.
THE COURT: -- Captain?
THE WITNESS: That's correct.
THE COURT: Okay. Thank you, sir.
You can step down.
MR. HODGES: Can I ask one question?
THE COURT: Wait a minute.
Okay. One more question.

FURTHER EXAMINATION

BY MR. HODGES:
Q Do you know if the informant in that underlying distribution is the same or -- or not? Or do you just not know?
A The -- the informant which Bryan Louis' investigation started between the informant with Mr. Pride?
Q Right.
A No, sir. I -- I have no knowledge of that.

Q You -- you don't know?
A No, sir.
MR. HODGES: Okay. Thank you, Your Honor.
THE COURT: Okay. You can step down, sir.
Thank you.
THE WITNESS: Yes, sir.
THE COURT: You say you had one short witness, Mr. Hodges, on this issue?
MR. HODGES: Yes. Lieutenant Russ.
THE COURT: Okay.
THE CLERK: Place your left hand on the Bible and raise your right hand.
WHEREUPON,
SCOTT RUSS,
after first having been duly sworn, testified as follows:
THE CLERK: You can take a seat.
THE WITNESS: Good morning, sir.
THE COURT: You may proceed.
MR. HODGES: Thank you, Your Honor.

DIRECT EXAMINATION

BY MR. HODGES:
Q Lieutenant Russ, were you as part of your --
THE COURT: Spell your last name for the court reporter.
THE WITNESS: R-U-S-S.

THE COURT: Okay.

BY MR. HODGES:

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

A Yes.

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

A Yes.

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

A That is correct.

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

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

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

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

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

BY MR. HODGES:

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

A Okay.

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

A Yes. I do remember this.

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

A At that point, yes, I do.

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

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

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

A That'd be a fair assumption.

Q And, essentially, without remembering specifics, that

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

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

Q Portions of it?

A Maybe a portion.

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

A That is correct.

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

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

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

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

So it wasn't a direct reflection upon something that

he had, actually, done himself.
Q Now, at the time, was he in the drug enforcement unit?
A Yes. I believe he was still in the drug enforcement unit.
Q All right. And the leaked information dealt with confidential informants and the use of confidential informants; is that fair to say?
A Right.
Q And as a result of that investigation in 2012, he was taken out of the drug enforcement unit and transported back -- transferred back to uniform patrol?
A I think that's correct, yes.
Q All right. Then at some point between 2012 and 2018, he was back in the drug enforcement unit, which then led to the more recent investigation and, ultimately, his dismissal; correct?
A At some point, he had to go back. I don't remember when he -- when he did.
Q But he was back and that's where he was when he was dismissed for this most recent investigation?
A Yes. I believe so.
MR. HODGES: All right. Please answer any questions that the Solicitor may have.
THE COURT: Solicitor, any questions?

MR. ANDREWS: Yes, Your Honor.

Thank you.

CROSS-EXAMINATION

BY MR. ANDREWS:

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

A I'm fine, sir.

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

A No.

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

A No.

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

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

A Yes.

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

A I'm not aware of it.

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

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

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

THE WITNESS: Thank you.

THE COURT: Anything in redirect, Mr. Hodges?

MR. HODGES: No, Your Honor.

THE COURT: You can step down.

Thank you.

THE WITNESS: Who gets this prize?

THE COURT REPORTER: Just lay it on the table.

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

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

MR. HODGES: Not provided with any testimony.

THE COURT: Okay.

MR. HODGES: Are you prepared to hear argument?

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

MR. ANDREWS: Well, Your Honor --

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

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

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

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

THE COURT: All right. Everybody be at ease.

(WHEREUPON, a break was taken.)

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

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

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

WHEREUPON,

CHAD COX,

after first having been duly sworn, testified as follows:

THE WITNESS: Judge.

THE COURT: Good to see you.

THE WITNESS: Good to see you.

THE COURT: You may proceed, Solicitor.

MR. ANDREWS: Thank you, Your Honor.

DIRECT EXAMINATION

BY MR. ANDREWS:

Q Good morning, sir.

Please state your name.

A Chad Cox.

Q And where are you employed?

A Greenwood County Sheriff's Office.

Q How long have you been there?

A About since -- about 20 years.

Q Okay. Were you recently in the narcotics division?

A I was.
Q Okay. Sir, I'm going to show you what's been marked as Court's Exhibit No. 7.
A So it's a warrant, a county warrant for Tremaine Okeefe Pride.
Q Okay. Is there an incident report attached to that?
A There is, having case number 189519.
Q Okay. What is the charge on that incident report?
A Distribution of crack cocaine third offense.
Q And who were the officers listed on that incident report?
A Agent Louis and myself.
Q Okay. Now, looking to Page 1 of that Court's Exhibit, sir, again, what --
A Are you talking about the warrant -- the warrant?
Q Yes, sir.
A Yes, sir.
Q And what's that warrant for?
A Distribution of crack cocaine third or subsequent offense.
Q Okay. And who was the affiant on that warrant?
A Bryan Louis.
Q All right. Was it your policy when you were in the narcotics unit to have multiple officers on a controlled buy?

A Yes. We don't -- we never did a controlled buy without, at least, two officers.
Q Okay. So were you and Mr. Louis the two officers on that controlled buy?
A It says I was. It says I was in the incident report.
Q Okay. Do you have any reason to doubt that the incident report is incorrect?
A I do not.
Q Okay. Sir, do you know why -- or are you aware of the circumstances of Mr. Louis' termination?
A I was not. I know there was an investigation and Captain Bishop handled all that. I was not privy.
Q Okay. Do you know any of the details of the investigation?
A I do not.

MR. ANDREWS: Thank you, sir.

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

THE COURT: Any cross-examination?

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

CROSS-EXAMINATION

BY MR. HODGES:

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

A I do not. I -- just reading the incident report. Because a lot of times when we would have our own cases, you may jump in there with somebody -- with another officer and do the drug buy. But I don't.
Q All right. And so would it be fair to say that this was a -- Bryan Louis' case?
A I would -- it would be fair to say that, yes.
Q He's the one that wrote the report?
A I'm sure.
Q His name appears at the bottom?
A At the bottom. So, yeah, I'm sure he wrote it.
Q All right. And -- and his name is the one that's on the -- the warrant seeking -- seeking a warrant from the judge?
A Yes, sir.
Q All right. So he would be the lead officer involved?
A Yes, sir.
MR. HODGES: All right. That's all the questions I have, Your Honor.
THE COURT: Okay. You can step down, sir.
MR. ANDREWS: Just brief redirect.

REDIRECT EXAMINATION

BY MR. ANDREWS:
Q Have you watched the video that's associated with this case, sir?

A Yes, sir, I did.
Q Do you have any reason to doubt any of the facts stated in the warrant or in the incident report?
A No, sir.
MR. ANDREWS: Thank you.
THE COURT: Thank you, sir.
You can step down.
THE WITNESS: Do you want this?
MR. ANDREWS: That's just a Court's Exhibit. So if you'd just leave it.
THE BAILIFF: Lay it on that desk there -- the table in front -- there you go.
THE COURT: All right. Does the State have anything further as it relates to witnesses on the motion?
MR. ANDREWS: No further witnesses, Your Honor.
THE COURT: All right. Mr. Hodges, I'll take some brief argument, if you'd like to make any.
MR. HODGES: Thank you, Your Honor.
As you've heard, Officer Louis was twice disciplined for his conduct regarding the use of CI's back in 2012 and, again, in 2018. I would note that this most recent investigation was around the same timeframe that Mr. Pride was arrested. And as you heard, the interview with him was on -- in May. His arrest was in April. So this -- this all was happening contemporaneously.

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

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

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

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

THE COURT: Thank you, Mr. Hodges.

Anything briefly, Solicitor?

MR. ANDREWS: Thank you, Your Honor.

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

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

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

THE COURT: Okay. Thank you very much.

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

The internal investigation was related to one

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

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

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

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

And I know I'm summarizing. I'm not stating in detail all your various arguments. 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.

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

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

The Wrapp case, I must make sufficient findings -- two sufficient findings. That, one, 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've had a wealth of conversations in chambers and -- and I have decided that any communication from an attorney to a client defendant as to notice of the date and time of a trial would not be violative of the attorney-client privilege if, in fact, that communication from the attorney to a defendant was disclosed.

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

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

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

THE COURT: Sure.

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

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

One of the exceptions to Rule 1.6 that states that a

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

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

THE COURT: Objection overruled.

MR. HODGES: Your Honor, I had a conversation with my client on October the 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. I have no way of knowing if he received the written communication from November 28th.

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

MR. HODGES: November the 28th.

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

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

THE COURT: Thank you.

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

findings that I must make under the Wrapp case, one, did Mr. Pride 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 Mr. Pride, and his written communication on November 28th.

Secondly, was Mr. Pride 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. 3, 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 Mr. Pride's absence.

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

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

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

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

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

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

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

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

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

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

So I just add those exceptions to the record.

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

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

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

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

brief housekeeping matter --

THE COURT: All right.

MR. ANDREWS: -- before you bring the jury out. Yesterday afternoon, Mr. Dowtin, and Mr. Hodges, and I discussed the potential redaction of the videos, anything objectionable in those videos that was on the audio portion. We thought the most efficient way to handle that was rather than giving it to our IT guy and having him take out the relevant portions, we would just be hitting the mute button at the appropriate time.

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

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

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

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

THE COURT: Oh, okay.

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

THE COURT: All right.

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

THE COURT: Yes. That's fine.

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

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

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

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

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

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

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

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

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

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

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

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

THE COURT: Right.

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

THE COURT: All right. Very good.

Thank you.

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

THE COURT: All right. Very good.

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

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

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

(WHEREUPON, there was no response.)

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

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

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

MR. HODGES: Thank you, Your Honor.

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

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

THE COURT: Okay. Are you okay?

MR. HODGES: I'm fine with it.

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

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

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

Good morning, once again, ladies and gentlemen.

I appreciate your patience and understanding.

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

Have -- have you decided on a foreperson?

(WHEREUPON, the jurors pointed.)

THE COURT: Okay. And tell me your name.

JUROR #96, JAMASON MARTIN: Jamason Martin.

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

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

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

THE CLERK: Yes, sir.

Everyone, please, stand and raise your right hand.

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

THE CLERK: You may be seated.

INTRODUCTORY REMARKS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

THE COURT: The Defense?

MR. HODGES: No objection, Your Honor.

THE COURT: Okay. Thank you very much.

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

All right. Is the State ready?

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

THE COURT: Okay. You may proceed, Solicitor.

OPENING STATEMENTS

MR. ANDREWS: Thank you, Your Honor.

May it please the Court.

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

crack before law enforcement, finally, got to him.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Thank you.

THE COURT: All right. Thank you, Solicitor.

Mr. Hodges, are you ready, sir?

MR. HODGES: Yes, sir.

Thank you, Your Honor.

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

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

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

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

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

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

these charges.

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

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

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

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

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

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

Thank you.

THE COURT: Thank you, Mr. Hodges.

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

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

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

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

(WHEREUPON, a break was taken.)

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

THE COURT: Let's bring the jury out.

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

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

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

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

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

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

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

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

(WHEREUPON, a lunch break was taken.)

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

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

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

THE COURT: All right. Solicitor --

MR. HODGES: -- prohibit that testimony.

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

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

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

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

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

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

MR. ANDREWS: Yes, sir.

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

MR. ANDREWS: Yes, sir, Your Honor.

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

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

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

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

THE COURT: Mr. Hodges.

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

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

MR. ANDREWS: Right.

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

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

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

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

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

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

THE COURT: No.

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

THE COURT: Right, right.

MR. ANDREWS: Thank you, Your Honor.

THE COURT: All right. Anything further?

MR. HODGES: Not from the Defense.

MR. DOWTIN: Nothing from the State.

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

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

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

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

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

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

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

WHEREUPON,

WESLEY MCCLINTON,

after first having been duly sworn, testified as follows:

THE CLERK: Thank you.

DIRECT EXAMINATION

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

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

A Yes, sir. That's Tremaine Pride.

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

A Yes, sir, it is.

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

THE COURT: Okay.

MR. HODGES: Without objection, Your Honor.

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

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

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

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

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

THE COURT: Okay. Yes.

BY MR. DOWTIN:

Q This is the individual you know as Tremaine Pride?

A Yes, sir, it is.

Q And this is the individual you made contact -- contact with on April 18th, 2018?

A Yes, sir.
Q All right. Going back to when you made contact with him, do you know where it was you made contact with Mr. Pride that day?
A It was on Gray Street. I believe it was 719 is the address.
Q And can you kind of describe that area for us?
A If you cut off and go onto Gray Street, on the right, there's a strip of apartments. I think it's four or five different residences. This one will be the first one on the right as soon as you come in contact with the apartments.
Q And is that in Greenwood, South Carolina?
A Yes, sir, in the city limits of Greenwood.
Q Were you alone that day?
A No, sir. Actually, there was two other narcotics agents with me at the time.
Q And if you could, tell us why you were in that area.
A We had gotten information that Mr. Pride may be in the area. We knew he had an active arrest warrant.
Q So you're in the area and you're aware that Mr. Pride had an active warrant. And do you come in contact with Mr. Pride at some point there?
A Yes, sir. When we turn on to Gray Street, we saw Mr. Pride sitting on the front porch -- or the front stoop

of 719 Gray Street.

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

A That day?

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

A No. I had seen him before.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

A Yes, sir.

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

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

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

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

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

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

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

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

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

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

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

hat and cell phone and locked the doors.

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

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

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

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

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

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

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

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

A Yes, sir.
Q And once you -- y'all counted up the money?
A Yes, sir.
Q Weighed the drugs?
A That's correct.
Q What happens with the evidence at that point? Where is it taken?
A It's then taken to the city police department evidence locker and secured in the evidence locker until Sargent Griffin, our evidence technician, can retrieve it and do her processing.
Q And do you know who submitted all these items into evidence?
A I did, yes, sir.
Q Do you remember the date that was done?
A It was the same date, the 18th.
Q And can you just briefly for us describe how that works? Like, do you hand it directly to somebody? Is it put in a locker? How's that whole process work?
A Yes, sir. If you could think of a different size locker like you have at school, they're -- you turn a knob, push a button, and that locker itself is secured. You take everything, put it in that locker, document what locker you put it in, and secure it. Nobody else has access to it but Sargent Griffin.

