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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM CHEROKEE COUNTY
Court of Common Pleas

R. Scott Sprouse, Circuit Court Judge

Case No. 2023CP1100145

Bryson Jamar Smith …….. Petitioner.

v.

The State …… Respondent.

APPENDIX

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APPENDIX

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STATE OF SOUTH CAROLINA
IN GENERAL SESSIONS
COUNTY OF CHEROKEE

State of South Carolina,

Plaintiff,

vs.

Transcript of Record
2020-GS-11-01147,
2020-GS-11-01148,
2020-GS-11-01149,
2020-GS-11-01150,
2020-GS-11-01151

Bryson Jamar Smith,

Defendant.

November 3, 2020
Gaffney, South Carolina
Volume I of IV

B E F O R E:

The HONORABLE R. KEITH KELLY

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

Kim Leskanic, Representing the State of South Carolina
Matt Kendall, Representing the State of South Carolina
Joshua Schultz, Representing the Defendant

SHARON G. HARDOON, CSR
Official Circuit Court Reporter, III

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THE BAILIFF: All rise. Court will come to order.

THE COURT: Thank you. Thank you. Please be seated. Thank you.

Okay. Ladies and Gentlemen, I thank you. We were working on some other matters that did not require your attention, but thank you for your patience.

We are here in the matter of the State of South Carolina vs. Bryson Jamar Smith.

Mr. Smith, would you stand, please, and face the jury panel for just a few seconds, please? And would you lower your mask just momentarily, sir? All right. Thank you, Mr. Smith. You may be seated.

We are here on the matter of the State of South Carolina vs. Bryson Jamar Smith in indictment 2020-1151. It is alleged that Mr. Smith did in Cherokee County, South Carolina on or about August 12 of 2019 commit the criminal offense known as trafficking in heroin. He has entered a plea of not guilty to the allegation contained in the indictment. And I'll say this more than once this afternoon, he is presumed innocent of the allegations contained in this

indictment.

We're also here on 2020-1149, the State of South Carolina vs. Bryson Jamar Smith. It is alleged that he did in Cherokee County, South Carolina on or about August 12 of 2019 commit the criminal offense known as trafficking in methamphetamine. He has entered a plea of not guilty to this indictment. He is presumed not guilty. He's presumed innocent, actually, of the allegations contained in this indictment.

In the indictment of 2020-1148, it is alleged in the State of South Carolina vs. Bryson Jamar Smith that he did in the county of Cherokee, State of South Carolina on or about August 12 of 2019 commit the criminal offense known as possession with intent to distribute cocaine. He has entered a plea of not guilty and he is presumed innocent of the allegations contained in this indictment.

In the matter of State of South Carolina vs. Bryson Jamar Smith, 2020-1147, it is alleged that Mr. Smith did in Cherokee County, South Carolina on or about August 12 of 2019 commit the criminal offense known as possession with intent to distribute marijuana. He has entered a plea of

not guilty to this indictment. He is presumed innocent by the allegations contained in the indictment.

In the indictment of 2020-1150, the State of South Carolina vs. Bryson Jamar Smith, it is alleged that he did in Cherokee County, South Carolina on or about August 12 of 2019 commit the criminal offense known as possession with intent to distribute Fentanyl, which is a controlled substance, and he did that in this county and state. He has entered a plea of not guilty to this indictment. He is presumed innocent of the allegations contained in the indictment.

Ladies and Gentlemen, I'll say this again more than once, he's presumed innocent by his plea. The burden is on the government to prove his guilt beyond a reasonable doubt. The indictments are merely charging instruments. They are not evidence against him. The evidence in this case will come to the jury through the testimony given by witnesses and any exhibits which might be introduced into evidence.

Now, Ladies and Gentlemen, you were previously sworn. And there's a series of

questions I need to ask at this time, and you were sworn earlier and you remain under oath at this time.

Here are some questions I'm required to ask: Is there any member of this panel who is now or ever has been related to Bryson Jamar Smith? You are now related to him or were related to him maybe by marriage or some connection. Have you ever been related to him, or are you related to him, now? If so, please stand.

Is there any member of this jury panel who has a friendship or acquaintanceship with Mr. Smith? You know him from school. You know him from recreation, from work. I don't know how, but somehow you know him. If so, stand.

Use numbers. So tell me your number, please.

JUROR 78: 78.

THE COURT: 78. 78, how do you know him? Recreationally?

JUROR 78: I've known him since birth.

THE COURT: Since he was born. The fact that you've known him all of these years, would that interfere with your ability to be fair and impartial?

JUROR 78: Yes, sir.

THE COURT: It would. Ma'am, you may not serve on the trial of this case. Have a seat.

Yes.

JUROR 77: 77.

THE COURT: 77. You know him socially some way.

JUROR 77: Yeah, he's in the neighborhood.

THE COURT: Would that interfere with your ability to be fair in this trial?

JUROR 77: No.

THE COURT: It would not. You may stay.

Yes.

JUROR 2: Number 2.

THE COURT: 2?

JUROR 2: Yes, sir.

THE COURT: You know him socially some way?

JUROR 2: He's a friend of the family.

THE COURT: Would that interfere with your ability to be fair and impartial?

JUROR 2: No.

THE COURT: Ma'am, you may stay.

Yes.

JUROR 50: Juror number 50. He used to date my first cousin and they have a six-year-old son.

THE COURT: Tell me your number one more time.

JUROR 50: 50.

THE COURT: 50, 5-0. Would that interfere with your ability to be fair and impartial.

JUROR 50: Yes, sir.

THE COURT: Okay. You may not serve in this case.

The following will be a list of potential witnesses. I say potential because he will never know who will or will not testify. Brandon Dorsette, Billy Anthony, Jacob Mullinax, Jimmy Henson, David Owens, John Fuller, Jerry Smith, Christopher Parnell, Maribeth McCormack, Ashley Lyles, Ronnie Painter, James Matthews, Traci Smith, Alexis Fowler, Stephen Anderson, Brandon Gardner, Vanessa Dawkins, Josh Mata, Roderick Oglesby, Mike Nicholson, someone from the United States Postal Service, Tanika Shipley, and I think I already said Tracy Smith. Is there any

member --

MR. KENDALL: I'm sorry. Your Honor, it's McCormick.

THE COURT: Maribeth McCormick. Thank you, Solicitor.

Is there any member of this jury panel related by blood or marriage --

Yes, sir.

MR. SCHULTZ: Your Honor, someone from the U.S. Postal Service is whom again?

MR. KENDALL: Mike Nicholson.

MR. SCHULTZ: Mike Nicholson, okay.

THE COURT: Oh, I'm sorry. It was listed as a separate person. That is the postal service.

MR. KENDALL: Yes, sir.

THE COURT: Very good.

Is there any member of the jury panel who is now or related by blood or marriage to any of those potential witnesses? If so, please stand.

Starting right here. Ma'am, your number?

JUROR 66: 66.

THE COURT: Would that interfere with your ability to be fair and impartial?

JUROR 66: No, sir.

THE COURT: You may stay.

Your number?
JUROR 38: 38.
THE COURT: 38.
JUROR 38: Samantha Holcombe.
THE COURT: Would that interfere with your ability to be fair and impartial?
JUROR 38: No, sir.
THE COURT: You may stay.
Anyone else? Yes.
JUROR 8: 8.
THE COURT: 8. Would that interfere with your ability to be fair and impartial?
JUROR 8: No.
THE COURT: You may stay.
Yes.
JUROR 63: 63.
THE COURT: Would that interfere with your ability to be fair and impartial?
JUROR 63: (Witness moves head from side to side.)
THE COURT: Ma'am, you may stay.
I'm going to ask the lawyers to now -- well, I asked about marriage. Does anyone have a personal or close relationship with those potential witnesses in that you know them again

from recreation, work, church, whatever it might be?

JUROR 43:

THE COURT: 43.

JUROR 43: Socially.

THE COURT: Would that interfere with your ability to be fair and impartial?

JUROR 43: No.

THE COURT: You may stay.

Yes, ma'am.

JUROR 11: Number 11, he works with my husband.

THE COURT: Would it interfere with your ability to be fair and impartial?

JUROR 11: I don't know.

THE COURT: Ma'am.

JUROR 11: I don't know.

THE COURT: I'm sorry, I have to press for a definitive answer. If you think so, I'm going to excuse you.

JUROR 11: Possibly.

THE COURT: Okay. Then, ma'am, you will not serve in the trial of this case. Anyone else? Thank you for your honesty. Anyone else?

All right. I'm going to ask the lawyer

now to introduce themselves, as always, ladies first.

MS. LESKANIC: May it please the Court?

THE COURT: Yes, ma'am.

MS. LESKANIC: Thank you.

Good afternoon, Ladies and Gentlemen. My name is Kim Vesanic, and I'm Deputy Solicitor here for Cherokee County.

MR. KENDALL: Good afternoon, Ladies and Gentlemen. My name is Matt Kendall. I'm an assistant solicitor here in Cherokee County.

MR. SCHULTZ: My name is Attorney Joshua Schultz and this is my client Bryson Smith.

THE COURT: Okay, thank you.

Is there any member of this jury panel related by blood or marriage or ever have been related by blood or marriage to any of the lawyers in this case? If so, please stand.

Any member of the jury panel have a close personal or social relationship with of the lawyers? Again, you went to school with someone or you know them from a neighborhood, shop at the same grocery? Anyone? Please stand.

Any member of this jury panel ever been

summoned to testify as a witness for the 7th Circuit Solicitor's Office? If so, please stand.

Any member of the jury ever received a summons or a request from the law office of Joshua Schutz to testify in a case? If so, please stand.

Any member of the jury panel have a family member or a friend employed in the 7th Circuit Solicitor's office? If so, please stand.

Any member of the panel have a friend or a family member employed in the law offices of Josh Schultz? If so, please stand.

Any member of this jury panel ever sought legal advice from any of these three lawyers, whether that be about a criminal matter, real estate closing, a will, a just question in general, even if you did not hire him or her? Anyone ever consulted with one of those lawyers about a legal matter? Please stand.

Any member of the jury panel in your immediate family have a law enforcement officer in your family? Immediate family; son-in-law, daughter-in-law, son, child, cousin, uncle, aunt in any agency.

THE COURT: Okay. Yes, ma'am. Right here. Number?

JUROR 63: 63.

THE COURT: What agency? What agency, like, city, county, state? Do you know?

JUROR 63: He's county.

THE COURT: County. Would that interfere with your ability to be fair and impartial in this case?

JUROR 63: No, sir.

THE COURT: Ma'am, you may stay.

Yes.

JUROR 40: 40, and he's with the county.

THE COURT: Cherokee County?

JUROR 40: Yes.

THE COURT: Would that interfere with your ability to be fair and impartial in this trial?

JUROR 40: No.

THE COURT: You may stay.

Yes, in the yellow.

JUROR 78: 78. My husband was prior with the Cherokee County Detention Center.

THE COURT: Would that interfere with

your ability to be fair and impartial?

JUROR 78: Yes.

THE COURT: You may be dismissed from the trial in this case.

Yes.

JUROR 49: 49.

THE COURT: What agency?

JUROR 49: I'm not exactly sure.

THE COURT: Would it interfere with your ability to be fair and impartial?

JUROR 49: Yes.

THE COURT: You've already been dismissed, ma'am.

Yes.

JUROR 66: 66.

THE COURT: What agency?

JUROR 66: Cherokee County Sheriff.

THE COURT: Would that interfere with your ability to be fair and impartial?

JUROR 66: No.

THE COURT: You may stay.

Yes, sir.

JUROR 28: Spartanburg County.

THE COURT: What number?

JUROR 28: 28.

THE COURT: Would that interfere with your ability to be fair and impartial?

JUROR 28: No, sir.

THE COURT: You may stay.

Over here. Yes, ma'am.

JUROR 56: 56.

THE COURT: 5-6. Okay, what agency?

JUROR 56: County.

THE COURT: Would that interfere with your ability to be fair and impartial?

JUROR 56: No, sir.

THE COURT: You may stay.

Yes, sir.

JUROR 26: Friend of the family is with the sheriff's office.

THE COURT: What number are you, sir?

JUROR 26: 26.

THE COURT: 26. Would that interfere with your ability to be fair and impartial?

JUROR 26: No, sir.

THE COURT: You may stay.

Is there any member of this jury panel who has ever been a sworn law enforcement officer, whether that be military police, SLED, county, municipal? You yourself. Not a family member.

You yourself. Please stand.

Is there any member of the family -- and I will not ask particulars, but is there any member of this jury panel who has a family member that was either arrested, charged, or convicted of a crime involving drugs? I will not embarrass you by asking any particulars. Just a family member -- a family member who was arrested, convicted, pled guilty to something involving drugs.

Yes, ma'am. Your number?

JUROR 40: 40.

THE COURT: Would that interfere with your ability to be fair and impartial?

JUROR 40: No, sir.

THE COURT: You may stay.

Yes, sir.

JUROR 18: 18.

THE COURT: 18.

JUROR 18: My son.

THE COURT: I'm not going to embarrass anyone, but would that interfere with your ability to be fair and impartial?

JUROR 18: No, sir.

THE COURT: You may stay.

Yes, ma'am.

JUROR 29: 29. I had somebody close to me charged.

THE COURT: Would it interfere with your ability to be fair and impartial?

JUROR 29: No.

THE COURT: You may stay.

Yes, ma'am.

JUROR 24: 24.

THE COURT: Would it interfere with your ability to be fair and impartial?

JUROR 24: No, sir.

THE COURT: You may stay.

Yes, ma'am.

JUROR 56: 56.

THE COURT: Would it interfere with your ability to be fair and impartial?

JUROR 56: No, sir.

THE COURT: Is there any member of this jury panel who knows anything whatsoever about the trial of this case? I do not. I'm not supposed to. I know what these pieces of paper say. Does anyone know anything about the trial -- about this case? Please stand.

Anyone know of any reason why he or she

should not serve as a juror on this case? If so, please stand.

Anything from the State?

MR. KENDALL: If we may approach, Your Honor.

(Bench conference off the record.)

THE COURT: Anything further from the State?

MR. KENDALL: No, Your Honor.

THE COURT: Anything from the defense?

MR. SCHULTZ: No, Your Honor.

THE COURT: Okay.

THE CLERK: When I call your name, please stand where you are. I'm going to ask the State if you are to be seated or excused. You will remain standing until I let you know that you've been excused. If I tell you you've been excused, you will take a seat where you. If I say take a seat in the jury box, you will come forward. Bring all your personal belongings and you will take a seat over here in the jury box.

Okay. Juror 69, Morgan Robinson. What says the State?

MR. KENDALL: Please seat the juror.

THE COURT: What says the defense?

MR. SCHULTZ: Please seat the juror in this case.

THE CLERK: Please take a seat in the jury box.

32, Angela Godfrey. What says the State?

MR. KENDALL: Please seat the juror.

THE COURT: What says the defense?

MR. SCHULTZ: Please excuse the juror in this case.

THE CLERK: You've been excused.

Juror 39, Lauren Holliday. What says the State?

MR. KENDALL: Please seat the juror.

THE CLERK: What says the defense?

MR. SCHULTZ: Please excuse the juror in this case.

THE CLERK: You've been excused.

Juror 40, Haley Hood. What says the State?

MR. KENDALL: Please excuse this juror.

THE COURT: You've been excused.

Jury 41, A.D. Huskey. What says the State?

MR. KENDALL: Please seat the jury.

THE CLERK: What says the defense?

MR. SCHULTZ: Please seat the juror in

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this case.

THE CLERK: Please come forward and take a seat in the jury box.

Number 19, Louis Deruvo. What says the State?

MR. KENDALL: Please seat the juror.

THE CLERK: What says the defense?

MR. SCHULTZ: Please seat the juror in this case.

THE CLERK: Please come forward and take a seat in the jury box.

Juror 10, Robin Bonner. What says the State?

MR. KENDALL: Please seat the jury.

THE CLERK: What says the defense?

MR. SCHULTZ: Please seat the juror in this case.

THE CLERK: Come forward and take a seat in the jury box.

31, Daniel Frady. What says the State?

MR. KENDALL: Please seat the juror.

THE CLERK: What says the defense?

MR. SCHULTZ: Please seat the juror in this case.

THE CLERK: Please come forward and take a seat in the jury box.