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

THE COURT: You can.

BY MR. DOWTIN:

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

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

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

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

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

A Yes, sir.

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

THE COURT: Okay.

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

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

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

BY MR. DOWTIN:

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

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

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

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

Q And then you submitted this?

A Yes, sir, I did.

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

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

THE COURT: Sure.

(WHEREUPON, a bench conference was held.)

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

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

BY MR. DOWTIN:

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

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

Q But you submitted that cash into evidence?

A Yes, sir.

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

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

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

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

Q But you, ultimately, submitted the scales --

A Yes, I did.

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

A Yes, sir, I did.

Q And when did that body-cam video come on?
A It comes on -- it's -- it's always on. Once you push the button, then the sound comes on to activate it. But it goes back one minute prior to you pushing the button. So it's, honestly, always recording, I think. And it doesn't, actually, play the sound until you push the button, yes, sir.
Q Agent McClinton, I'm going to show you what's been marked as State's Exhibit Nos. 5 and 6 for identification purposes. If you could, look at those and let us know if you're able to identify each of them.
A Yes, sir. These are the videos from -- I just, actually, looked at these yesterday and confirmed they were the videos.
Q And you -- so you had a chance to review them?
A Yes, sir. And I dated both of them 12/10/2018.
Q And this is an accurate representation of your body cam --
A Yes, sir.
Q -- from the incident?
A Yes, sir.
MR. DOWTIN: Your Honor, at this time, the State requests permission to move State's Exhibit Nos. 5 and 6 into evidence and publish to the jury.
THE COURT: Okay.

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

THE COURT: Right.

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

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

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

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

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

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

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

THE COURT: Sure.

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

THE COURT: That'll be fine.

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

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

THE COURT: Okay.

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

THE COURT: Okay. That's fine.

Mr. Hodges, do you have any objection?

MR. HODGES: No objection.

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

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

THE COURT: Sure.

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

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

THE COURT: Okay.

BY MR. DOWTIN:

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

A That's Agent Evans, Sammy Evans.

Q He has his vest on, it appears?

A Yes, sir.

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

A Yes, sir.

Q Did you have yours on as well?

A Absolutely.

Q Is the person sitting in that chair Tremaine Pride?

A Yes, sir, it is.

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

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

THE COURT: Okay.

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

THE COURT: Okay.

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

MR. HODGES: No objection.

THE COURT: Okay. Very good.

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

BY MR. DOWTIN:

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

A Yes, sir, it is.

MR. DOWTIN: Thank you, Agent McClinton.

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

THE WITNESS: Yes, sir.

THE COURT: Cross-examination.

MR. HODGES: Thank you, your Honor.

CROSS-EXAMINATION

BY MR. HODGES:

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

A It's possible.

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

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

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

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

A Yes, sir, it was.

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

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

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

A Yes, sir.

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

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

A That's true.

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

along this path that you took?
A That's correct.
Q In fact, you -- you indicated you found a paint ball gun. Apparently, y'all had some problem with people --
A We had a rash of people driving through that street, actually, that prior week and they were shooting up cars with paint ball guns.
Q Now, that didn't come from Mr. Pride?
A No, sir, it didn't.
Q And you found a jacket that looked like it was behind a back screen door, or something?
A Yes, sir.
Q Obviously, that didn't come from Mr. Pride?
A No, sir.
Q What was it that you were digging out of the pocket of that jacket?
A I believe it was a -- actually, a crack pipe in there and a push rod.
Q So some sort --
A There's a lot of drug use in that area.
Q Some sort of drug paraphernalia?
A Yes, sir.
Q And I think it looked like maybe you'd picked up some random baggies and --
A There was a bag of bullets laying on the ground near

the paint ball gun, yes, sir.
Q And -- and what other kind of stuff were you finding out there?
A I believe that was it.
Q It looked like maybe there were empty bags and, I mean, all kinds of --
A I'm not sure.
Q Okay.
A I searched pretty -- pretty hard.
Q All right. When you testified on direct, you indicated when he reached into his sock and threw something that you later found out what it was?
A Yes, sir.
Q Would it be fair to say you didn't know what he was getting out of his sock when he reached into his sock?
A Obviously, not, no, sir. I -- I just saw he reached down in his sock. And it looked like he switched it from his left hand to his right hand before throwing it.
Q Okay. You testified on direct that you locked the evidence that you had seized in -- in a vehicle. And I think we saw that on the video. Was there someone else in the vehicle when you --
A Lieutenant Brooks was in the vehicle. When -- when you saw that it was parked up at the top of the hill further away than it was when we, initially, got out, it's

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

So he was in the vehicle during that time.

Q Okay.

A That's who I was speaking with.

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

A Yes, sir.

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

A Yes, sir.

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

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

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

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

Q Are you provided with any kind of equipment to be able to -- to do that?
A Yes, sir. They give you a kit once you start on your own. And it's a brush and some dust, actually.
Q So that's something you -- I guess you keep in your vehicle with you?
A No, sir, not any more.
Q You don't keep that in your vehicle?
A No, sir.
Q All right. Would it be fair to say that you did not attempt to lift any fingerprints off of this bag or --
A No, sir, I did not.
Q All right. What is touch DNA? Do you know what that is?
A To the best of my ability in explaining it, if I touch something, they're able to swab it. And if they have a -- if they have your DNA on file on the CODIS system, they're able to match it up.
Q So basic -- so, basically, if you touch something, you tend to leave your DNA on it. And if it's swabbed and tested --
A That's my understanding. I just -- I have basic knowledge of it. I don't know a lot about that.
Q All right. You filled out a form. You talked about this paperwork that you did with the BEST pack?

A Yes, sir.
Q You filled out a form to request that SLED do the drug analysis; correct?
A Yes, sir.
Q Now, SLED, also, has other types of forensic experts that assist local agencies; right? I mean, that's, basically, what SLED does, they do drug testing for y'all, fingerprint testing, DNA testing. They've got --
A They do that, yes, sir.
Q They've got a bunch of scientists in --
A Yes, sir.
Q -- Columbia that do those sort of things?
So you could have filled out paperwork asking SLED to do DNA testing just like you asked for them to do drug testing; is that fair to say?
A This case would be far done and over with by the time DNA evidence came back. That would -- that's completely unnecessary in this case. It -- it takes sometimes 18 months to two years to get DNA evidence back. So that would have -- I would -- that would have never crossed my mind.
Q All right. I mean, are you suggesting the case is not important enough to do DNA testing?
A No, sir, not a bit. I'm suggesting -- I guess I'm not suggesting anything. When I observed him pull it out

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

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

A No, sir.

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

Thank you, Your Honor.

THE COURT: Anything on redirect?

MR. DOWTIN: Just briefly, Your Honor.

REDIRECT EXAMINATION

BY MR. DOWTIN:

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

A Absolutely not.

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

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

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

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

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

A No, sir.

MR. DOWTIN: No further questions, Your Honor.

THE COURT: Recross?

MR. HODGES: No, Your Honor.

Thank you.

THE COURT: You can step down, Officer.

All right. Solicitor, have you got another witness?

MR. DOWTIN: Your Honor, request permission from Mr. McClinton be excused or to be able to sit in.

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

MR. DOWTIN: The State calls Sammy Evans.

THE CLERK: Place your left hand on the Bible and raise your right hand.

WHEREUPON,

SAMMY EVANS,

after first having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. DOWTIN:

Q Agent Evans, if you could, please, introduce yourself to the jury.

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

enforcement unit with the Greenwood County Sheriff's Office.

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

A Since January of this year.

Q And how long have you been in law enforcement?

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

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

A I was.

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

A I do.

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

A Yes, sir. It's Tremaine Pride.

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

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

Q Is that in Greenwood, South Carolina?

A It's within the city limits of Greenwood.

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

A No. I had -- Agent McClinton was also -- got out of the car with me. And Lieutenant Whitfield Brooks was inside the car. He didn't -- he never exited the vehicle.
Q And if you will, just take us through what happened when y'all approached Mr. Pride?
A I approached Mr. Pride first. Up until that point, I wasn't -- I didn't know who he was. I asked him what his name was. He told me Tremaine Pride. I knew at that point, he -- he did, in fact, have a warrant for his arrest.

Agent McClinton told him to place -- one of us told him to put his hands behind his back. He was under arrest. He took off running toward Milwee, which is the direction we came from around the side of the apartments, across the back, across Gray into the Gain [phonetic] Street creek where he -- I, ultimately, put him in handcuffs in the creek.
Q And before you placed him in handcuffs, did you notice anything else?
A Yeah. When he got in the creek, he was reaching for something around his ankle. I drew my weapon. Once I confirmed he was not pulling a weapon, when I saw what was in his hand, I re-holstered. He threw what he had in his hand. Agent McClinton went and retrieved it while I placed Mr. Pride in handcuffs.

Q And when Mr. Pride's placed in handcuffs, do you -- did you, ultimately, search Mr. Pride?
A When I got him out of the creek, I did.
Q And were you able to locate any items on Mr. Pride?
A I pulled out a set of black digital scales and some money out of his pocket.
Q Do you recall approximately how much money it was?
A I believe it was -- it was $388, maybe.
MR. DOWTIN: Your Honor, permission to approach the witness.
THE COURT: Sure.
BY MR. DOWTIN:
Q Agent, I'm going to show you what's been marked as State's Exhibit No. 4 for ID purposes. Can you tell us what that is?
A It's a set of black digital scales.
Q Is that the set of scales you recovered off Mr. Pride?
A Yes.
MR. DOWTIN: Your Honor, permission to -- to move State's Exhibit No. 4 into evidence.
THE COURT: What says the Defense?
MR. HODGES: Without objection.
THE COURT: All right. Without objection, State's Exhibit No. 4 into evidence for the State.

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

BY MR. DOWTIN:

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

A Correct.

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

A Yes.

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

THE COURT: Sure.

(Pause.)

MR. DOWTIN: Thank you, Agent.

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

THE COURT: Cross-examination.

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

THE COURT: You may step down, sir.

THE WITNESS: Thank you, Your Honor.

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

Mr. Foreman, and, ladies and gentlemen of the jury, we'll take a little short afternoon recess. And I remind you, once again, don't begin any discussions about this case. And we'll get you back out shortly.

(WHEREUPON, the jury was excused from open court at approximately 2:43 p.m.)

THE COURT: Okay. We will take a 10-minute recess.

(WHEREUPON, a break was taken.)

THE COURT: Solicitor, it's my understanding that the next witness you intend to call is Whit Brooks with the sheriff's department; is that correct?

MR. ANDREWS: Yes, sir, Your Honor.

THE COURT: And, Mr. Hodges, you have an objection?

MR. HODGES: I do, Your Honor. As Your Honor recalls, yesterday, I moved for sequestration of all the witnesses. And the State conceded to that. During Officer McClinton's testimony, he testified on direct examination that he'd locked the evidence in this case in a vehicle.

I pointed out a break in the chain during cross-examination that there was actually -- the drugs were left in someone else's presence in the vehicle. And he identified that as Lieutenant Brooks, who was present during the balance of Officer McClinton's testimony about that chain of custody issue.

So I would object because of the violation of the sequestration rule to his testimony.

THE COURT: Well, I mean, we -- we had some communication in chambers. I don't know necessarily that

by virtue of Lieutenant Brooks being in the car with the drugs would necessarily be a break in the chain of custody.

But as it relates to a violation of the sequestration order, it's my view -- and, apparently, the Solicitor has alluded to Officer Brooks' testimony and it would not be related necessarily to something that's already been testified to. I think it would be in violation of the sequestration order if it's something different or something that has not been brought out.

So, I mean, that's -- what we can do, we can take in camera -- I think you indicated it's going to be very brief. We can take in-camera testimony and see exactly what's going to be asked and answered. And then we can -- we can revisit your objection.

MR. HODGES: Thank you, Your Honor.

THE COURT: Okay. So let's go ahead.

And, Officer Brooks, if you'll come and be sworn in. Take the stand. We'll do this in camera.

WHEREUPON,

WHITFIELD BROOKS,

after first having been duly sworn, testified as follows:

THE COURT: Solicitor, do you confirm that -- that Officer Brooks has been in the courtroom for your first two witnesses? I looked over there and saw him, but I,

certainly, don't know when he came in.

DIRECT EXAMINATION

BY MR. ANDREWS:

Q Lieutenant Brooks, when did you come into the courtroom during this trial?

A It was -- I believe it was fairly early on during Detective McClinton's testimony. I -- I can't say exactly how early into it. Because I don't know how much was heard before I walked in.

Q Okay. Were you present for the cross-examination?

A Yes, sir.

Q And, sir, I'm going to ask you about the substance of Officer McClinton's video. Do you remember the incident involving Mr. Pride, sir?

A Yes, sir, I do.

Q Which vehicle did Mr. McClinton arrive in?

A My vehicle. I was the driver.

Q Okay. And what's the make and model of that vehicle?

A I believe it's a -- it's either a '12 or a '13 Ford Explorer, gray.

Q I may need you to come off the witness stand here in just a second so you can watch this video.

A Yes, sir.

Can I step down, sir?

THE COURT: Sure. Yeah, yeah. Do what you need to do.