53, Roger McKinney. What says the State?

MR. KENDALL: Please seat the juror.

THE CLERK: What says the defense?

MR. SCHULTZ: Please seat the juror in this case.

THE CLERK: Please come forward and take a seat in the jury box.

46, John Leary. What says the State?

MR. KENDALL: Please seat the juror.

THE CLERK: What says the defense?

MR. SCHULTZ: Please seat the juror in this case.

THE CLERK: Please come forward and take a seat in the jury box.

Juror 22, Robbie Eaker. What says the State?

MR. KENDALL: Could you say the name again.

THE CLERK: Robbie Eaker, Number 22.

MR. KENDALL: Please excuse the jury.

THE CLERK: You have been excused.

Juror 66, Tierra Phillips. What says the State?

MR. KENDALL: Please seat the juror.

THE CLERK: What says the defense?

MR. SCHULTZ: Please seat the juror in

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this case.

THE CLERK: Please come forward and take a seat in the jury box.

Juror 15, Sharon Chitty.

MR. SCHULTZ: Madame Clerk, what number was that?

THE CLERK: 15.

What says the State?

MR. KENDALL: Please seat the juror.

THE CLERK: What says the defense?

MR. SCHULTZ: Please excuse the jury in this case.

THE CLERK: You've been excused.

Juror 51, Anita McAbee. What says the State?

MR. KENDALL: Please seat the juror.

THE CLERK: What says the defense?

MR. SCHULTZ: Please seat the juror.

THE CLERK: Please come forward and take a seat in the jury box.

Juror, Hearl Richmond, Jr. What says the State?

MR. KENDALL: Please seat the juror.

THE CLERK: What says the defense?

MR. SCHULTZ: Please seat the juror in this case.

THE CLERK: Please come forward and take a seat in the jury box.

Juror 79, Travis Winkler. What says the State?

MR. KENDALL: Please seat the juror.

THE COURT: What says the defense?

MR. SCHULTZ: Please excuse the juror in this case.

THE CLERK: You've been excused.

MR. SCHULTZ: Madame Clerk, I should be on three.

THE CLERK: Four.

MR. SCHULTZ: Thank you.

THE CLERK: Jury 12, Xavier Burris. What says the State?

MR. SCHULTZ: Number, Madame clerk.

THE CLERK: 12.

MR. SCHULTZ: Thank you.

MR. KENDALL: Please seat the juror.

THE CLERK: What says the defense?

MR. SCHULTZ: Please seat the juror in this case.

THE CLERK: Please come forward and take a seat in the jury box.

Juror 6, Austin Beck. What says the State?

MR. KENDALL: Please excuse the jury.
THE CLERK: You've been excused.
Juror 3, Teresa Allison. What says the State?
MR. KENDALL: Please seat the juror.
THE CLERK: What says the defense?
MR. SCHULTZ: Please excuse the juror.
THE CLERK: You've been excused.
Juror 72, David Sils. What says the State?
MS. LESKANIC: Please seat the juror.
THE CLERK: What says the defense?
MR. SCHULTZ: Please seat the juror in this case.
THE CLERK: Please come forward and take a seat in the jury box.
Our next jury will be for alternate 1.
Juror 27, Brook Ferguson. What says the State?
MR. KENDALL: Please seat the jury.
THE CLERK: What says the defense?
MR. SCHULTZ: Please seat the juror in this case.
THE CLERK: Please come forward and take a seat in the jury box.
Juror 57, Lisa Moore-Blakely. What says the

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State?

MR. KENDALL: Please seat the juror.

THE CLERK: What says the defense?

MR. SCHULTZ: Please seat the juror in this case.

THE CLERK: Please come forward and take a seat in the jury box.

THE COURT: Any matters from the State?

MR. KENDALL: No, sir, Your Honor.

MR. SCHULTZ: No, sir.

THE COURT: Ladies and Gentlemen, who were not selected, even though you're wearing a mask, I can tell you're disappointed. But the week is young, okay. The week is young. With that, I'm going to release you here in just a few moments. I'm going to ask you to ensure before you leave that you have that magic number with you and I'm going to ask you to call that number --

After 10:00 a.m., Madame Clerk?

THE CLERK: Yes, sir.

THE COURT: After 10:00 a.m. If you'll call that number after 10:00 a.m., please. After 10:00 a.m. It may say to report and it may say you're not needed and call back after 6:00 p.m. tomorrow evening.

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But nonetheless, if you'll do us a favor, do us a courtesy, call that number after 10:00 a.m. tomorrow morning, there will be a recorded message with instructions for you.

THE CLERK: Judge, if I may must add something on that?

THE COURT: Yes.

THE CLERK: You're going to call in 10:00 for further reporting instructions. But if you have to be at work prior to 10:00 a.m. in the morning, you will go to work and call from your place of employment. Remember, you're only going to get an excuse for the days you physically report to the courthouse and I don't want you to get in with your HR department or your job.

Typically, if you call in at 10:00, we're going to give you a two-hour window to get here, and it could be two and a half hours. But just remember, you may call in at 10:00 and the directions may be to call back at 6:00 for further reporting instructions.

So if you don't go to work and you don't come to the courthouse, you're not going to have an excuse. I don't want anybody getting in trouble with their job. So you'll go to work,

call in from your place of employment, and then just doing whatever the message tells you when you call in in the morning. Okay.

THE COURT: Thank you, Ms. Brandy.

Also, as I release you here, I'm going to invite you to stay with us, if you'd like. We're going to continue to work a little bit. If you want to see some of what goes on in court, we have some other matters. Nothing exciting, I don't think, but we got some nuts and bolts things to do.

But this is an open courtroom, and I invite you now, and I'll do that all week, I invite you to come to your courthouse, your courtroom, and observe court at any time you choose. Again, we have open court and you're welcome here always at any time.

With that, I'm going to dismiss you. As we have done earlier today, if you would be kind enough to stand, turn around, the bailiffs will release you row by row so we can maintain social distancing, please.

(Jury pool released at 3:24 p.m.)

THE COURT: Jury Number 66, Miss Tierra Phillips, you are right there. Miss Phillips, it

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is my custom to alternate between a foreman and a forelady. It's time for a forelady. Would you serve as the forelady on this jury.

JUROR 66: Yes, sir.

THE COURT: I'm not going to require that. I'll ask someone else.

JUROR 66: That's fine.

THE COURT: But if you would, I would appreciate it.

JUROR 66: That's fine.

THE COURT: Tomorrow, when we return, if you would be kind enough to switch seats with the gentleman right here on the end, right there, that is my forelady's seat, the foreperson's seat. You become the spokesperson for the jury. When I look up, I always look to that chair.

Sir, if you would be kind enough to switch places with her. I would appreciate that.

Ordinarily, I would advise every one of you to switch seats as much you want. But under the COVID directions that we have, I'm going to ask you, unless there's some extenuating circumstance, to always sit in the seat you are in now. That will be your seat every time you come and go and nobody else will there. I assure you

the cleaning is done. Every night things are wiped down. But I find it would be best if we all sit the seat as your seat. If you want to switch -- I'll tell you what -- I'll give you the option. If you want to switch seats, do it in the morning and then maintain that seat. Because once you leave here today, there will be a wipe-down of seats and microphones and that sort of thing. If you would, be kind enough to remain in that seat.

My alternates you are in the correct seats. Those are the two alternates. And when I look up, I know where my alternates are at all times, along with my foreperson.

With that, I'm getting ready to release you. I will turn you over to the bailiffs to be released. I need you back in the morning.

You got one thing in the morning.

MR. KENDALL: Yes, sir.

THE COURT: So 30 minutes, 40 minutes?

MR. KENDALL: Yes, sir. About 30 minutes.

THE COURT: About 30 minutes?

MR. KENDALL: Yes, sir.

MR. SCHULTZ: I would say it's -- I would say probably about an hour.

THE COURT: Well, okay. I don't want to hold them back there waiting. Come in at 10:00?

MR. KENDALL: That's fine, Your Honor.

THE COURT: Okay. I'm going to be here at eight o'clock, a little after eight o'clock. They're going to be here at 8:30. But we have some pretrial which we're going to work on this afternoon. It's matters about -- you know, some things that are just nuts and bolts. It's has nothing to do with the facts of the case. Matters of law, I have to decide. Matters of fact, you have to decide.