BY MR. ANDREWS:
Q Okay. I'm showing you -- hopefully, I'm about to show you what's been marked as -- well, what is State's Exhibit No. 5.
A Yes, sir.
(WHEREUPON, a portion of State's Exhibit No. 5 was played in open court.)
BY MR. ANDREWS:
Q Is this you in the driver's seat, sir?
A Yes, sir, it is.
Q I'm going to go along with the video here.
Is there somebody in the driver's seat of that vehicle, sir?
A That's me. You can see my forearm. It looks like -- almost like I had a phone in my ear. You can see my arm.
(WHEREUPON, State's Exhibit No. 5 continued to be played in open court.)
BY MR. ANDREWS:
Q And is that your vehicle?
A Yes, sir, it is.
Q Okay. Does anyone else, other than you, have access to that vehicle?
A No, sir. I was the only one with keys to it.
Q Okay. If you left that vehicle, would you lock it?
A Yes, sir.

Q Separate apart from this incident, do you normally leave your vehicle unlocked?

A Not -- I never leave it unattended and unlocked. Either myself or if another officer's in it, I may not lock it --

THE COURT: Officer Brooks, speak up since you're away from the microphone, please, sir.

THE WITNESS: I never leave it unattended and unlocked. If -- if I was in it or another officer was in it, I may not lock it. But if -- if it's unattended, I'm away from it and no other officer's in it, I would lock the doors always.

MR. ANDREWS: Your Honor, that's all the questions we have.

THE COURT: Do you have anything as far as in-camera testimony?

CROSS-EXAMINATION

BY MR. HODGES:

Q Officer, did you -- were you in the courtroom when Officer McClinton testified that he had locked the evidence in the vehicle?

A Yes, sir.

Q And you were present in the courtroom when I asked him on cross-examination about whether you were, actually, in the vehicle when the drugs were in there?

A Yes, sir.
Q You heard all that testimony?
A Yes, sir.
MR. HODGES: That's all I have, Your Honor.
THE COURT: Okay.

EXAMINATION

BY THE COURT:
Q Officer Brooks, did the drugs ever change location from where Officer McClinton put them in the vehicle?
A No, sir.
Q Okay. Has any of the testimony from the prior two witnesses had any influence whatsoever on the testimony you've given today?
A No, sir.
THE COURT: All right. We'll have to -- we'll bring the jury out. Then they'll recall you.
THE WITNESS: Yes, sir.
THE COURT: And your objection is noted for the record.
I'm going to find that, based upon what he's testified to, the sequestration order has not been violated.
Let's bring the jury out, please, Mr. Hamby.
(WHEREUPON, the jury came into open court at approximately 3:16 p.m.)

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

Solicitor, do you want to call your next witness?

MR. ANDREWS: Yes, sir, Your Honor. The State calls Whit Brooks.

WHEREUPON,

WHITFIELD BROOKS,

after first having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. ANDREWS:

Q Good afternoon, sir.

Please state your name for the record.

A Yes, sir. Whitfield Brooks.

Q And who do you work for?

A The Greenwood County Sheriff's Office.

Q And in what capacity are you employed there?

A I am the lieutenant in the narcotics unit.

Q Okay. How long have you been in the narcotics unit?

A February will be four years.

Q Okay. How long have you been -- are you the head of the narcotics unit?

A I'm the lieutenant from the sheriff's office side. There's, also, a lieutenant from the city police department side.

Q Okay. Did you expect to be in court today, sir?

A No, sir, I didn't.
Q When did you find out that you would be called as a witness in this case?
A Maybe 10 minutes ago.
Q All right. Were you present during the incident that occurred on April 18th of 2018?
A Yes, sir.
Q Okay. Sir, I'm going to show you some portions out of State's Exhibit No. 5 that is Officer McClinton's first body-cam video.
A Yes, sir.
Q All right. And if you need to -- if you need to come down off the witness stand to...
A Yes, sir.
(WHEREUPON, a portion of State's Exhibit No. 5 was played in open court.)
BY MR. ANDREWS:
Q Who's that in the driver's seat, sir?
A That's me.
Q Okay. And what -- what kind of vehicle do you drive?
A It's a gray Ford Explorer. It's either a '12 or '13 model.
Q Okay. Is that your work vehicle?
A Yes, sir. It's my county-issued unmarked vehicle.
Q All right. And I'll go to the end of this video.

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

BY MR. ANDREWS:

Q This vehicle in the background here --

A Yes, sir.

Q -- is that your car?

A Yes, sir.

Q Is there someone in the driver's seat?

A Yes, sir. You can -- you can see my forearm right there through the windshield. It's like it's kind of raised like I've got a phone in my ear, or something.

Q Okay. Does anyone else ever drive your car?

A No, sir.

Q All right. Are you the only one with keys to it?

A Yes, sir.

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

BY MR. ANDREWS:

Q Do you remember how long you stayed in the vehicle after Detective McClinton had placed those -- those items in there?

A Maybe a minute or so. I believe I'll be on video a little bit later when we were looking around trying to find any additional evidence.

Q Okay. Would you have left the car unlocked if you left it?
A No, sir.
Q All right. Separate apart from this case, just as a general principle --
A Yes, sir.
Q -- if you're not around the vehicle, do you leave it unlocked?
A No, sir.
Q All right. Did you handle those -- those items after Detective McClinton put them in the vehicle?
A No, sir.
MR. ANDREWS: Thank you, sir.
Please answer any questions the Defense may have for you.
THE WITNESS: Yes, sir.
MR. HODGES: I have no questions for the witness, Your Honor.
THE COURT: You can step down, sir.
Thank you.
THE WITNESS: Thank you, Your Honor.
THE COURT: Okay. Next witness.
MR. DOWTIN: The State calls Kenya Griffin, Your Honor.
THE COURT: Okay.

WHEREUPON,

KENYA GRIFFIN,

after first having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. DOWTIN:

Q Ms. Griffin, if you could, please, introduce yourself to the jury.

A I'm Kenya Griffin. I work for the Greenwood City Police Department.

Q And, Ms. Griffin, how long have you worked for the police department?

A 15 years.

Q And what is your current position with the police department?

A I am the crime scene and evidence technician.

Q And how long have you been the evidence technician?

A About 10 years.

Q Can you explain to us what some of your day-to-day responsibilities are as the evidence technician?

A I'm in charge of logging in and maintaining custody for any evidence that officers turn in.

Q And can you just briefly tell us, if an officer brings you evidence over at the police station, how does it, typically, work? Like, what do you do with it?

A There's two ways they can submit it. If I'm in the

office, they can bring it to me personally. They bring in an evidence sheet. They sign it over to me.

If I'm not in the office, we have a set of evidence lockers outside my office that they can put it in, put the evidence in with the evidence sheet, they lock it. Once it's locked, they can't get back in.

Q And can anybody just come and go as they please from the evidence room?

A No, they cannot.

Q Do you recall back on April 18th of 2018, receiving some evidence related to a case involving Tremaine Pride?

A Yes, I do.

Q And how would you be able to associate the pieces of evidence you received in that case to this specific incident? Like, is there a form, or anything?

A Yes. Any evidence that is submitted to the evidence room, the officer has to fill out a chain of custody or evidence report form. That report has a case number for the incident. And it, also, lists the evidence that they put in the locker.

Q And do you recall what all pieces of evidence you received that's related to this case?

A Yes, sir. There was a BEST pack, a cell phone, a set of digital scales, and some cash.

Q You said "BEST pack." What is that?

A It's the packaging that they have to put drugs in to be sent to SLED.
Q And do you recall who you received these pieces of evidence from?
A Officer McClinton put them in the evidence locker. And I retrieved them from the evidence locker the next day.
Q All right. And do you recall what day you received the items?
A April the 19th, 2018.
Q And just briefly, the evidence locker, how does that process work again?
A They put it in. There's a handle and a button. They turn the handle, push the button. And once they do that, it's -- the locker is locked. I have a key to unlock the -- the locker.
Q Ms. Griffin, I'm going to show you what's been marked as State's Exhibit No. 2 for identification purposes. If you could, take a look at that. And let us know if you're able to tell us what it is.
A This is the BEST pack that Officer McClinton turned into evidence.
Q And do you know the BEST pack number?
A B288009.
Q Did you ever do anything else with these drugs?

A They were taken to SLED. I believe April 27th, I took them down to Columbia to SLED.
Q And you just make that trip yourself?
A Yes.
Q Was that the only piece of evidence related to this case that you took to SLED?
A Yes.
Q And so when you get to SLED, what do you do with the drugs at that point?
A They're -- they have their own evidence lockers. I take it back, time stamp the forms, and put it in the locker and lock it.
Q And would you just be carrying the drugs out of the package in your hand and dropping them off?
A No. I would not.
Q They would be in that BEST pack?
A They would be in that BEST pack, correct.
Q And you said you received some cash in this case. What happened to the cash?
A The cash was turned into our finance department. Our policy is that any money that is seized has to be put into a -- an account. So it's turned into our finance department for deposit into that account.
Q And did you, ultimately, receive the drugs back from SLED?

A Yes, I did.
Q Do you recall what day that was on?
A I don't recall the exact date that that was on.
Q Is there any kind of document that that information is listed on?
A Yes. Once it comes back, I log it back into our evidence room with the -- the date that I received it back from SLED.
Q I'm going to show you an evidence property report and see if maybe this can refresh your memory on when you received the drugs back from SLED?
A They were returned from SLED on July the 19th of 2018.
Q And this is a form that your office frequently generates?
A Yes, it is.
Q After you received the drugs back from SLED, what do you do with them at that point?
A They're put into our narcotics safe where they stay until they're needed for court. Or once the case has been disposed of, then the drugs are disposed of.
Q So after you came back from SLED on the 19th of July, you placed the -- the drugs back into evidence. And they've stayed there until today?
A That's correct.

Q And the rest of the evidence just stayed in your custody the whole time?

A That's correct.

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

THE COURT: All right.

(Pause.)

MR. DOWTIN: Please answer any questions Mr. Hodges may have.

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

CROSS-EXAMINATION

BY MR. HODGES:

Q When you took this substance down to SLED, it's my understanding that you placed that into a -- a locker?

A That's correct.

Q So you don't -- you don't, actually, know who received it on the back end of that?

A No, I do not.

Q Okay. You testified that not only are you the evidence custodian, but you're, also, the crime scene technician?

A That's correct.

Q What does that mean?

A It means I'm responsible for responding and processing any major crime scenes such as armed robberies, homicides, or stuff like that.

Q Okay. And what sort of processing does that involve?
A Collecting any evidence such as DNA, fingerprints, taking pictures, collecting physical evidence.
Q Okay. So you are a -- a resource in the police department that is trained in those types of investigations?
A That's correct.
Q Do you do any evidence processing back in your office once evidence is submitted?
A Yes, sir. If an officer requests additional processing, I can process for latent prints or swabs from items for DNA.
Q Okay. In this particular case, did anyone ever request that you process any of the evidence for either fingerprints or DNA?
A No. They did not.
Q Is that something that could have been done?
A It could have, yes, sir.
Q And had you done that, then you would have submitted that to SLED as well?
A That's correct.
Q And am I correct that SLED has a number of different scientists or experts down there that process evidence in different ways, and that, basically, is an assisting agency to the police department?

A That's correct.
Q And so that is another resource that the police department has to further investigate and process evidence?
A Yes. That's correct.
MR. HODGES: All right. That's all the questions I have, Your Honor.
THE COURT: Anything on redirect?
MR. DOWTIN: Just briefly, Your Honor.

REDIRECT EXAMINATION

BY MR. DOWTIN:
Q Ms. Griffin, how often have you checked a bag of drugs for trace DNA?
A Not very often.
Q Or for fingerprints?
A Not very often.
MR. DOWTIN: Thank you.
THE COURT: Let me see the lawyers for just a minute.
(WHEREUPON, a bench conference was held.)
(WHEREUPON, State's Exhibit No. 9 was marked for identification only.)
THE COURT: Do you need to see that?
MR. HODGES: Yes.
THE COURT: Show it to him.
(Pause.)

BY MR. DOWTIN:

Q Officer Griffin, I'm going to show you State's Exhibit No. 9 for identification purposes. And if you could, take a look at this and let us know if you can tell what that is.

A This yellow sheet is our evidence form that the officer fills out when they submit their evidence. The second page is the Forensic Services Request form that I fill out requesting analysis on the evidence that I submit to SLED.

This page is the actual chain of custody that's in the BEST pack that the officer fills out, along with the analysis request that the officer, also, fills out. These two forms come in the BEST pack.

Q And that is, typically, stapled to the drugs and remains --

A Yes.

Q -- with it throughout the case?

A Once it comes back from SLED, I attach this paperwork to the -- to the BEST pack.

MR. DOWTIN: Your Honor, at this time, we would ask that State's Exhibit No. 9 be moved into evidence.

MR. HODGES: No objection.

THE COURT: All right. Without objection, State's Exhibit No. 9 into evidence for the State.

(WHEREUPON, State's Exhibit No. 9 was admitted into evidence.)

MR. HODGE: Just one follow-up question.

THE COURT: Oh, sure. Yeah.

RECROSS-EXAMINATION

BY MR. HODGES:

Q The second document you indicated was the -- what did you call it again?

A It's a Pre-Log Analysis Request form.

Q Okay. So it's, basically, you telling SLED what tests that you want --

A That's correct.

Q -- to have conducted?

Okay. And the only thing that's on here is drug analysis?

A That's correct.

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

THE COURT: Thank you, ma'am.

You can step down.

Next witness.

MR. ANDREWS: The State calls Shannon Sorrells.

THE COURT: You can be sworn in right there, please, ma'am.

THE CLERK: Place your left hand on the Bible and raise your right hand.

WHEREUPON,

SHANNON SORRELLS,

after first having been duly sworn, testified as follows:

THE CLERK: Thank you.

DIRECT EXAMINATION

BY MR. ANDREWS:

Q Good afternoon, ma'am.

Please state your name.

A Shannon Sorrells.

Q And what agency do you work for?

A I work for the South Carolina Law Enforcement Division, more commonly known as SLED.

Q And what do you do at SLED?

A I am currently a forensic chemist in the drug analysis department.

Q How long have you been there?

A I have been there 12 years, eight months.

Q And what are your duties there?