Having said that, I need you back in the morning at 10:00. And the bailiff is going to instruct you about where to report to and how to get in. My bailiff will inform you what you need to do and how to access back here and all that good stuff. Okay, he'll take care of that.

We're all adults. I'm not going to tell you to be here 30 minutes early or 15 minutes early, but I need you all 14 at 10:00. I will be here. And I need all 14 to be here at 10:00. These guys and ladies make some really good coffee so you better be here to get some. Store your belongings. It may be cool in the morning. You

may have a jacket you want to leave back here. Again, no cell phones, please. No tablets, no communication devices on your wrist or anything like that.

Okay. Unlike the other group, I cannot invite you to stay this afternoon. In fact, I'm going to ask you not to come back into the courtroom because we're going to talk about pretrial stuff. And I may have to make a comment about on a fact, and the South Carolina law prevents me, forbids me from making a comment in front of the jury about a fact in the case. That is entirely up to you 12. So we're going to talk nuts and bolts. I cannot ask you to stay. I'm asking, please, don't come back to this courtroom until 10:00 tomorrow morning.

Bailiff, if you will take the jury.

(Jury is excused at 3:30 p.m.)

THE COURT: Okay. We have some stuff that we need to talk about, pretrial-wise? Have you all talked?

MR. KENDALL: One thing we need to do, Your Honor, is an arraignment --

THE COURT: Yes, we need an arraignment on indictment 1151.

MR. SCHULTZ: Judge, you want Mr. Smith up here?

THE COURT: That would be good.

MR. SCHULTZ: Okay, thank you.

THE COURT: Does he wish to be arraigned, Mr. Schultz?

MR. SCHULTZ: He does, Your Honor.

THE COURT: Okay. Sir, you are Bryson Jamar Smith?

MR. SMITH: Yes, sir.

THE COURT: It is alleged in the indictment 2020-GS-11-01151 that you did in the County of Cherokee, state of South Carolina on or about August 12th of last year knowingly sell, manufacture, deliver, purchase, or bring in this state, or provide financial assistance, or did otherwise aid, abet, attempt, or conspire to sell, manufacture, deliver, purchase, or bring into the State, or did knowingly, actually or constructively possess, or did knowingly attempt to actually or constructively possess four grams or more but less than 14 grams of heroin, which is a schedule one substance, in violation of state law.

That was sent to the grand jury and the

grand jury returned a true bill indictment.

Do you enter a plea of not guilty, sir?

MR. SMITH: Yes, sir.

THE COURT: The Court will enter a plea of not guilty.

Do you wish to be tried by a jury?

MR. SMITH: Yes, sir. By my country and my God.

THE COURT: By your country and your God. So be it.

That's the order of the Court.

MR. SCHULTZ: Thank you, Judge.

MR. KENDALL: The State has also filed a third-party guilt.

THE COURT: Have you talked about that, Mr. Schultz? Any objection?

MR. SCHULTZ: No objection.

THE COURT: Okay. So a third-party guilt motion is granted. There will be no arguments about third party.

Okay. Next, Solicitor.

MR. KENDALL: I believe that -- I guess we could put the offers on the record.

Most recently, Your Honor, so Mr. Smith has --

THE COURT: Wait just a second. I don't know that I really want to know what the offer is, to tell you the truth.

Why don't we do this: If you just tell me that there is an offer -- give me some information that there is an offer and if he rejected the offer.

MR. KENDALL: There are actually -- this will make better sense, Your Honor.

THE COURT: Okay.

MR. KENDALL: There were actually two different sets of offers. There's a separate set of charges Mr. Smith is also charged with that we are not dealing with today. So we made an omnibus offer. He indicated he did not wish to resolve those together. And we've also made an offer specific to these charges.

THE COURT: Okay.

MR. KENDALL: I don't know -- I assume he's not interested in that. If you talked to him?

THE COURT: I'm going to ask his lawyer, and then I'm going to swear him.

Yes, sir, Mr. Schultz.

MR. SCHULTZ: Thank you. There have been

some offers in this case. There have been negotiations, there's been counter-proposals, there's been proposals. At this time, Bryson has rejected all those.

THE COURT: Okay.

Sir, if you would stand and be sworn, please.

THE CLERK: Please raise your right hand. Do you solemnly swear the information you give to this Court to be the truth, the whole truth, and nothing but the truth?

MR. SMITH: Yes, ma'am.

THE COURT: Sir, you're Bryson Jamar Smith. You've been in the courtroom during these procedures. Have you heard what the solicitor and your lawyer has told with regard to offers, counter-offers, global offers?

MR. SMITH: Yes, sir.

THE COURT: Did you understand all that?

THE WITNESS: Yes, sir.

THE COURT: Okay. Is it true that you rejected all offers?

MR. SMITH: The ones that I heard, I rejected. Yes, sir.

THE COURT: Okay. Do you need to talk to Mr. Schultz? If you do, I want you to step back

about two feet here. You want to talk to Mr. Schultz?

MR. SMITH: We talked right now. No, sir.

THE COURT: All right. Apparently, there was an offer that you rejected and then there's another set of charges. So there was an offer on these charges, and there was an offer, as I understand, from the solicitor that would cover all the charges. So my question is: Are you rejecting both the offer on these charges and the offer on all the charges?

MR. SMITH: Yes, sir.

THE COURT: Okay. No one forced you, threaten you, made you do that?

MR. SMITH: No, sir.

THE COURT: That's your decision?

MR. SMITH: Yes, sir.

THE COURT: You had sufficient time to talk to your lawyer about the offers?

MR. SMITH: Yes, sir.

THE COURT: And you understood the conversations with your lawyer?

MR. SMITH: Yes, sir.

THE COURT: And, still, understanding

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that and knowing that, you reject all offers?

MR. SMITH: Yes, sir.

THE COURT: And you want to go to trial?

MR. SMITH: Yes, sir.

THE COURT: Very good, sir.

MR. SCHULTZ: Thank you, Judge.

THE COURT: He's covered. All offers rejected.

Yes, sir, Solicitor.

MR. KENDALL: I believe that's all the motions that we have, Your Honor.

THE COURT: Okay.

MR. KENDALL: I don't know if defense has got some. I got a couple minutes to round up more people out there.

THE COURT: You got one in the morning.

MR. KENDALL: My guess is, it's probably going to be defense's motion in the morning --

THE COURT: Okay.

MR. KENDALL: -- ideally, with the admissibility of Facebook records. The person we have to authenticate those records is available tomorrow morning.

MR. SCHULTZ: That's correct. Mr. Kendall is correct. He is attempting to

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introduce some Facebook records. I'm obviously going to object to that. We can argue about that in the morning.

THE COURT: Okay. Well, how about this: We could argue about it in the morning but give me some specifics.

Mr. Schultz?

MR. SCHULTZ: Yes.

THE COURT: Let's hear a few specifics so I can go read.

MR. SCHULTZ: This is what I'm assuming at this point, the State hasn't formally introduced this, but in discovery, Mr. Kendall has provided me with voluminous Facebook records and correspondences or instant messages on Facebook. For the most part, they are -- I think there's about 800 pages' worth of this stuff.

But Mr. Kendall has told me today, that they are going to put three, for lack of a better word, pages of these threads in their case in chief. I'm going to object to this, because the authors of these messages does not say Bryson Smith or anywhere close to it. The people in these messages refer to themselves, or at least name themselves, Buddy Dawkins, Q. Longway Horton,

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Alexis Byars, Adonis Willis, and Thomas Payne, and there's also a Joshua Lindsey in one threat as well.

I think the State is going to attempt to present, or at least try to authenticate these Facebook messages as belonging, or at least originating from my client, and they want to show that to prove, I guess, some kind of common scheme or plan to distribute narcotics, which is obviously under their indictment.

So I would object to the Facebook records coming in, and I know Matt is going to try to authenticate it, but that would be my position.

THE COURT: Solicitor.

MR. KENDALL: Your Honor, I believe the controlling precedent in this case is State vs. Green.

What we're discussing here, the defendant used a pseudonym in handling his Facebook messages. He actually acknowledges that on jail phone calls. And the State would argue, on those jail phone calls, he actually acknowledges this is his Facebook account.

The messages we're seeking to introduce show within days of this taking place his

possession of what are called percs. Percs is a common slang for opiates. It's short for Percocet. It's frequently used for opiates that are sort of the knock-off version of that, I would say. Things people make. They're opiate based. They're not, like, made by the company Percocet, but have the same opiate effects. In this case, Fentanyl and heroin.

In addition, Your Honor, we're going to produce a witness who is going to testify -- we believe he's going to testify that he utilized this Facebook account with this defendant. They've had conversations with this. And based on those conversations, action were taken that necessarily -- that the only way that would happen is if it was through the Facebook conversation.

Based on that, I believe the State vs. Green case that, under that, it's appropriate. I believe it's the standard that has been laid forth in that case, and we would offer those. Again, we would also, hopefully do the hearing tomorrow, the jail call into evidence which he seems to acknowledge. He certainly acknowledges that he, in fact, was using a pseudonym on his jail phone call. But also that

he -- it sounds to me like he's saying it's his.

THE COURT: How about that Green case, Mr. Schultz?

MR. SCHULTZ: Your Honor, I'm going to review that. My understanding, as far as the admissibility and -- or at least the admissibility and authentication of Facebook or any kind of social media transmission into court is that the State or, you know, the moving party has to get some kind of IP address, internet protocol address where this actually came from. Just somebody on Facebook saying, oh, I think it's him, I don't think that rises to the level of admissibility. And I think that's what the State is presenting here. I don't think we have anybody coming in from Facebook to say, well, it was from an IP address that was registered to Bryson Smith, or an and IP address that was registered to a home that he was staying in or living in or received mail in.

All we have, apparently, and maybe Mr. Kendall can correct me if I'm wrong here, is somebody that thinks he was talking to Bryson Smith, that he was an alias. I guess that would be the basis of the State's motion. I don't

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think it's authentic. I just don't think it comes in.

THE COURT: I don't get to decide it today. I just wanted to hear where we were headed to.

What else in the morning? Anything?

MR. SCHULTZ: Not involving -- well, that would be the basis of my motion there. I'm going to review State v. Green tonight, but that would be the basis of my objection in the morning.

THE COURT: Yeah, that's all I wanted, was to get an idea where we were headed.

Are there other motions?

MR. SCHULTZ: Right now?

THE COURT: Yes.

MR. SCHULTZ: Yes, sir. I wanted to challenge the search that was conducted on August 12, 2019 by, I believe, Lieutenant Parnell.

THE COURT: Solicitor.

MR. KENDALL: Before we get to Detective Parnell here to offer a search warrant, I believe the defendant has to show standing. That is, he can certainly acknowledge standing in this case, but is actually going to an issue. I bring that up, Your Honor, because I think the

likely defense on this is that he doesn't live here. I just want to caution the defense that if he takes the position for purposes of a suppression hearing that he does, in fact, live there, I don't know he's free to argue that subsequently that he does not.

THE COURT: I don't know what the motion is. You say you're going to challenge it, so what is the motion?

MR. SCHULTZ: Well, the basis of my challenge is that Mr. Smith is being charged with trafficking in this room that he wasn't staying in at the time. So I understand the basis of the standing, but the trafficking is still there. He's being charged for whatever is in the room. So I believe I do have standing without abdicating my defense.

THE COURT: So I guess the solicitor is saying -- is he saying he lived there?

MR. SCHULTZ: No, sir.

MR. KENDALL: In order to establish claim for standing, he must -- to challenge a search warrant, he must have a reasonable expectation of privacy on the premises that are being searched.

The State would actually allege that he

was, in fact, living there. It's his stuff, or at least coming and going from there. That is his stuff.

I believe the case law would suggest the defense has the burden, they must first establish that has standing. I mean, if the defendant is going to say, this is my room, this search warrant is bad. I would be in agreement with that.

The State problem is, I don't believe they can take both sides of that coin. They must either -- it's either his room and he has a reasonable expectation of privacy to search there. Or it's not his room and has no reasonable expectation of the privacy of that room. That would be the State's position, Your Honor.

THE COURT: Which way is it?

MR. SCHULTZ: Well, at this point, if -- my understanding of the case law is that there is -- there's some kind of expectation or privacy. But, yes, at the same time, I don't understand how the State can then produce that in their case in chief if I raise this issue in a pretrial hearing. That's what I'm trying to understand.

THE COURT: Okay. See, I don't know anything about the case. But if he's just

visiting there, if that's his position -- I'm not asking you to say one way or other, but I'm getting close to it. If he's just visiting there, that's different than he's got a room there. Where his clothes are, maybe a cell phone charger, maybe some mail. I don't know which way it is, so which -- what's his argument?

You're saying that you think you can argue standing without him admitting that that's his room.

MR. SCHULTZ: Yes, sir.

THE COURT: Well, I -- Anybody got a case on that?

MS. LESKANIC: I believe there's a Supreme Court case, a United States Supreme Court case. It's not directly on point, but I believe that in -- I printed it off with the headnote. I haven't gone through it all the way through, but my understanding the defendant must establish. They have the burden of establishing standing to challenge a search warrant. The search warrant is presumptively valid absent, you know, kind of the standards things. It's deficient on its face, non-detached -- not attached to a magistrate, et cetera. To do that -- to get that, they must

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first establish standing. Once they establish standing, then they can go and challenge the search warrant.

The State's position is that this is a room he's staying. I'll just -- without playing hours of video, the officers talk about that quite a bit. They actually go in the house, get permission into the house. They stop -- they go in there to look for him to see the drugs -- they actually go get the search warrant for this because they don't feel like they can get consent for the whole thing. We think that this is his room.

But I think before we get to that analysis of whether or not he has standing to challenge, I think he has to assert that he standing to do that. I don't think that there's -- that burden rests -- not burden, but that initial showing rests with the defense of the search warrant and he must establish that before we go to part two of whether or not the search is appropriate.

I don't think they can play two sides of the same fiddle. It's either got to be something that he has expectation of privacy or he

doesn't.

THE COURT: I mean, I'm just shooting from the hip, but if I come to visit you at your house and I'm standing in the kitchen and drugs are found in the kitchen, you're saying that I have standing to challenge the search warrant?

MR. SCHULTZ: Quite possibly.

THE COURT: I don't know that to be the law, but -- so what's his assertion?

MR. SCHULTZ: Well, Judge, if I speak to my client real quick.

THE COURT: Sure.

MR. SCHULTZ: Thank you.

Your Honor, after conversation with my client, I'm going to withdraw the motion to contest the validity of the search warrant.

THE COURT: Okay.

MR. SCHULTZ: Thank you.

THE COURT: Withdrawn.

Is there any other motions, Mr. Schultz?

MR. SCHULTZ: No, sir.

THE COURT: Okay. So the only one we'll deal with in the morning is -- I'm going to call it electronic media.

MR. SCHULTZ: Yes, sir.

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THE COURT: Okay. Nothing further this afternoon on this. Okay. Parties want to keep talking, that's fine too.

Anything further from the State?

MR. KENDALL: I don't believe so, Your Honor.

THE COURT: All right. It's almost 4:00. The Chief Justice has talked about letting people go around 4:00 if we can anyway because it's election day. So I think we'll stand down. I'll be here at 8:10, something like that, in the morning. All of you all probably have my cell phone number. If something changes, you call me. Don't ex parte me, but get everybody into the call. I'll see you here in the morning.

I would recommend you all get here about 8:30, Mr. Schultz.

MR. SCHULTZ: Yes, sir.

THE COURT: See if we can hammer out some things and talk about some things then. If anything, if we need to get set up over here. I don't know the new system.

MR. KENDALL: We will be using audio. And it might be easier -- I don't think we -- the projector, we will have a bunch of pictures,

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Your Honor, so we would probably -- instead of passing these around -- oh, there is an issue that we do need to discuss on the Fentanyl.

Fentanyl, when you get -- Fentanyl -- basically, this is because of the quantity of drugs. They're packaged in a sealed box as opposed to, like, your small quantity investment. When they reseal this, they put a label on it basically saying, because this is Fentanyl, this needs to be handled the -- I guess the punch line to it is, we want SLED to open it. We don't want to open it. We need to make sure it's opened away from the jurors, because is very lethal in small doses.