A As a drug chemist, I am in charge of maintaining a chain of custody of evidence, testing that evidence for the presence or absence of controlled substances.

Q And what type of training did you receive to qualify for that position?

A I have a Bachelor's Degree in Chemistry from the University of South Carolina. I, also, have a Master's

Degree in Analytical Chemistry from the University of South Carolina.

I spent my first eight years at SLED as a toxicologist. I did extensive drug and alcohol training in looking for drugs and alcohol, not just in substances, but in biological fluids, brain, liver, blood, urine.

I then switched over to the drug analysis department five years ago where I did another extensive in-house training on controlled substances and -- well, what's considered drugs under a senior chemist. I have attended multiple drug conferences, along with clan lab techniques and been trained in how to analyze clan lab substances.

Q In your experience with drugs, about how many times have you performed chemical tests -- or how many cases?

A It's hard to say exactly how many cases I've done. Last year, I worked close to 1,300 cases. I've been there for five years. So that's well over 10,000 cases -- well, I take that back, well, over 6,000 cases. Sorry.

Q Okay. And have you ever qualified as an expert in this field in General Sessions Court before?

A Yes, I have.

MR. ANDREWS: Your Honor, the State offers Agent Sorrells as an expert in the field of drug analysis.

THE COURT: Okay.

MR. HODGES: Without objection, Your Honor.

THE COURT: All right. Without objection, Agent Sorrells is found to be an expert in the area of drug analysis.

Mr. Foreman, and, ladies and gentlemen of the jury, ordinarily, witnesses are only permitted to testify as to things that they have directly observed, heard, seen, that sort of thing, and really not allowed -- except for a few situations allowed to render opinions.

However, when a witness is found to be an expert in a particular area because of education, training, experience, they will be permitted to offer opinions and the basis for those opinions. And Agent Sorrells will be allowed to do that in this case.

However, it's -- it's up to you to give whatever weight to Agent Sorrells testimony that you feel like is appropriate. You are to consider and weigh her testimony just like any other witness in the case.

You may proceed, Solicitor.

MR. ANDREWS: Thank you, Your Honor.

Your Honor, if I may beg the Court's indulgence. I just wanted to mark a couple of exhibits for identification.

THE COURT: Sure. Yeah.

(WHEREUPON, State's Exhibit Nos. 10 and 11 were marked for identification only.)

MR. ANDREWS: May I approach the witness, Your Honor?

THE COURT: You sure can.

BY MR. ANDREWS:

Q Ma'am, I'm going to show you what's been marked as State's Exhibit No. 2 for ID purposes. Do you recognize this item?

A Yes, I do.

Q Okay. Do you know who submitted it to you?

A I would have to go back and look at my notes as to who submitted it to me --

Q Okay.

A -- through the chain of custody.

THE COURT: Feel free to do that.

BY MR. ANDREWS:

Q Yes. And hold on. If I could...

A Get that out of the way?

Q Yes, ma'am.

A This was submitted to SLED by Kenya Griffin of the Greenwood Police Department.

Q Okay. Do you know when it was submitted for analysis?

A Based off of my chain of custody -- well, I don't have the date and time it was submitted. I have the date and time that it was logged in as a case at SLED.

Q Okay. While at SLED, would it have been continuously

under the custody, care, and control of SLED?
A Yes, it would have.
Q Okay. When this item reaches you, is it in tamper-resistant packaging?
A It is. So what you see here, if you can see this, this is what we call a BEST bag or a BEST kit. Best stands for best evidence sample testing bag. If you look on the sides, you see the blue rings that goes all the way down the back and along the bottom.

When I get it, we check these rings to make sure that they have not been cut, that all the lines line up together, that they have not been tampered with. So what it is not tamper proof, it is tamper evident.

In this case, I have written on the bag, Seal intact. If it was not sealed, of course, it would say seal not intact, and a notation would have been made on the report.
Q If you had gotten it back sealed not in intact, would you have tested the substance?
A We would have tested the substance. But, again, we would have notated on the evidence that the seal was not intact, the seal was broken. And we would have notated on the final report that the BEST kit was not properly sealed.
Q So were you the first person to break the seal once the BEST kit had been sealed?

A Yes. Each analyst is the -- the first person to break it and the only person that should break that seal, yes.

Q Okay. Now, I'm going to show you what's been marked --

MR. ANDREWS: Permission to approach, Your Honor.

THE COURT: Sure.

BY MR. ANDREWS:

Q State's Exhibit No. 10 for ID purposes, do you recognize that document?

A Yes. This is -- this is our actual electronic chain of custody.

Q Okay. And you'd agree with me there are a number of names on there?

A Yes, there are.

Q Okay. And a lot of names from SLED; correct?

A Yes, there are. Yes, that's correct.

Q Okay. Would any of those names, other than yours, have broken that seal?

A No, they would not.

Q Okay. Who else at SLED handled this item?

A When it was first brought into SLED, it was -- well, it was first touched by a Charlotte Pitts down in our log in department. And what she does is she takes the evidence and assigns it a case number. That's all she

does. And then she puts it in a hold bin until I call down there and say, I need this case.

So then I go down to her and -- or go down to our log in department and pick it up. In this case, I contacted a Jackie M. Davis. And Jackie -- when I went down there, Jackie personally handed this to me, electronically scanned it into her custody out of their intake storage, and then scanned it to me. And that's all they did.

Q Could I have State's Exhibit No. 10 back, please?

A (Witness complied.)

Q And, once again, did anyone at SLED, other than you, break this seal?

A No, they did not.

MR. ANDREWS: Okay. Your Honor, the State offers to -- the State moves to admit State's Exhibit No. 10 for ID purposes into evidence.

THE COURT: Okay. Mr. Hodges.

MR. HODGES: Without objection.

THE COURT: Without objection, State's Exhibit No. 10 into evidence for the State.

(WHEREUPON, State's Exhibit No. 10 was admitted into evidence.)

BY MR. ANDREWS:

Q Now, turning back to State's Exhibit No. 2 for ID purposes, did you conduct an analysis on State's Exhibit

No. 2?
A Yes, I did.
Q All right. What kind of test did you conduct?
A I -- well, the first thing that happens when it comes in the door is it gets weighed outside of all the packaging. As you can see, that's the packaging that it was in. It was taken out of this and weighed to get the actual weight.

After that is done, a chemical spot test is performed on it. All the spot test does is it gives a color reaction to kind of give us an idea of what we have. That spot test does not tell us right away what it is. After I have an idea of which direction that this could possibly be going in, I take a small portion of it and I do a gas chromatography mass spectrometry analysis on it to get a fingerprint of what this could possibly be.
Q Now, when you say a "fingerprint" -- there's been some talk. Could you explain what you mean by "fingerprint"?
A What we mean by a fingerprint is every drug that comes in has a specific break down within the gas chromatography mass spectrometer. It's bombarded with electrons. Depending on the molecular weight, it breaks down in a specific way. On a GCMS, it breaks down a specific way every single time, depending on the drugs.

It, also, comes out at a very specific time.

So based off of the -- what is called the mass spectrogram and the ions that we see, along with the retention time that it comes off of the instrument, we can say without a doubt what that substance is.

Q Do you have an expert opinion as to what State's Exhibit No. 2 is?

A This substance was found to be cocaine base, more commonly known as crack.

Q Okay. And what was the weight on that?

A The weight was -- hold on one moment. The weight was 29.06 grams.

MR. HODGES: May we approach, Your Honor?

THE COURT: Sure.

(WHEREUPON, a bench conference was held.)

THE COURT: What exhibit number is that, Solicitor?

MR. ANDREWS: Your Honor, this is State's Exhibit No. 11 for ID purposes.

THE COURT: Okay.

BY MR. ANDREWS:

Q Ma'am, I'm going to show you what's been marked as State's Exhibit No. 11 for ID purposes. What is State's Exhibit No. 11 for ID purposes?

A This is a copy of my report that was done for this case.

MR. ANDREWS: Your Honor, the State moves to admit State's Exhibit Nos. 2 and 11 marked for ID purposes into evidence.

THE COURT: Okay. And subject to our recent sidebar conference, State's Exhibit Nos. 2 and 11 will come in as evidence for the State.

(WHEREUPON, State's Exhibit Nos. 2 and 11 were admitted into evidence.)

MR. ANDREWS: Thank you, ma'am.

Please answer any questions the Defense may have for you.

THE COURT: Cross-examination, Mr. Hodges.

MR. HODGES: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. HODGES:

Q Agent, you mentioned that before becoming a drug analyst that you were in the toxicology department. What other departments are there at SLED? What other services do SLED -- does SLED provide to local agencies?

A I really only know the lab. We kind of stay there.

Q When you say the "lab," what does that mean?

A The forensics lab.

Q Okay. What -- what services does the forensics lab provide?

A We have a -- a crime scene department. I'm having to

go by floors. Crime scene, firearms, latent prints, DNA, trace, tox, drugs, computer crimes, question documents. I hope I have everybody.

Q In other words, there's lots of services that are available to local agencies for assistance?

A Yes.

Q And -- and yours is one of a number of different services available?

A That is correct, yes.

Q Okay. When we are talking about these types of substances, what -- what is a cut or cutting agent? Can you explain that to us?

A A cutting agent -- what we consider a cutting agent is, sometimes, the drugs come in, but they're not completely in pure form. They have what -- we say that they have been cut with another substance. They have been mixed with another substance.

Sometimes, that substance is something that's there to hold it together. Or what we've found out more often than not is if you get a -- a -- let's say you get a gram of cocaine, but you want to sell it. Well, now, if I mix it with, let's say, caffeine, which is a common cutting agent we see a lot.

Now, I can mix a gram of caffeine with it. And now I have two grams of what is cocaine. And you can't really

tell the difference between the cocaine and the caffeine mixed in. So now, you can sell a gram to two different people, instead of a gram to one person. That's what we call a cutting agent.

Q And is it pretty common through the different stages of distribution that cutting agents are added to, basically, bulk it before it's passed on to the next step?

A It is a common practice, yes.

Q Okay. What is the -- what's the difference between a quantitative analysis and a qualitative analysis?

A Quantitative analysis tells you how much is there -- is -- gives you an exact number. A qualitative analysis tells you what it is.

Q Okay. And what do you do when you do an analysis? Is -- is it one or the other, or both, or...

A It has recently changed with marijuana. But with cocaine and with all other drugs currently, except for marijuana, it is a qualitative analysis.

Q Okay. Which means what?

A Which means that we do not test to see how pure it is, based off of South Carolina law. We test to tell you what it is.

Q So, basically, you are just testing for the presence of some quantity of illegal drug?

A That is correct, yes.

Q In the total?
A That is correct.
Q But you are not testing for what is the purity of that particular substance?
A We do not test the purity of the substance. No, we do not.
Q Okay. You -- you testified about the chain of custody. Is that -- is your knowledge about that based upon the paperwork?
A Some on the paperwork, some on dealing with our log in department every day. And we do get taught how they are doing their steps, what they do day in and day out.

What's easy for our department is we have a sealed package that's brought in. We get the sealed package back. So they do not have any cutting into it. They just transfer it from one place to another just so that officers can drop it in the door, they can assign it a case, and then we can go down and get it.

Q Would it be fair to say, though, that this substance is passing through hands at SLED, and is not within your personal knowledge, and you're not -- you're not there when it's happening?
A I am not present when the outer bag is being moved from place to place. But I am the only one that, actually, touches the evidence.

MR. HODGES: Okay. That's all the questions I have. Thank you, Your Honor.

THE COURT: Anything on redirect?

MR. ANDREWS: Nothing on redirect, Your Honor.

THE COURT: Okay. Any objection to Agent Sorrells being excused?

MR. HODGES: No objection from the Defense.

MR. ANDREWS: Not from the State, Your Honor.

THE COURT: Okay. You're free to leave, ma'am.

THE WITNESS: Thank you.

MR. DOWTIN: May we approach Your Honor?

THE COURT: Sure.

(WHEREUPON, a bench conference was held.)

MR. DOWTIN: Your Honor, at this time, the State rests.

THE COURT: All right. Thank you very much.

Mr. Foreman, and, ladies and gentlemen of the jury, let's -- I need to kind of talk to the lawyers about a few matters, see how we're going to proceed. Consequently, I will need for you to go back to the jury room. And it may very well be we'll maybe adjourn for the day. I'm not sure. I just want to wait and see what the lawyers have to tell me.

So if you'll go back to the jury room. We'll get you back out shortly.

(WHEREUPON, the jury was excused from open court at approximately 3:57 p.m.)

THE COURT: Okay. Prior to the Court admitting into evidence the analysis report, State's Exhibit No. 11, and the actual drugs, State's Exhibit No. 2, the lawyers approached. We had a sidebar conference.

And, Mr. Hodges, you placed your objection to that coming in on a chain of custody analysis -- or not analysis, but basis for your objection. And we agreed to go -- that I would go ahead and let it in, but then have you put your objection on the record, but noting that your objection was made to the Court prior to the evidence coming in.

So I will -- I will hear from you at this time concerning that and then anything else you need to put on the record at this stage of the trial.

MOTIONS

MR. HODGES: Thank you, Your Honor.

Your Honor, on May the 24th of 2018, when I filed my Rule 5 and Brady requests, I, also, filed under Rule 6 or rules -- specifically, under Rule 6(b) demanding the appearance in court of all persons within the chain of custody of any evidence. We have not heard from the -- the full chain in the case. I think there were a number of gaps in the chain.

The analyst testified that she didn't know -- at least, didn't have personal knowledge of who all the substances came through.

So my motion would be that it was a -- my objection was it's an insufficient chain of custody presentation by the State. And, therefore, the drugs should not be admitted.

THE COURT: Let me just -- just take a peek at that rule.

(Pause.)

THE COURT: Okay. Solicitor, talk to me about Rule 6(b).

MR. ANDREWS: Your Honor, if I could...

THE COURT: If you need a few minutes, that's fine.

MR. ANDREWS: Yes, sir. Really, what we would be citing to, Your Honor, is State v. Brockmeyer.

THE COURT: Right.

MR. ANDREWS: And that is 406 S.C. 324.

THE COURT: The State v. Brockmeyer discussed Rule 6(b)?

MR. ANDREWS: Well, Your Honor, really, it goes to the issue of the log establishing the chain of custody for items recovered by investigators and law enforcement was not testimonial in nature and, thus, custodian's testimony about chain of custody items did not implicate defendant's

confrontation under Crawford.

As you heard the analyst say, none of these people are people who, actually, broke the seal on the tamper-evident packaging. You did hear from Agent McClinton, who seized the evidence. You heard from Agent Brooks, who was present.

THE COURT: Right.

MR. ANDREWS: You -- you heard from Sergeant Griffin, who collected the evidence. And then you heard from Agent Sorrells, who, actually, tested the evidence.

THE COURT: Right. So would 6(b) come into play only if the analysis -- or the one doing the analysis, their report comes in without live testimony. And in that case -- I'm just looking. Let's -- let's set State v. Brockmeyer aside. Okay.

MR. ANDREWS: Yes, Your Honor.

THE COURT: So Rule 6, it can come in without the one conducting the analysis. It can come in without the person testifying, unless the Defendant objects.

And then if the Defendant objects, then you've got to have the -- the one who did the analysis to come and -- and testify personally.

MR. ANDREWS: Yes, sir, Your Honor.

THE COURT: So 6(b) kicks in, as -- as I read it. And you guys are smart. You can -- you can help educate

me. I read 6(b) to kick in as far as sworn statements signed by each successive person having custody of the evidence. That there be a sworn statement from potentially these other people.

MR. HODGES: What I -- what --

THE COURT: That's the way I read it.

MR. HODGES: What I'm looking at, Judge, is the very last sentence in Subsection B. It says, The Defendant or his attorney may demand appearance in court of the persons within the chain of custody in the same manner provided in Section A.

And that's, specifically, what my Rule 6 motion says that I filed is that pursuant to Rule 6(b), the Defendant hereby demands the appearance in court of all persons within the chain of custody with the evidence.

So that was my objection to the admission of the drugs is that we have not heard from all the people in the chain of custody.

THE COURT: Well, we -- we know that it's the law in South Carolina that not everybody has to testify within this "chain of custody." I'm just trying to figure out how Rule 6 fits into that.

So when you say the Defendant or his attorney may demand the appearance in court of the persons within the chain of custody, is that chain of custody meaning every

person that shows up on the SLED report, or the legal chain of custody, which does not necessarily mean everybody? Do you see what I'm saying?

MR. ANDREWS: Right. And, Your Honor, it would be our position that it's anybody who's got -- I guess for lack of a better term, a substantial investment in the chain. Like, you heard Agent Sorrells testify. There are people who just move the bag around.

THE COURT: Right.

MR. ANDREWS: And she testified that it's in tamper-evident packing. So she would have known if anyone other than her had broken the seal.

THE COURT: Okay.

MR. ANDREWS: Your Honor, if you could give us just a couple more minutes maybe to address this issue.

THE COURT: Sure. That's fine.

(Pause.)

MR. ANDREWS: Your Honor --

THE COURT: Hold that thought, Solicitor, if you would, for just a minute for me, please.

MR. ANDREWS: Yes, Your Honor.

(Pause.)

THE COURT: Okay. Let's go back on the record.

Solicitor, you wanted -- you came across something you wanted to address?

MR. ANDREWS: Well, Your Honor, yes. I just wanted to cite State vs. Joseph.

THE COURT: What's that cite?

MR. ANDREWS: 328 S.C. 352. And in that case, that does address a violation of Rule 6.

THE COURT: Okay. Let me pull that one up.

(Pause.)

THE COURT: Okay. The way -- the way I read -- and I've looked at the Joseph case, Brockmeyer. In reading Rule 6 and 6(b), the requisite chain of custody witnesses, the Defense can require them to be present. I don't think that says or means that everybody on the -- on the SLED chain of custody sheet -- in this case, I think two, one who logged it in and assigned it a number, and then one who logged it out and gave it to the chemist. I don't think that means all those people, too.

I think -- for example, let's say Officer Griffin, who was the evidence custodian here, certainly, you could require her presence and not have an affidavit submitted in lieu of her testimony.

So I think 6(b) allows you to require all necessary chain of custody witnesses to be present. And all necessary chain of custody witnesses have testified in this case. And under Brockmeyer and some of the other cases, it doesn't require that everybody -- that those who

gave it a number has to come and testify.

So I'm going to deny your request. I am, however -- because it's been a while since Rule 6 has been -- has been argued before me, I'm going to look at it a little bit further.

But my -- my initial ruling, Mr. Hodges, is to deny your motion to exclude the -- State's Exhibit Nos. 11 and 2 coming into evidence based upon that. But it's -- I'm going to look at it a little bit further.

MR. HODGES: Thank you, Your Honor.

THE COURT: Okay.

MR. HODGES: One other housekeeping matter. I don't know what State's Exhibit number it is, it's the cell phone. It's State's Exhibit No. 3. When that was admitted, we had a sidebar. And I raised the exception, I guess, that I had no objection to the admission, as long as the jury did not have the ability to go into the phone. There's a whole line of cases that talks about --

THE COURT: Right.

MR. HODGES: -- search warrants on phones. And I haven't been provided any kind of phone dump. And the Court ruled at sidebar that it would be admitted, but the jury would not be able to access any contents inside of the phone.

THE COURT: Right.

MR. HODGES: I just wanted to clear that up on the record.

THE COURT: Right. It's -- it's been put into evidence that this was just something that was found at the -- at the scene. And -- and I'll -- I'll just instruct the jury that they cannot open the envelope that the phone is in. They can look at it. And, you know, that's the -- that's the extent.

MR. HODGES: And then at this stage, Judge, I would move for a directed verdict of not guilty on these two charges and renew my motion to suppress, based upon my earlier arguments about the -- the unreasonable search and seizure, the fruit of the poisonous tree. And that the Defendant had the right to resist an unlawful arrest.

THE COURT: All right. I will respectfully deny your motion and the renewal of your motions.

Based upon my prior ruling and on your motion for directed verdict, viewing the evidence in the light most favorable to the State, the Court finds that there does exist sufficient evidence to send this case to the jury. We're just concerned with the existence of evidence and not with the weight.

All right. We're going to bring the jury out.

The State, you've already rested on the record; right?

MR. DOWTIN: Yes, Your Honor.

THE COURT: You've already rested on the record.

Bring the jury out. And I think it's your intention not to put up a case; correct?

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

THE COURT: Okay. And the Defense can rest. And then we'll send the -- the jury home for the afternoon. And I'm going to have them come back just to give us enough time to deal with the charge at about 10:30, I think, have the jury back.

And we can have an informal conference this afternoon for a little bit.

Okay. Let's bring the -- bring the jury out.

(WHEREUPON, the jury came into open court at approximately 4:19 p.m.)

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

Mr. Hodges.

MR. HODGES: The Defense rests, Your Honor.

THE COURT: Okay. Very good. The evidentiary record in this case is now closed.

Ladies and gentlemen of the jury, what we have left to do -- and this is going to be tomorrow is the lawyers will make their closing arguments to you. And then I will charge you the law applicable to -- to this case and what

you are to consider. And -- and then I will instruct you after that to begin your -- your deliberations. We'll do all that in the morning.

We have some work to do on the case that does not involve you directly. Therefore, you will not need to be here until 10:30 in the morning. Be sure to be prompt.

And, again, there's my -- my instruction not to have any discussions about this case among yourselves or with anybody that you come into contact with. I remind you of the prohibition against any independent research into this case.

And we will see you in the morning at -- at 10:30. Have a good nights rest. And have a good -- have a good evening.

(WHEREUPON, the jury was excused from open court at approximately 4:21 p.m.)

THE COURT: All right. We'll take a little break. And then we can kind of start chatting about charges.

(WHEREUPON, the proceedings were concluded at approximately 4:22 p.m., to be reconvened on Wednesday, December 12, 2018.)

WEDNESDAY, DECEMBER 12, 2018

THE COURT: We're -- we're back on the record.

In -- two things. One, I want to -- to supplement my ruling as it relates to the Defense's objection as to chain of custody. And I want to cite and -- and rely on State vs. Hatcher. That's 392 S.C. 86. And it just further supports my ruling.

And I want to quote from State v. Hatcher. It found that the State was not required to, specifically, identify every individual who handled drug evidence in order to establish change -- chain of custody.

And the State vs. Hatcher even went further and said that the practice -- and this is in another case, I can't recall the name of it -- of identifying those who handled -- identifying everybody who handled the -- the fungible item, the drug, whatever that's being tested and their role didn't even have to do that so long as you had everybody necessary to testify to establish chain of custody. That was enough.

So in this case, we had all the necessary people to testify to establish the chain of custody.

So I just wanted to supplement my ruling on -- on that, not to -- to relitigate or reargue that particular objection, but just to further support my ruling.

All right. Secondly, concerning the charge. We had

an informal charge conference yesterday afternoon in chambers wherein Mr. Hodges had requested the Court to charge the lesser included offense of possession with intent to distribute, as well as simple possession.

And after a considerable amount of discussion, I declined to -- to charge that, basically, relying on State vs. Grandy, 306 S.C. 224, and Statute 44-53-392. Basically, Grandy holding that when the weight is not in dispute -- it's not in dispute in this case -- that the lesser included offense or offenses should not be charged.

So I've declined Mr. Hodges' request.

Anything else you want to put on the record on that point?

MR. HODGES: Just one clarification.

THE COURT: Sure.

MR. HODGES: I believe I had just asked for the lesser included possession, not possession with intent.

THE COURT: Oh, okay.

MR. HODGES: And the -- the other thing I had asked for that the Court had indicated you declined to charge was the hesitate to act.

THE COURT: Right. Just leave the firmly convinced language.

Also, I think with everybody's agreement, I took out any constructive possession language that normally appears

in the standard charge. But in this case, there was not any. So by agreement of both sides, I -- I took that out.

And I think that covers everything that we discussed as far as the charge; correct, gentlemen?

MR. HODGE: I believe that's correct, Your Honor.

MR. DOWTIN: That's correct, Your Honor.

THE COURT: Very good.

All right. We're going to be down until 10:30. I was a little -- I don't know why I said -- I guess I thought maybe we needed more time to do whatever we needed to do.

But, anyway, we'll be in recess until 10:30.

(WHEREUPON, a break was taken.)

THE COURT: Let's bring the jury out, Mr. Hamby.

(WHEREUPON, the jury came into open court at approximately 10:35 a.m.)

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

Good morning, ladies and gentlemen.

All right. Here's what we have left to do today. The lawyers will make their closing arguments to you. I will charge you the law that's -- that applies to this case. After that is done, I will probably send you on for a lunch break. It might be a little bit longer lunch break and then a designated time for you to come back.

Don't start your deliberations when you come back. Because I still have all 14 of you in there. Then I'll bring you out and give you some further instructions.

So this is the last time the lawyers have an opportunity to advocate for their respective sides, so, please, give them your undivided attention.

Solicitor, are you ready?

CLOSING ARGUMENTS

MR. DOWTIN: Thank you, Your Honor.

May it please the Court.

Ladies and gentlemen, before I get started, I just wanted to thank each of y'all for being here. Without y'all, this whole process is not even possible. Y'all have a huge role in this case, as the Judge told you and is probably going to tell you again. Y'all, ultimately, determine the facts of the case, based on the evidence that's presented from this witness stand and the exhibits like the video, and the -- the drugs, the scale that are presented to you.

So thank y'all very much for being here.

This, hopefully, should finish up today. And as -- as the Judge just indicated, this will be the last time you hear from me. I'm going to try and keep it as brief as I can.

Y'all are aware of what Mr. Pride is charged with.

Mr. Pride is charged with trafficking crack cocaine 28 grams or more, but less than a hundred grams. We heard the weight from the SLED analyst. It's not in dispute what the weight was, 29.06 grams. He's, also, charged with resisting arrest.

Now, as you heard, the burden is on us to prove beyond a reasonable doubt Mr. Pride's guilt. Beyond a reasonable doubt is that you're firmly convinced of the Defendant's guilt. It doesn't mean beyond all doubt or any doubt. But just that you're firmly convinced of Mr. Pride's guilt.

So what do we have to prove to you beyond a reasonable doubt? I'm going to read for you what the law says and what Judge Hocker's going to read to you after Mr. Andrews -- or Mr. Hodges is done with his closing argument.

Starting with trafficking crack cocaine, it says, The State must prove beyond a reasonable doubt that the Defendant was knowingly in actual possession of crack cocaine. And there is some more language as far as that the Defendant sold, manufactured, cultivated. But it's our position that doesn't apply here. What you should focus on is that he was in actual possession of the amount required to be considered trafficking, according to the law.

So he was knowingly in actual possession of crack cocaine. And that the weight of that crack cocaine was 28 grams or more, but less than a hundred grams.

And you'll, also, hear that it doesn't have to be a hundred percent pure crack cocaine. It says it can be in its pure form or it can be a mixture of crack with whatever else. It can be salt, baking soda, whatever. It's -- it can be a mixture. And, again, we heard from the SLED analyst, 29.06 grams of crack cocaine, positive crack cocaine.

Actual possession. That's pretty -- pretty straightforward, ladies and gentlemen. You got to see the video. It's in his possession when it's on him, when he reaches down in his sock, when he puts it in his hand, and he throws it. That's actual possession. That is, actually, on the Defendant. It's pretty straightforward.

As far as resisting arrest, the law says we must prove beyond a reasonable doubt that the Defendant knowingly and willfully opposed or resisted a law enforcement officer in serving, executing, or attempting to serve or execute a legal writ or process, an arrest warrant in this case.

You heard from law enforcement. They had heard Mr. Pride was in the area. They see Mr. Pride. They have an active warrant for Mr. Pride. They approach Mr. Pride.