So we may be going out of order with some of our analysts and things like that for the purposes of getting in here, opening the thing up, and making sure that we, kind of, go that route, as opposed to --

THE COURT: We don't want to open it. Let SLED open it.

Okay. Anything further? You all talk with Madame Court Reporter about exhibits and how you want to do that?

MR. KENDALL: No.

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THE COURT: When we get off the record here, you might spend a few minutes talking to Madame Court Report to see how we want to handle that. It's different.

MR. KENDALL: Yes.

THE COURT: It's different.

MR. KENDALL: Yes, sir.

THE COURT: I'm going get off the bench. Oh, you want that case.

LAW CLERK: Can I get the cite for State v. Green.

MR. KENDALL: It is 427 S.C. 223.

MR. SCHULTZ: 223.

MR. KENDALL: It was decided -- there was actually one sooner than that.

THE COURT: Off.

(The trial was adjourned for the day at 3:56 p.m.)

CERTIFICATE OF REPORTER

I, SHARON G. HARDOON, Official Circuit Court Reporter, III for the State of South Carolina at Large, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in General Sessions for Cherokee County, Gaffney, South Carolina.

I do further certify that I am neither kin, counsel, nor interest to any party hereto.

May 2, 2021



_____
Sharon G. Hardoon, CSR
Official Circuit Court Reporter, III

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STATE OF SOUTH CAROLINA
IN GENERAL SESSIONS
COUNTY OF CHEROKEE

State of South Carolina,

Plaintiff,

vs.

Transcript of Record
2020-GS-11-01147,
2020-GS-11-01148,
2020-GS-11-01149,
2020-GS-11-01150,
2020-GS-11-01151

Bryson Jamar Smith,

Defendant.

November 4, 2020
Gaffney, South Carolina
Volume II of IV

B E F O R E:

The HONORABLE R. KEITH KELLY

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

Kim Leskanic, Representing the State of South Carolina
Matt Kendall, Representing the State of South Carolina
Joshua Schultz, Representing the Defendant

SHARON G. HARDOON, CSR
Official Circuit Court Reporter, III

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MS. LESKANIC: May it please the Court, Your Honor?

THE COURT: Yes, ma'am.

MS. LESKANIC: Your Honor, we have one issue to address first thing this morning. We have the box containing the narcotics that Captain Anthony has with the sheriff's department. Our concern yesterday afternoon was the Fentanyl.

It's our understanding that inside the box, once that is opened, I think the Fentanyl is just in a Ziploc bag. We wanted to secure that better for court, so we wanted to ask the defense and the Court's permission for Captain Anthony to take the box back to the sheriff's department to open the seal on the box. He will photograph what is inside the box and then place the Fentanyl tablets into a tamper evident or Ziploc -- heat-sealed bag. And then when everyone handles that evidence in court, I would recommend that gloves be worn. I spoke with the analyst, Maribeth McCormack, she stated that some residue could have gotten on the outside of the bag that she used just from handling it, although she wears gloves. Just in an abundance of caution, we're asking that he be allowed to do that to secure

that evidence better before it's brought into the courtroom for the attorneys to handle as well as for the jury to see.

THE COURT: Any objection?

MR. SCHULTZ: I don't have any objection. I think it's necessary for the protection of the officers of the court, the jury. And as long as there's nobody else involved in the chain of custody when he takes it over to the sheriff's office and does what he has to do with it. That would be my main objection. But Miss Leskanic says that's not going to happen, so I have no problem with it.

THE COURT: I don't think Mr. Anthony would do that anyway, so, yeah, that's granted.

MS. LESKANIC: Okay. Thank you, Your Honor. We're going to ask that he be excused at this time to go ahead and prepare that so it will be ready when we get to the first witnesses.

MR. SCHULTZ: No objection.

THE COURT: Okay. I believe you have a motion this morning.

MR. SCHULTZ: I do, Your Honor.

THE COURT: All right.

MR. SCHULTZ: Your Honor, as we spoke

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about yesterday, I believe the State is going to at least to attempt to present some Facebook, I guess for the lack of a better word, threads of correspondence between what is purported to be my client and other individuals pertaining to drug activity in or around Cherokee County.

I am opposing this based upon what I've read with State v. Green. I had a chance to review this over the night. So I think, at this time, the State at this time is going to put up possibly one of their witnesses or other people that are going to be presenting or at least attempting to authenticate the Facebook Messenger threads. And I would object -- well, I'm objecting to this now, but I'm also going to object to it if the State does intend to prove this in their case in chief as well. So that would be the nature of my motion.

THE COURT: Solicitor.

MR. KENDALL: Your Honor, at this time, the State will call Randy Gardner.

THE CLERK: Please raise your right hand. Do you solemnly swear or affirm the testimony you give this Court will be the truth, the whole truth, and nothing but the truth so help you God?

THE WITNESS: Yes, ma'am.

THE COURT: Sir, tell us who you are and spell your last for our court reporter.

THE WITNESS: Randy Gardner, G-a-r-d-n-e-r.

THE COURT: Solicitor.

WHEREUPON:

RANDY GARDNER,

after having been sworn, testified as follows:

DIRECT EXAMINATION

BY MR. KENDALL:

Q Officer Gardner, where are you currently employed?

A For South Carolina Department of Natural Resources.

Q And how long have you been employed there?

A Since January of the given year.

Q And prior to that, where were you employed? Where were you employed prior to that?

A I was employed at the Cherokee County Sheriff's Office since 2009.

Q And during the course of your time at the Cherokee County Sheriff's Office, what were your responsibilities, particularly in August of 2019?

A August 2019, I was a criminal investigator. I worked in the criminal investigation division.

Q And did you investigate a case involving Bryson Smith in August of 2019?

A I did. Yes, sir.

Q And what -- over the course of that, did you seek and receive Facebook records from an account of Mr. Smith?

A I did. Yes, sir.

Q And what was that account listed as? What name did he list as his account name?

A Buddy Hawkins.

Q Okay. And did you receive Facebook records from Facebook?

A I did. Yes, sir.

Q I'm going to show you --

MR. KENDALL: If we could go ahead and mark these.

(STATE EXH. 1, Facebook messages, was marked for identification.)

(STATE EXH. 2, Facebook messages, was marked for identification.)

BY MR. KENDALL:

Q I'm going to show you what are marked State's Exhibit 1 and 2. And if you'll take a look at these.

A Yes, sir.

Q Are those fair and accurate representations of the

Facebook messages you received back from Facebook?

A There was a larger one, but, yes, that does seem accurate.

MR. KENDALL: Your Honor, we would offer for purposes of this motion State's Exhibit 1 and 2.

MR. SCHULTZ: For purposes of this motion, no objection.

THE COURT: For purposes of this motion.

MR. KENDALL: Please answer any questions Mr. Schultz may have.

CROSS-EXAMINATION

BY MR. SCHULTZ:

Q Officer, how long have you worked in law enforcement?

A Since 2009.

Q 2009?

A Yes, sir.

Q All right. So about 11 years now?

A That's correct.

Q Have you conducted investigations using Facebook?

A I'm sorry?

Q Have you conducted investigations where you

utilize Facebook as evidence?

A I have. Yes, sir.

Q All right. And when you receive Facebook threads or correspondences, how do you usually get these?

A From Facebook.

Q From Facebook?

A Yes, sir.

Q All right. How do you get into Facebook if it is not your account?

A A search warrant.

Q A search warrant?

A Yes, sir.

Q Okay. Was there a search warrant in this case?

A I believe there was. Yes, sir.

Q All right. Do you have that in front of you right now? I see you have the case file. Do you have that search warrant in front of you?

A I do. Yes, sir.

Q All right.

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

THE COURT: Sure.

MR. SCHULTZ: Thank you.

THE COURT: Don't get too close.

MR. SCHULTZ: I won't.

BY MR. SCHULTZ:

Q All right. And is that your signature as the affiant on the warrant?

A It is. Yes, sir.

Q All right. And could you read to the Court the reason why you requested the warrant in the first place to search Facebook?

A Sure. An investigation began on August 12th, 2019 when Cherokee County deputies responded to a shooting with injuries on General Drive in Gaffney, South Carolina.

When deputies arrived on the scene, they located Ron McGill and Carlton Leach laying on the ground near [redacted] General Drive. Both subjects had sustained a gunshot wound and were transported to Spartanburg Regional. Information was also gathered while deputies were on the scene, and a third subject was brought to Gaffney hospital after a little bit with a gunshot wound.

The affiant began -- the affiant, which is myself, began questioning possible witnesses on scene, gathered information from witnesses, the suspect dressed in all black and was short.

The affiant did obtain information that Carlton Leach he had been in an argument over the last

few days with Bryson Smith, who was the shorter black male on the scene.

This affiant also provided a statement from the suspect that he got into a burgundy Hyundai, possibly being driven by John Snyder after the shooting.

The affiant also spoke with the mother of Carlton Leach. Miss Leach explained that her son recently updated about some posts that were made on social media by him. She provided screen shots of these posts which are attached to this update. These posts were posted by an account with the name Buddy Dawkins, which appears to be Bryson Smith's Facebook page.

August 12, 2019, Josh Mata was interviewed by this affiant and provided a statement that consisted of him and me providing a ride to a guy who he knew as Buddy who identified in a digital lineup as being Bryson Smith. Mr. Mata explained he heard gunshots. And shortly after Bryson came to his car asking for a ride and telling him to go, go, go, Mr. Mata explained that Bryson was dressed in dark clothing and was carrying a bag.

It is this affiant's belief that a search of the requested Facebook entries will aid in the

investigation of the shooting of the three subjects that occurred on August 11, 2019.

Q All right. So you executed that search warrant, correct?

A Yes, sir.

Q And how did you execute that search warrant?

A Kind of the process, you go in there and you preserve the data on that Facebook profile. And then once you get a search warrant, you send it to Facebook. It's a link. They get your credentials that you're law enforcement.

Once you send it, the link to them, you know, depending on how large the date range is or how many profiles you want, they send it back to that link once it's completed.

Q So that is how you received these threads of correspondences?

A That's correct, through a Facebook link.

Q Okay. The only evidence that you have -- I just want to be clear with this -- that Buddy Dawkins was Bryson Smith was through Monica, correct, or no?

A No, sir. I'm familiar with Bryson. I worked in the narcotics unit since 2011. I know his nickname to be Buddy. Cash Buddy, Buddy, Little Buddy, you know, that was, kind of, the

names that I was familiar with.

The mother of Carlton Leach showed me a Facebook page that's attached of Buddy Dawkins. So I guess, along with the mother of Carlton Leach and Monica, that would be correct.

Q Now, you mentioned a couple -- you stated you worked in narcotics since 2011, correct?

A Yes, sir.

Q Okay. Now, you're no longer in narcotics, right?

A Yes, sir.

Q You work for DNR, right?

A I do. Yes, sir.

Q You mentioned you went, kind of, fast through that, and I apologize, I didn't write down all the names that you know Bryson Smith from. What were those names?

A Buddy, Little Buddy, or Cash Buddy, all referring to Buddy.

Q Buddy, Little Buddy, and Cash Buddy, correct?

A That's right.

Q All right. Up until your time that you left did Bryson Smith ever go by the name of Buddy Dawkins on the street?

A I said he did, yes, sir.

Q So Buddy --

A I apologize. I said Buddy Dawkins.
Q Buddy, Little Buddy, and Cash Buddy.
A Yes, sir.
Q Now, there's other people that you had probably arrested and interrogated that went by the name Buddy.
A He's the only Buddy that I'm familiar with in Cherokee County.
Q The only Buddy that you're familiar with ever.
A The only Buddy that I ever investigated or dealt with is Mr. Bryson.
Q So it is the truth then that you investigated nobody else named -- nicknamed Buddy or had the suffix Buddy, right?
A That's correct.
Q Okay. Could there be a possibility that this Buddy Dawkins in the Facebook correspondence thread could be somebody else posing as Buddy Dawkins?
A I guess it's possible. With the messages going back and forth, I think it's highly unlikely.
Q But it could be possible?
A I mean, sure. Yes, sir.
Q All right. Could it also be possible that other people in Cherokee County knew of the name of Buddy Dawkins, or at least knew that Bryson Smith went

by the name Buddy Dawkins that could be posing as him on Facebook?

A I guess. Yes, sir.

Q Because you don't know, right?

A I think the messages that with the messages that were sent back and forth, the pictures that are on that account that I would say it's highly unlikely that somebody was posing to be him. I think that it would be Mr. Bryson.

Q That's your opinion that it's highly unlikely. But it is possible?

A Yes.

Q I just want to be clear with this. That was a yes?

A Yes, it would be possible. Yes, sir.

Q All right. In your investigation through the search warrant, did you ever establish via Facebook or by your own investigation an Internet protocol address where those messages were from?

A No, sir.

Q Do you know what an Internet protocol address is?

A The IP address, I suppose, is what you're referring to?

Q Yes.

A No, sir. I did not.

Q Okay. Detail to the Court what the Internet protocol address is?

A It establishes what device was used to post, to post on social media. What Internet access was available to post on social media.

Q An Internet protocol address can go back to possibly an individual who has that Internet protocol account, correct?

A Possibly. Yes, sir.

Q Well, you've looked at other IP addresses. Would that be a fair and accurate statement?

A It would be kind of tough with Facebook to get an IP address sometimes, because, you know, they may use a cell phone. They may use different tablets, different computers, TVs. There's all different types of IP addresses.

Q But you never once, in this case, did that in this, in this case?

A No, sir. Right.

Q You never had an IP address for Buddy Dawkins in the Facebook corresponding -- the correspondences that you had?

A I can't say without certainty. They may have sent one in their results, but I did not look into the IP address. Does that make sense?

Q It does.
A Okay.
Q You just never looked into it.
A That's correct. I won't say that they didn't send me one. I would think that it's possible they did try to look at some of the -- to provide me with the IP address.
Q Did any other investigators look into an IP address?
A Not that I'm aware of. No, sir. And I would say no.
Q So other than a third party and your personal knowledge, you have no other evidence that Buddy Dawkins is linked with Bryson Smith, correct?
A No, sir. I was investigating a shooting that occurred.
Q Okay.
A So I guess I have Carlton Leach. His mother said this is a Facebook post of Bryson I warned him about.

When I interviewed Josh Mata, my knowledge of Bryson, I'd seen the pictures that are on that page. Further investigating the shooting, there was four females.

Q All right.

A So, I guess, third parties, maybe five third parties that said they were talking to Bryson.

Q Now, I just want to establish because we got to define our terms here. When you talk about "post", do you mean that Buddy Dawkins, whoever that is, posted on Facebook or was that a private message?

A The post the mother was concerned with was a post made public. She showed me. I attached that to the affidavit. The private message was received from Facebook between him and Josh Mata, him and the four females.

Q Okay. Do you have that post? I'll give you a minute.

A Yes, sir.

Q All right.

MR. SCHULTZ: Can I approach the witness, Judge.

THE COURT: Yes, sir.

MR. SCHULTZ: Thank you.

BY MR. SCHULTZ:

Q Was there any other identifications made of the man in that picture?

A The profile picture that was here was Bryson.

Q The profile picture?

A Yes, sir.

Q All right. And IP address, again, I just want to confirm this, officer.

A Yes, sir.

Q You never looked into an IP address linked with Buddy Dawkins, correct?

A I do not.

MR. SCHULTZ: Nothing further, Judge.

THE COURT: Anything?

MR. KENDALL: Yes, sir, Your Honor.

MR. KENDALL: My understanding was we weren't going to go into the attempted murder today. If we need to, I guess that's what, sort of, what we're doing.

MR. SCHULTZ: Judge, I just want to clarify that.

I'm sorry, man.

This is a pretrial hearing, so I don't want to get into attempted murder. I'm not going to get into that in the case in the chief. But for purposes of the pretrial hearing, I think I had to.

MR. KENDALL: All right. Let me just -- our position was -- I didn't understand -- I thought this was an authentication issue as opposed to search warrant issue, but certainly, if

we need to clarify what's taking place on that.

REDIRECT EXAMINATION

BY MR. KENDALL:

Q Do you recall the investigation into Bryson Smith for the shooting of Carlton Leach amongst other?

A Yes, sir.

Q And could you please describe what happened just so the Court has some context?