They tell him, Hey, can you give us your name? You're under arrest. You need to come with us. And at that point, Mr. Pride runs. Again, I'm not going to go through all that. You heard the testimony. You've seen the video.

He was aware it was law enforcement. That's why he ran. He was -- he ran because he knew it was law enforcement. And he ran because he knew what he had in his pocket and he knew what he needed to get rid of. He didn't think it was a bag of sugar in his pocket, some salt. He knew what he had on him. And he, also, had a scale in his possession and $388 in cash.

So, again, I kind of hit on the points about how we proved our case.

We called Agent McClinton and Agent Evans. They testified to you why they were there. You got to see everything on the video. The crime is on video. So I'm not going to rehash all their testimony. But you heard from them what is confirmed on the video. It's pretty rare we have a video of a crime, basically, from start to finish. Everything is there.

I'm going to -- I'm not going to play the whole video again. I'm just going to show you the -- basically, two minutes that, actually, has the crime on there of Mr. Pride running. I'm going to slow it down for y'all where

you can see him reach down in his pocket, throw the bag of crack through the air.

And excuse my -- I guess my use of this, but the -- the officer, basically, you know, bird dogs it. He sees the drugs fly through the air. He immediately goes over to it, looks down, and there's the bag of crack. It's -- it's -- 30 grams of crack is not just going to be sitting around. I don't really -- you know, where it's at -- the area it's in, it's -- you're not going to just have 30 grams of crack randomly laying on the ground.

And, more importantly, there's the video showing he threw it there. And the officer immediately picks it up, puts it in evidence. It's, ultimately, sent to SLED, tested, confirmed crack cocaine, 28 grams or more. It's 29.06 grams to be exact in this case.

Why did the Defendant run? We have to -- part of it is we have to show he knew what he had on him. Again, he ran because, one, he knew there was an arrest warrant for him. And, two, because he knew what he had on him.

You can see in the video when he's walking in the creek, he's got to be, what am I going to do with this? I have this in my pocket. What am I going to do? He reaches in his pocket, throws it away to get him off -- to get if off of him. Because he knows what he has in his possession. If it was something that was not an illegal

substance, I doubt he'd be trying to throw it and get it off of him.

Now, Defense Counsel, they kind of talked about the -- with the SLED agent on cross, hey, can you -- can you talk about the purity? Like, can you tell us exactly the purity of these drugs? She said, no, we don't do that. And that's because the law says it doesn't matter. Once it's confirmed that it's crack cocaine, whatever it's mixed with, that does not matter. You take the weight of all of it. Again, the weight is 29.06 grams.

Defense Counsel briefly mentioned trace evidence. You heard from Ms. Griffin from the Greenwood Police Department, the evidence technician. They don't do trace evidence on a bag of drugs. You see the bag. The drugs were in it right here. It's a little bag.

It, basically, just looks like some saran wrap, if you will, wrapped in. It's confirmed on the video that's what it's in. It was taken out and it was put in the bag that it was weighed in by Agent McClinton where he weighs it and it's 30.84 grams because he's weighing it in the bag. It's taken down to SLED. They weigh the drugs. It's not in the bag. It's just the actual weight of the -- the crack, 29.06 grams.

So if you see this, that's what Mr. McClinton testified to. He weighs it, that's what he got. But the

number you should be concerned with is SLED, ultimately, said it was 29.06 grams.

At this point, ladies and gentlemen, that's -- that's our case. I'm going to show you the crime on video one more time. I think it's a couple minutes long. And I'll pretty much wrap it up after that.

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

MR. DOWTIN: You can see Mr. Pride sitting right there. He's been identified. I'm just going to slow it down for you here.

(WHEREUPON, a portion of State's Exhibit No. 5 continued to be played in open court.)

MR. DOWTIN: You can see the drugs on the ground that Agent McClinton's picking up. And there's State's Exhibit No. 2 in his hand, 29.06 grams of crack.

Ladies and gentlemen, that's the case. Everything is right there on video. I'm not going to stand up here and talk any longer. I'm just asking that you find Mr. Pride guilty of trafficking crack cocaine 28 grams or more, but less than a hundred grams and resisting arrest.

Thank you very much for your time.

THE COURT: Thank you, Solicitor.

Mr. Hodges, are you ready, sir?

MR. HODGES: Yes, sir.

Thank you, Your Honor.

You never know what you might find. You may remember Officer McClinton saying that on the video. You never know what you might find out here. You may recall that he testified this was what they call a high drug area. He said there's lots of drug activity going on in this particular area.

And I want you to think about when the officers are searching back behind this apartment complex and looking along this path. Think of all the stuff that they found just in that short search. They found a paint ball gun. They found a bag of bullets. There was a jacket behind the screen door that had drug paraphernalia in it. Lots of stuff that was in this area. You never know what you might find.

Well, they, also, found this bag in a bunch of debris behind this house. And it begs the question, I mean, you can't tell what is thrown. All right. So it begs the question, is that bag that the officer went and picked up what he threw?

It's pretty easy for the State to answer that question. There's a couple of ways that they could have answered that question beyond a reasonable doubt to your satisfaction. One way is with latent prints. You know, each one of us is unique. And we all have unique

fingerprints. The tips of our fingers are all different. If you look at them closely, you've got all these swirls and whirls on your fingers. And when you touch something, the oils in your fingers are going to leave a print of those ridges and those valleys on your fingers.

And you heard Sergeant Griffin, who is the police department crime scene technician, say that she's got lots of equipment over there at city hall that she can use to develop fingerprints. They didn't do that in this case. She said they could have. Nobody asked her to do it.

There's, also, a thing called touch DNA. And DNA is, basically, our genetic fingerprint. It's the -- the material that's in each cell in your body. And it makes me different from each one of you. And it's like a fingerprint because it's unique to each one of us.

When you touch something, your DNA transfers to that object, oil from your hand, sweat, skin cells, all of those cells from your body transfer to whatever you touch. And it's called touch DNA.

And you heard Sergeant Griffin tell you she's got the swabs. She's got the equipment over there to do DNA testing. You heard the SLED expert from Columbia tell you they've got all kinds of experts and chemists down there in four different floors worth of labs and departments that can do all of this testing, that can assist local

agencies in this forensic testing. And the police department didn't do that.

The Solicitor asked her on redirect, well, you know, how often do you do that in drug cases? Rarely. Well, I mean, is that an excuse that, well, they didn't do it in this case because they don't do it in other cases? You know, if they've got the equipment over there to bring you that kind of evidence, why didn't they?

You know, the -- the State has got the burden of proof. And I submit to you that they have got the obligation to bring you the strongest case that they can bring you to convince you beyond a reasonable doubt. They could have done that in that -- in this case. And for whatever reason, they didn't do it. They didn't bring that evidence to you and they could have.

And, you know, if they had fingerprints on the bag or they had touch DNA on the bag, that'd have been pretty rock solid proof that this bag was in my client's possession. They didn't bring you that evidence.

So when I talked to you in opening statement yesterday and I was talking about that -- that inkling of doubt, that's the kind of thing I'm talking about. You've got to hold them to their burden. The burden of proof is proof beyond a reasonable doubt. And that's a very high burden. So that's something I'd ask you to think about.

The other thing I would ask you to consider is this evidence of the chain of custody. You heard a lot about chain of custody yesterday. And what chain of custody, basically, is is that the State has got to convince you that what was collected here in Greenwood is the same thing that got to Columbia and got tested by that SLED analyst.

All right. They've got to -- you know, they've got to make sure that this is the same thing that got there. Does that make sense? Because it -- you know, it's pretty vitally important that what the SLED analyst is testing in Columbia is the same thing that was collected in this particular case.

And you heard her, she does, like, 1,300 cases a year. She's not going to know one from the other. They've got to keep it sorted out as to which -- which evidence goes with which case. And so they've got to prove this chain of custody to you, this chain of events to get it where it goes.

Well, you heard in the testimony yesterday, Officer McClinton said he took all this evidence and locked it up in a car; right? And then I pointed out on cross-examination, well, now, wait a minute. We just looked at your video. And you left it in a car with somebody else. That's not what he testified to on direct.

He said he locked it up in the car.

So I pointed out on cross, no, that's not what the video shows. You left it in somebody else's custody. Who's that? Oh, that's Lieutenant Brooks.

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 not 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?

You will, also, see this other paperwork that's the -- the SLED paperwork. And I asked the analyst, well, do you have personal knowledge about who all's hands this went through? Well, no, she didn't. And she could look

at the paperwork. But she didn't have personal knowledge of it.

And there's a bunch of people listed on that paperwork that you never heard from, that did not come in this courtroom and testify about their role in that chain of custody. Again, the State's got the burden to bring witnesses into this courtroom and testify so you can judge their credibility and decide if what was collected on that scene is what was tested by that analyst.

And one of the reasons that I bring that up -- you may be asking, well, why -- why is he harping on this issue of the chain of custody? Well, you've got a SLED analyst who has told you that what she tested was crack cocaine and that it weighed 29.06 grams; right? But you've got this bag that says 30.84 grams. That's a pretty big inconsistency in the weight, which then begs the question, is what they collected what got tested? Why is there -- why is there the big difference in the weight? That's 1.78 grams difference.

You know, they've got to convince you beyond a reasonable doubt that what got collected here is the same thing that got tested there, and that it wasn't contaminated, or adulterated, or mixed up with other evidence. You've got to be convinced beyond a reasonable doubt that this is what got tested. And I submit to you

that there are holes in this chain that should lead you to doubt that.

I'm going to ask you to direct your attention to this chart. This is just to give you an idea of the burden that the State is under. The Judge will tell you, again, that the State has the complete burden of proof in this case. It's proof beyond a reasonable doubt.

I told you in my opening yesterday it's not like in a civil case where you've got to tip the scales just a little bit. They've got to tip the scales almost all the way in their favor.

And so if you go back in the jury room and you say, you know, I think, perhaps, the Defendant's guilty, your obligation is to find him not guilty, because that's not a high enough burden. Or if you go back there and you say, you know what, I think he's probably guilty of this crime. Your obligation is to find him not guilty, because that's not good enough. You go back there and say I've got a strong belief that he's guilty. It's not good enough.

You've got to find him guilty beyond a reasonable doubt. You have got to be firmly convinced of his guilt before you can find him guilty. And 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. And I would ask you to listen to that, you know.

Consider this evidence closely. Look at it. I mean, look at the evidence that they've given you. See if it's consistent with what you've heard. And I would ask that at the end of this trial that you find my client not guilty.

Thank you.

CHARGE ON THE LAW

THE COURT: Thank you, Mr. Hodges.

Mr. Foreman, and, ladies and gentlemen of the jury, I now will charge you the law applicable to this case. And you must consider the charge as a whole and not focus on some portions to the exclusion of other portions.

The indictments charge the Defendant with resisting arrest and trafficking crack cocaine. I remind you, once again, that the fact that the Defendant was arrested, charged, and indicted in this case is not evidence in this case and cannot be considered by you as evidence of guilt in this case. Nor does it create any presumption or inference of guilt.

These documents are simply the formal written instruments which contain the charges made against the Defendant. They are the formal documents by which this case is brought into this Court.

The indictments in this case allege two different offenses against the Defendant. Again, one for resisting

arrest and the other for trafficking cocaine. Each indictment charges a separate and distinct offense. You must decide each indictment separately on the evidence and the law applicable to it uninfluenced by your decision as to any other indictment.

The Defendant may be convicted or acquitted on any or all of the offenses charged. And you'll be asked to write a separate verdict for guilty or not guilty for each indictment. And I'll show you that verdict form which we call a verdict form at the conclusion of this charge.

The Defendant has pled not guilty to these indictments. And that plea 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 guilt 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.

Now, ladies and gentlemen, I remind you, once again, that during this trial, you and I have had certain duties to perform. As the trial judge, it has been my responsibility to preside over the trial of this case. And I, also, have had the duty to rule on the admissibility of evidence offered during this trial.

You are to consider only the competent evidence before you. If there was any testimony ordered stricken from the record in this case during this trial -- I'm not sure if there was -- but if there was, you must disregard that testimony. You are to consider only the testimony which has been presented from this witness stand, any exhibits which have been made a part of the record in this case, and any stipulations of Counsel.

I have the additional duty to charge you the law applicable to this case. As the presiding Judge, I am the sole judge of the law in this case. And it is your duty, as jurors, to accept and apply the law as I now state it to you. If you already had any idea as to what the law is or what the law ought to be and it does not agree with what I now tell you the law is, you must abandon your

idea. Because you're sworn to accept the law and apply the law exactly as I state it to you.

In every case tried in this Court before a jury, the jury becomes the sole and exclusive judge of the facts in the case. A trial Judge cannot intimate, state, comment on, or make any statement to a trial jury about the facts in the case.

Since you, the jury, are the sole judge of the facts in this case, you're not to infer from what I have said during the progress of this trial in ruling upon the admissibility of evidence, or otherwise, or anything that I say now during the course of this instruction to you that I have any opinion about the facts in this case. The law does not allow me to have an opinion about the facts in this case.

This is a matter solely for you, the jury, to determine. As jurors, it is your duty to determine the effect, value, weight, and truth of the evidence presented during this trial.

Now, there are two types of evidence which are, generally, presented during a trial, that being direct evidence and circumstantial evidence. Direct evidence directly proves the existence of a fact and does not require deduction. Circumstantial evidence is proof of a chain of facts and circumstances indicating the existence

of a fact. Crimes may be proven by circumstantial evidence.

The law makes no distinction between the weight or value to be given to either direct or circumstantial evidence. However, to the extent the State relies on circumstantial evidence, all the circumstances must be consistent with each other and when taken together point conclusively to the guilt of the accused beyond a reasonable doubt. If these circumstances merely portray the Defendant's behavior as suspicious, the proof has failed.

Once again, the State has the burden of proving the Defendant guilty beyond a reasonable doubt. This burden rests with the State regardless of whether the State relies on direct evidence, circumstantial evidence, or some combination of the two.

Necessarily, ladies and gentlemen, you must determine the credibility of the witnesses who have testified in this case. Credibility simply means believability. It becomes your duty, as jurors, to analyze and to evaluate the evidence and determine which evidence convinces you of its truth.

In determining the believability of witnesses who have testified in this case, you may believe one witness over several witnesses, or several witnesses over one

witness. You may believe a part of the testimony of a witness and reject the remaining part of the testimony of that same witness. You may believe the testimony of a witness in its entirety, or reject the testimony of a witness in its entirety. You may consider whether any witness has exhibited to you any interest, bias, prejudice, or other motive in this case. You may, also, consider the appearance and manner of a witness while on the witness stand.

Now, as I explained yesterday to you concerning expert witnesses, the rules of evidence ordinarily do not permit witnesses to testify to opinions or conclusions. An exception to this rule exists for witnesses we call expert witnesses. A witness who by education and experience has become an expert in some art, science, profession, or calling may state an opinion as to relevant and material matter in which the witness claims to be an expert and may, also, state the reasons for that opinion. You should consider any expert opinion received in evidence in this case and, like any other evidence, give it the weight you think it deserves.

If you decide that the opinion of an expert witness is not based on sufficient education and experience, or if you conclude that the reason given in support of the opinion are not sound, or that the opinion is outweighed

by other evidence, you may disregard the opinion entirely.

An expert witnesses testimony is to be given no greater weight than that of other witnesses simply because the witness is an expert. Furthermore, you are not required to accept an expert's opinion, even though it is not contradicted.

Now, as I told you yesterday, under the laws of this state, a Defendant may be tried even if the Defendant does not attend the trial. The fact that the Defendant is not present may not be considered by you at all and cannot be considered against the Defendant in any manner whatsoever.

And since the Defendant was not here, he elected not to testify. And I instruct you and emphasize the fact that the Defendant did not testify is not a fact to be considered by you in any way in your deliberations and in your consideration on the question of the guilt or innocence of the Defendant. It must not be considered by you in any manner whatsoever.

A Defendant has the Constitutional right to remain silent. And the assertion of this right must not be considered by you in your deliberations. I repeat, under the oath you took yesterday, you are to draw no conclusion whatsoever from the fact that the Defendant in this case did not testify. The fact that this Defendant did not testify should not even be discussed in the jury room.

The burden of proof, as I've already stated to you several times, is on the State. The Defendant is not required to prove his innocence. The burden of proof remains on the State to prove guilt beyond a reasonable doubt.

Now, in order to establish criminal liability, criminal intent is required. For example, the mental state required to be proven by the State for a particular crime might be purpose, intent, knowledge, recklessness, or criminal negligence. Criminal intent must be proven by the State beyond a reasonable doubt. Criminal intent is always a matter that must be determined by the jury from the circumstances surrounding the situation.

Now, there's no way to prove intent to a mathematical certainty. There's no way medical science can dissect a person's brain and determine what the person had in mind. So the law says criminal intent may be inferred from the circumstances shown to have existed. This is how you make a determination of whether or not the element requiring intent was present.

It is not necessary to establish intent by direct and positive evidence. But intent may be established by inference in the same way as any other fact by taking into consideration the acts of the parties and all the facts and circumstances of this case.

Criminal intent is a mental state of conscious wrongdoing. It is up to you to determine what the Defendant intended to do, based on the circumstances shown to have existed.

Now, let me discuss with you the two charges, the resisting arrest and trafficking crack cocaine. Resisting arrest. The Defendant [sic] must prove beyond a reasonable doubt that the Defendant knowingly and willfully opposed or resisted a law enforcement officer in serving, executing, or attempting to serve or execute a legal writ or process.

Knowingly means with knowledge, consciously done. Willfully means done intentionally and not done by accident. Resist means to oppose, strive against, obstruct. Obstruct means to impede, hinder, or interfere with.

Even peaceful non-violent indirect obstruction of an arrest or the service or execution of process is considered resisting arrest. If the means used are sufficient to prevent the officer from making an arrest, the Defendant is guilty of resisting arrest.

Trafficking crack cocaine. The State must prove beyond a reasonable doubt that the Defendant knowingly sold, manufactured -- and I'm reading straight from the statute in this state on trafficking crack cocaine. The

State must prove beyond a reasonable doubt that the Defendant knowingly sold, manufactured, cultivated, delivered, purchased, brought into the State, provided financial assistance, or, otherwise, aided, abetted, attempted, or conspired to sell, manufacture, cultivate, deliver, purchase, or bring into the State, or was knowingly in actual possession, or knowingly attempted to become in actual possession of crack cocaine.

To prove possession, the State must prove beyond a reasonable doubt the Defendant had both the power and intent to control the disposition or use of the crack cocaine. Actual possession means that the crack cocaine was in the actual physical custody of the Defendant.

The State must, also, prove beyond a reasonable doubt that the amount of the crack cocaine or any mixture containing crack cocaine was 28 grams or more, but less than 100 grams.

Now, concerning these charges, Mr. Foreman, and, ladies and gentlemen of the jury, there are two possible verdicts, guilty or not guilty. And your verdict as to each charge must be unanimous among the 12 of you.

I'm going to come down in just a second and show you the verdict form. In light of the fact that we've accomplished all this a little sooner than I thought, in probably just a few minutes, I'm going to go ahead and

instruct you to begin your deliberations and not send you for lunch at this time because it's only 11:15. Okay.

And I realize what I have just read to you, Mr. Foreman, and, ladies and gentlemen of the jury, was a lot. And that's why I will provide you with a copy of what I just read for -- in any use you want to make of the jury charge, the written jury charge.

Let me come down and show you the verdict form that you'll have to complete, Mr. Foreman, and sign. It's very simple. This just has the name of the -- the case and the two indictment numbers. And it says, As to the charge of resisting arrest, we, the jury, find the Defendant -- and you put your initials on either guilty or not guilty. And the same thing for the trafficking charge, put your initials on the line, guilty or not guilty. And sign it.

It's already been dated for you. The fact that guilty appears above not guilty is of no significance. One just has to go above the other. That's all.

Now, what I'm going to do is I'm going to ask that the 14 of you go back to the jury room. Do not begin your deliberations yet. I just need to discuss with the lawyers to make sure there's no additions or corrections to the charge.

If I don't bring you back out and the bailiffs bring to you all of the evidence, the exhibits, that will be

your queue for two things to happen. One, the two alternates, I will need to have exit the courtroom to come back in here. And I'll talk with you then. And then that will be your queue to begin your deliberations. Okay. But don't start your deliberations yet.

And when you have reached a unanimous verdict as to both charges, then knock on the door and let the bailiffs know. There's a pad of paper back there for your use.

If you were to have a question that you needed brought to the attention of the Court, write it out, sign your name, Mr. Foreman, and knock on the door and let the bailiffs know that you have a question or an issue for the Court.

Okay. Now, one piece of evidence is this -- a cell phone. And it is in a plastic bag. I don't think the cell phone is operable. But you cannot take the cell phone outside of the bag.

Okay. Now, if the four of you -- 14 of you would go back in the jury room. And let me talk to the lawyers for just a moment.

(WHEREUPON, the jury was excused from open court at approximately 11:15 a.m.)

THE COURT: All right. Other than what's been noted on the record previously, does the State have any exceptions or objections to the Court's charge?

MR. DOWTIN: No, Your Honor.
THE COURT: And the Defense?
MR. HODGES: Just the -- just subject to the objection I --
THE COURT: Previous.
MR. HODGES: -- included in the -- the hesitate to act --
THE COURT: Right.
MR. HODGES: Nothing additional.
THE COURT: All right. Very good.
All right. We'll go off the record and make sure we've got all our exhibits together.
(Pause.)
THE COURT: The exhibits are in order.
Here you go.
THE BAILIFF: Ready to go in?
THE COURT: Yes, ready to go in. And just bring the two alternates out.
(WHEREUPON, the two alternates were released from jury service.)
THE COURT: We will be at ease pending a verdict.
(WHEREUPON, the proceedings were recessed at approximately 11:18 a.m.)
THE COURT: We're back on the record.
It's my understanding, gentleman, that the jury has

reached a verdict.

Mr. Hamby, if you'll bring the jury out, please.

(WHEREUPON, the jury came into open court at approximately 11:42 a.m.)

THE COURT: Let the record reflect the jury is in.

Mr. Foreman, without telling me what the verdict is, have you reached a unanimous verdict in this case on both charges?

JUROR #96, JAMASON MARTIN: Yes, sir.

THE COURT: All right. If you'll hand the paperwork to Mr. Hamby, please.

Madam Clerk, if you'll publish the verdict.

VERDICT

THE CLERK: Yes, sir.

State of South Carolina v. Tremaine Okeefe Pride, indictments 2018-GS-24-1480 and 2018-GS-24-1481. As to the charge of resisting arrest, we find the Defendant guilty. As to the charge of trafficking crack cocaine, we find the Defendant guilty.

THE COURT: Okay. I would ask the jury is and was that your unanimous verdict? If so, designate by raising your right hand.

(WHEREUPON, all jurors raised their right hand.)

THE COURT: Let the record reflect that all of the jurors raised their hand.

Would you like for the jury to be polled?

MR. HODGES: That's not necessary, Your Honor.

THE COURT: Okay. Thank you very much.

Mr. Foreman, and, ladies and gentlemen of the jury, I want to thank you for your jury service.

I hope it has been an educational experience for you and maybe an experience that you would like to have again sometime in the future, whether it's in the criminal arena or whether it's in the civil arena. And as I mentioned to you either yesterday or on Monday -- I can't remember -- jury service is extremely important in our society today. And we have a great -- the greatest justice system anywhere in the world.

The good thing is you do not need to come back. Now, the clerk is going to give you your voucher card. And I think it's -- as I understand has been mentioned to you, use it like a debit card.

It's not good until Friday?

THE CLERK: Yes, sir.

THE COURT: And do not make any big plans. State law does not provide adequate compensation for what jurors have to go through, but it is what it is.

I'm going to come down. And I like to shake hands with the jury.

Mr. Foreman, remain as you are because you will have

to sign the indictments.

Now, if any of you need an excuse for work --

THE CLERK: I'll just be outside.

THE COURT: She'll be outside for you.

(WHEREUPON, the jury was released at approximately 11:46 a.m.)

THE COURT: Mr. Hodges, do you need to put anything on the record, sir?

MR. HODGES: And I was debating about whether that would be ripe now or at the time of unsealing the sentence.

THE COURT: I don't have an answer for that. But I'll give you 10 days.

MR. HODGES: My thought off the top of my head is this proceeding really doesn't conclude until he's sentenced.

THE COURT: Right. Any post-trial motions would be relative to the trial itself and not to the ultimate sentencing. So I'll give you 10 days from today. But you're more than welcome to have that if that's -- if that's what you need.

MR. HODGES: Yes, please, Your Honor.

THE COURT: All right. Thank you very much.

All right. Of course, as -- as you gentlemen know, the sentence will be sealed. I will need to have the

amount of credit that Mr. Pride is entitled to. And then I will -- after I seal the sentence, I will, actually, show you the envelope before you leave. So hang around a few minutes.

MR. HODGES: Judge, could I be heard briefly on the issue of sentence?

THE COURT: You can. And you have the right to -- whoever unseals the sentence, you have the right to argue aggravation, mitigation. And the unsealing Judge has the right to -- to alter my -- my sentence.

But, yeah, I'll be glad to hear from you now on that. Yes, sir.

MR. HODGES: Judge, the only thing I would mention is that -- I mean, I know your hands are tied on the minimum mandatory.

THE COURT: Right.

MR. HODGES: It appears that the most time Mr. Pride's done was a four-year sentence. And that was back in 2001, 17 years ago. I would just ask that you consider the minimum and that you run the two charges concurrent.

THE COURT: Okay.

MR. HODGES: And, obviously, give him credit for the time he's entitled to.

THE COURT: All right. Very good.

And do you have certified copies of --

MR. DOWTIN: I do, Your Honor. I was going to make three Court -- additional Court's Exhibits from all of his previous drug convictions for drugs other than marijuana.

THE COURT: Okay. If you'll just have them marked and then let me -- let me look at them.

And, Mr. Hodges, there's no dispute from you that -- that this would be a third or subsequent?

MR. HODGES: No. There's no dispute on it.

THE COURT: And the statute is 25 to 30 with a $50,000 fine. And, of course, one year on the resisting.

MR. HODGES: Correct.

(WHEREUPON, Court's Exhibit Nos. 8, 9, and 10 were marked for identification and admitted into evidence.)

MR. HODGES: Judge, it's 147 days.

THE COURT: 147?

MR. HODGES: Yes, sir.

THE COURT: Wade, are y'all -- you good with that? 147?

MR. DOWTIN: Yes, sir.

THE COURT: Mr. Hodges, I'm sure you've seen these.

MR. HODGES: I have.

(Pause.)

THE COURT: Gentlemen, in light of the fact that the trafficking is a violent offense pursuant to Section

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-) TRANSCRIPT OF RECORD
TREMAINE O'KEEFE PRIDE)
DEFENDANT.) SENTENCING HEARING
_____)

APRIL 29, 2021
GREENWOOD, SOUTH CAROLINA

B E F O R E:

THE HONORABLE FRANK R. ADDY, JR., JUDGE

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

ATTORNEY FOR PLAINTIFF:
WADE DOWTIN, ASSISTANT SOLICITOR

ATTORNEY FOR DEFENDANT:
ANDREW HODGES, ESQUIRE

TARA T. SCOTT, CVR
CIRCUIT COURT REPORTER

INDEX

(THERE WERE NO EXHIBITS INTRODUCED DURING THIS HEARING.)

THE COURT: Solicitor?

MR. DOWTIN: Judge, this is Tremaine O'Keefe Pride, represented by Andrew Hodges. He's here on true bill indictment numbers 2018-GS-24-1480 for resisting arrest and -1481 for trafficking crack cocaine 28 to 100 grams, third or subsequent offense.

He was tried before Judge Hocker back in December of 2018. He was found guilty December 12, 2018. We had to try him in his absence, Your Honor. The issue of notice was addressed, and ultimately Mr. Hodges put on the record that he notified Mr. Pride of his trial, met with him in his office, but he did not show up for his trial the following Monday. We're just here to have the sentence read, Your Honor.

THE COURT: Mr. Hodges, you did meet briefly with me in the hallway indicating that Mr. Pride, or his family, had been in touch with Mr. Wise and Mr. Jones about possibly retaining them for purposes of a motion for reconsideration and for the ultimate appeal on the trial; am I correct?

MR. HODGES: That is correct, Your Honor. Mr. Pride has asked for some period of time to be able to do that and to hold off on sentencing today. I think they are prepared to hire private counsel today to do that, and that was the conference we had, was me requesting to delay this. Obviously, Mr. Pride is not going anywhere.

THE COURT: I understand. Logistically, any Motion for Reconsideration would have to be addressed to the trial court, or the trial judge rather, that heard the case. Since I am not empowered to change Judge Hocker's sentence, at least under my reading of the law, so he would be able to file that, I would presume, within ten days of today's date should he decide that the sentence that is imposed, which I have not unsealed yet, should he decide that that is a sentence he wants to have reconsidered. So, of course, he would be at liberty to go ahead and do that, but I see no reason since you represented him at trial I see no reason to delay the opening of the sealed sentence.

We'll move forward with that today, and he'll be at liberty of course to file any Motion for Reconsideration and, of course, Notice of Intent to Appeal also has to be filed within ten days. Very good.

The Court will proceed to open the sealed sentence. I've got a manilla envelope. Judge Hocker has written his name across the seal and I recognize his signature. It is case 2018-GS-24-1480 and -1481, guilty verdict rendered December 12, 2018. (OPENS ENVELOPE)

Mr. Pride, before I impose sentence, is there anything you would like to say, sir?

DEFENDANT: No.

THE COURT: No. Mr. Pride, on indictment 18-1480,

that's the resisting arrest charge, Judge Hocker sentenced you to one year, credit for 147 days in jail. On the trafficking crack cocaine 28 grams or more third or subsequent offense, that's indictment -1481, Judge Hocker sentenced you to the Department of Corrections for twenty-five years, credit 147 days in jail. The sentences are to be served concurrently, Mr. Pride.

That may very well be the mandatory minimum; correct?

MR. DOWTIN: That's correct, Your Honor.

THE COURT: Mr. Pride, as I told your attorney a moment ago, of course, you're at liberty to retain Mr. Jones for any reconsideration of this sentence, and Mr. Jones and/or Mr. Wise for any appellate issues that you might want to file, but it has to be done within 10 days.

Do you understand that, sir?

DEFENDANT: Yes, sir.

THE COURT: Very good. The sentence has been imposed. Mr. Pride, good luck to you, sir.

(END OF REQUESTED TRANSCRIPT OF RECORD.)

209

WITNESSES

Wesley Mcclinton

Greenwood Police Department

WARRANT NUMBER

2018A2420100386

TRUE BILL

208 Lee Wideman

Foreman of the Grand Jury

8-17-18

VERDICT

Guilty

li

12-12-18

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:

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 Dowtin
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#

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

INDICTMENT/CASE#: 2018GS24-1480

A/W: 2018A2420100386

Date of Offense: 04/18/2018

S.C. Code §: 16-09-0320(A)

CDR Code #: 0326

RECEIVED MAY 03 2021 SC Court of Appeals

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS

TO: Resisting Arrest

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 (CSC w/minor 1st or CSC w/minor 3rd) ☐ §17-25-45

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:

M. Wade Dowtin, Assistant Solicitor 100359 SC Bar # | Defendant | Attorney for Defendant 11715 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: 2018GS24-1481

☒ 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 _____ Attend Voc. Rehab. Or Job Corp. _____

May serve W/E beginning _____

Recipient: _____ Substance Abuse Counseling ☐

Random Drug/Alcohol Testing ☐

*Fine:		$_____
§14-1-206 (Assessments 107.5%)		$_____
§14-1-211 (A)(1)(Conv. Surcharge)	$100	$ 100
§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	$ 25
§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)	$	$ 3.25
TOTAL		$ 128.25

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.

Clerk of Court/Deputy Clerk: Charles Copeland

Court Reporter: Hollie Jenkins

Presiding Judge: _____

Judge Code: 216

Sentence Date: 12/12/18

Sentence 210, Insured 02

212

WITNESSES

Wesley Mcclinton

Greenwood Police Department

WARRANT NUMBER

xt Indictment

RUE BILL

Evi Wideman

Foreman of the Grand Jury

-17-18

VERDICT

ulty

12-12-18

THE STATE OF SOUTH CAROLINA

COUNTY OF GREENWOOD

COURT OF GENERAL SESSIONS

August Term, 2018

Indictment #2018GS24- /481

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

214

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#:

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.

213

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)
GREENWOOD)

APR 2 7 2018

AFFIDAVIT

Form approved by S.C. Attorney General April 21, 2003 SCCA 618

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 SHOP 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 paracticable.

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 GREENWOOD ☐ Circuit

FILED GENERAL SESSIONS 6TH JUDICIAL CIRCUIT GREENWOOD, S.C. '18 APR 25 AM 8:25

ORIGINAL* ORIGINAL*** ORIGINAL*** ORIGINAL*** ORIGINAL*** ORIGINAL*** ORIGINAL*** ORIGINAL*** ORIGINAL**

2018A2420100386

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of GREENWOOD

THE STATE

against

PRIDE, TREMAINE OKEEFE

Address: [redacted]

Phone: [redacted] SSN: [redacted]

Sex: M Race: B Height 5 ft. 7 in. Weight 150

DL State: SC DL#: [redacted]

DOB: [redacted] 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

215

214

STATE OF SOUTH CAROLINA)
☐ County/ ☒ Municipality)
GREENWOOD)

APR 2 7 2018

AFFIDAVIT

Forms approved by S.C. attorney General April 21, 2003 SCCA 618

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 TH 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

800000

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 paraciticable.

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 GREENWOOD ☐ Circuit

FILED GENERAL SESSIONS CIRCUIT COURT GREENWOOD SC 2018 APR 25 AM 8:18

ORIGINAL*** ORIGINAL*** ORIGINAL*** ORIGINAL*** ORIGINAL*** ORIGINAL*** ORIGINAL*** ORIGINAL*** ORIGINAL

2018A2420100383; 2018A2420100386
CRIMINAL CHARGING DOCUMENT NO.

BAIL PROCEEDING
FORM II

STATE OF SOUTH CAROLINA
COUNTY OF GREENWOOD

IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA
v.
Tremaine O. Pride
NAME OF DEFENDANT

ORDER SPECIFYING METHODS AND CONDITIONS OF RELEASE

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 $75,000.00

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. — ADDRESS

Greenwood, SC — CITY/STATE/ZIP

TELEPHONE

SOCIAL SECURITY NUMBER

DRIVER'S LICENSE OR ID NUMBER

SIGNATURE OF DEFENDANT

9.11.18 — DATE

Andrew Hodges — ATTORNEY REPRESENTING ACCUSED (IF KNOWN)

SPECIAL CONDITIONS OF RELEASE

a. ☐ Placement in custody. The defendant is placed in the custody of: _____ NAME OF PERSON OR ORGANIZATION

_____ ADDRESS _____ CITY/STATE _____ ZIP _____ TELEPHONE

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.

_____ SIGNATURE OF CUSTODIAN (IF APPROVED) _____ DATE

b. ☒ Restrictions on Travel, Association or Residence. The defendant will comply with each of the following conditions: HOUSE ARREST SEE ORDER.

c. ☐ Part-time Release. The defendant will be released from custody from _____ TIME o'clock, _____ AM/PM to _____ TIME o'clock, _____ AM/PM

on _____ DATE(S) on condition that he return to the custody of _____ NAME OF PERSON OR ORGANIZATION

at _____ LOCATION as designated.

d. ☒ 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 — NAME OF SURETY BONDSMAN COMPANY

864-378-0633 — TELEPHONE

SIGNATURE OF SURETY BONDSMAN

108 Court Sq. — ADDRESS OF SURETY BONDSMAN

Abbeville SC 29620 — CITY/STATE/ZIP

S/ Donald B. Hocker (See order) — SIGNATURE OF JUDGE

International Fidelity Ins — NAME OF INSURANCE COMPANY

9.11.18 — DATE

P.O. Box 9810 — ADDRESS OF INSURANCE COMPANY

Glendale CA 91372 — CITY/STATE/ZIP

Solicitor: D. Dowtin
Attorney: A. Hodges

STATE OF SOUTH CAROLINA)
) IN THE COURT OF GENERAL SESSIONS
COUNTY OF GREENWOOD)
)
)
STATE OF SOUTH CAROLINA)
)
vs.) **BOND ORDER**
)
)
Tremaine O Pride)
Defendant

Case Numbers/Charges: 2018A2420100383 Trafficking Crack 3rd
2018A2420100386 Resisting Arrest

The issue before the Court regarding Bond:

(X) 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: _____

#1

II. The Court directs and so orders based upon the below:

(X) Cash in Lieu of Bond in the total amount of $75,000 (Non-cumulative to distribution charge bond), or

(X) 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 (X)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

III. The Court has considered:

A. Allegations against the Defendant by the State:

(X) Seriousness of Crime(s) charged: _____

(X) 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.

(X) Danger to Community and/or Individual: _____

(X) Prior Record: Significant

_____

(X) Pending Charge(s) not subject to this Bond: _____

_____

(X) 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 DMA

B. The Defense has asserted:

( ) The Defendant is _____ years old;

(X) The Defendant resides at 920 Taggent Avenue, Greenwood SC

( ) The Defendant's education level is _____;

(X) The Defendant's work history is Carolina Pride;

( ) The Defendant arranged to surrender to law enforcement;

(X) The Defendant's Family Ties

( ) The Defendant's Character/Mental Condition

( ) The Defendant's Financial Resources

( ) The Defendant has been detained for _____;

(X) 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.

(X) 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.

(X) 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.

#4 BA

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.

#5

( ) 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.

(X) 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.

(X) 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.

(X) 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):

_____

_____

(X) 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).

(X) The Defendant shall be subject to GPS Electronic Monitoring at his/her expense.

( ) Other: _____

_____

#6

( ) 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

#7 2018

AND IT IS SO ORDERED.

DONALD B. HOCKER
PRESIDING JUDGE

Laurens, 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.

#8

Log Number: 32622

Storage Location: F-1/E-7(A)/SAFE 34B TASER BOX

GREENWOOD POLICE DEPARTMENT
EVIDENCE/PROPERTY REPORT

Case Number: 18-7337

Date/Time Obtained:	Reason: ☒Evidence ☐Recovered ☐Found ☐Safekeeping ☐Seized	Analysis Requested: ☒Yes ☐No
4/18/18		

Location where property was obtained/found: Gray St., Greenwood, SC

Impounding Officer: McClinton | ID#: 1458 | Type Case: Trafficking Crack

Found By: | Address: | Phone:

Suspect(s): Tremaine Pride | Address: | Phone:

Victim/Owner: | Address: | Phone:

Item Number	Quantity	Description of Articles(include model,serial number, etc.)
1	1	KEST Dark #02KK009
2	1	Digital Scales
3	1	Black iPhone in Dented screen
4	1	$348 US Currency
5	1	Deployed Taser Cartridge

Chain of Custody

Item#	Date/Time	Released By	Received By	Purpose/Reason
1-5	4/18/18	McClinton	Evidence Locker 016	Evidence
1-5	4/19/18 0916	Locker #16	GRIFFIN	EVIDENCE
1	4/27/18	GRIFFIN	SLED	ANALYSIS
1	7-19-18	SLED	GRIFFIN	RTD FROM LAB

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	Date_____ Time_____		Officer:_____	Date_____ Time_____	
☐ Returned to Owner	Date_____ Time_____		Property Custodian:_____	Date_____ Time_____	
☐ Sold at Public Auction	Date_____ Time_____		Chief of Police:_____	Date_____ Time_____	
☐ Destroyed	Date_____ Time_____		Court:_____	Date_____ Time_____	
☐ Other_____	Date_____ Time_____		Other:_____	Date_____ Time_____	

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

Item#_____ Date/Time_____ Officer's Signature_____ Passed: ☐Yes ☐No

Item#_____ Date/Time_____ Officer's Sign:_____ Passed: ☐Yes ☐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

APPEAL FROM GREENWOOD COUNTY
Court of General Sessions

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

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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

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

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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

FINAL BRIEF OF APPELLANT

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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

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[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 tttis 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 he 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 hy trial counsel was in keeping with the law and prior decisions of our supreme court. "A reasonable doubt is the kind of douht that would cause a reasonahle 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 douht 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

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[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 he 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

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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

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Appellant complies with Rule 211(b), SCACR.

June 16th, 2022

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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

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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 Dowtin 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 order[1] 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 Wrapp[2] 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. 3[3], 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.

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[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 conve[y] 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,

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July 5, 2022

RECEIVED
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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,

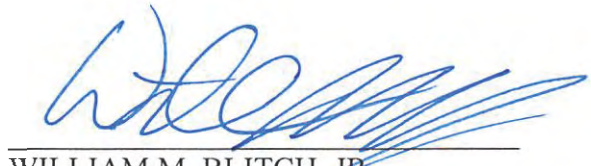
v.

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.



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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

FINAL REPLY BRIEF OF APPELLANT

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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." Ree. 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 16, 2022

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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
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The State, ... Respondent,

vs.

Tremaine O. Pride, ... Appellant

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Reply Brief of Appellant complies with Rule 211(b), SCACR.

June 16th, 2022

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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.

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[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.

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

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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

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