A There was a call. I think it was on Gateway Drive, say a trailer park in Cherokee County. I just want to make sure I tell you the right -- it was in Province Creek area, the trailer park, multiple people were injured.

I responded to find two individuals who were shot and taken to Spartanburg Regional. I had an investigator I contacted to go there to try to interview them. One individual I was able to interview later that evening who had been shot and released from the hospital talk to several witnesses on scene, found out where the owner of the trailer was actually staying at. I talked to her to kind of give me a brief description of what happened.

I was able to talk to an individual who said that he saw a red burgundy Hyundai car similar to the one Josh Mata drives. He thought it was Josh. And

that they -- Bryson Smith was arguing with Carlton Leach. He thought it might be Bryson by his stature, a short black male. I was able to go talk to Carlton's mother who said they -- Bryson had been arguing back and forth with Carlton about an incident that occurred a while back. She provided me the Facebook post and the Facebook profile picture of Mr. Bryson Smith.

I was able to contact Mata. I interviewed Mata who stated he did pick up Bryson. He was riding through the trailer park looking for a bootlegger.

Q Okay.

A I believe is what he told me.

Heard gunshots and heard somebody saying, Mata, Mata, Mata. It was Bryson Smith getting in the car with him. Or he would call Buddy, he identified as Bryson. Told him, you know, anything happens, I'll write a statement.

And then we were able to obtain search warrant records after sending the search warrant for Facebook and found, you know, the post. It provided also a conversation between Bryson and four females of him, kind of, discussing for them to let him know when they saw Carlton and that he was going to shoot that individual.

Q Okay. And this occurred prior to the issuance of any kind of warrants, right? These conversations were dated prior to when he was arrested, correct?

A Yes, sir.

Q This wasn't an account that was created subsequent to that?

A It was before any warrants.

Q And could you, sort of -- I guess briefly, sort of, summarize what was in those messages back and forth to the girls? What was --

A It was all discussing back and forth about when they see him and to let him know in some way -- these wasn't the exact words, but he was planning on shooting him. For him to find out where he's at.

Q Okay. And that was something -- and then he was subsequently, after the conversation before we get the Facebook records back, identified by another party as being on scene running frantically back to the car saying go, go, go.

A Yes, sir.

Q Okay. And, kind of, going back further: Were you able to look at the pictures on this Facebook page? Did you recognize Mr. Smith?

A When Mr. Leach's mother showed him to me, I

did. And then once we got the results back, I recognized him.

Q Okay. And so, were -- the messages that you found within the attempted murder case, were they consistent with somebody planning attempted murder?

A Yes.

Q Okay. The IP address -- what are the difficulties in obtaining an IP address?

A I don't know the exact difficulties. I don't know exactly what all goes into an IP address. I just know that when it deals with Facebook, there's so many different IP addresses that can be used to access that one account, whether it be someone's cell phone, tablet, a computer, and Facebook is able to obtain them. I've never searched -- I've never received an IP address from Facebook and tried to find out exactly, you know, what device was used to post them.

Q Okay. And so it varies with the device. So if somebody has multiple phones, per se, you would have multiple devices.

A Yeah, it's not always off of that Internet.

Q Okay.

A That was used to make a post there.

Q Okay.

MR. KENDALL: Just a moment, Your Honor.

THE COURT: Yes, sir.

BY MR. KENDALL:

Q Do you recall what email address was assigned to this Facebook account?

A I do not. No, sir. It's not the email address. There is a link that is attached to it.

Q What is that link?

A HTTPS://www.facebook.com/bryson.smith.587.

Q All right. So bryson.smith.587. What is the assigned name for the Facebook account?

A The user name was Buddy Dawkins. The Facebook contact information is the link that is associated with that username.

Q Okay. And would Facebook just make that up?

A No, sir. I think it was created by someone. Facebook doesn't assign the name people use.

Q And would there be a registered email with this as well?

A There would be, but I can't -- I don't --

Q Would looking at a copy of the return from that Facebook business records assist in that?

A Yes, sir. It would.

Q Okay. Let me show you.

A The registered email address associated with that account is registered to brysonsmith.87@yahoo.com and bryson.smith.587@facebook.com.

Q Okay.

MR. KENDALL: I'm going to go ahead and mark these just as an exhibit.

(STATE EXH. 3, Emails for Facebook, were marked for identification.)

BY MR. KENDALL:

Q When did the attempted murder take place, do you recall?

A I'm sorry. When or where?

Q When.

A August 11, 2019.

Q August 11, 2019?

A That's right.

Q All right. So the drug case occurred approximately a day later?

A I believe that's correct. Yes, sir.

Q Okay. Do you recall what time the shooting took place on the 11th?

A 2018, August.

Q And, just to be clear, the Facebook times are in

UTC time, is that correct? Located next to the -- on the messaging post?

A Yes, sir.

Q Okay. And that's not the same thing as Eastern Standard Time, correct?

A No, sir. It would be five or four hours difference, depending on daylight savings.

Q That's ahead. So, for example, 2:37 p.m.; is that correct?

A Sure.

Q All right.

A Yes, sir.

Q So these are actually dated -- so the time on this would actually be ahead of what we deal with, Eastern Standard Time, correct?

A Yes, sir.

Q I'm going to show you State's Exhibit 3. Can you take a look at that?

A Yes.

Q And what is the content of that if you can just do the highlighted portions?

A Conversation between Buddy Dawkins and Sharda Watkins on August 12th, 6:39 universal time.

Q And what does that indicate?

A It says, "Call me right now. Get out." Sharda was sending that to Buddy. It says, "Call me right now," and for him to get out of there.

MR. KENDALL: Your Honor, this is State's 4 and 5. Let me get this marked as well.

THE COURT: Any objection to State's 4 and 5?

MR. SCHULTZ: Not for the purposes of this hearing.

(STATE EXH. 4, Facebook messages, was marked for identification.)

(STATE EXH. 5, Facebook messages, was marked for identification.)

MR. KENDALL: Just to clarify the record. We're obviously not going to introduce this shooting -- try the shooting case at the same time we're trying the drug case. That's our intention, Your Honor.

Obviously, it wasn't really my intention to go into this, but it has been gone into. And instead of just having people testifying as to broadly what happened. I'd like to be able to put this on here. The Court can take a look at it.

Your Honor, he doesn't have to read through the whole -- it's five or six pages.

Maybe we can give them to Your Honor and you can look through them as well.

There were some questions asked about how the basis of this came about. I thought we were just doing authentication. If not, I want to make sure this gets on the record. It could affect the subsequent case.

THE COURT: Okay.

BY MR. KENDALL:

Q If you take a look at 4. Is that, again, a fair and accurate --

A Yes, sir.

Q And what is the basic -- what is the timeline to -- you don't have to read the entire thing. We'll submit that with the judge. What is the general, kind of -- just the highlight portion?

A Sharda was just saying, I'm asking what trailer he's got weed and which door, he's referring to Carlton. Where you at, bro? Just now. See if you'll bring you some more clothes. Oh, he got to be shot.

It's a conversation between four females and Bryson, talking back and forth about where Carlton is at. He wants to know where he's at.

Q State's Exhibit 5?

A Referring to Carlton, his name is Mook. They're talking about an incident that occurred. They asked Bryson, damn, Buddy, I heard Mook got you. Yeah. What did he do, or what did he get, bro? And I think he was referring to money. I think they had an altercation.

Q And State's Exhibit 6?

A Buddy asked him is he out there. Tierra telling him, I'll ride by there and let you know.

Q And that was a good bit before; is that correct?

A Yes. It was sent at August 4, 2019.

(STATE EXH. 7, Facebook message, was marked for identification.)

(STATE EXH. 8, Facebook message, was entered into evidence.)

BY MR. KENDALL:

Q All right. And State's Exhibit 7?

A Buddy just telling him, I just want to ride around in broad day. I have a witness. I'm not going out like Grock. I'm going have a real charge.

Q Who is Grock?

A Franklin Dover.

Q And what happened to Franklin Dover?

A Around that time, he was charged for a

shooting incident. I think the trial was about to go on or just concluded.

Q And he was found guilty of murder?

A That's right.

Q That was when? What was the date on that one?

A August 11th at 2030 universal time.

Q State's Exhibit 8.

A That continued conversation. Bryson telling him that he stole five wraps, which is $5,000. Carrie says, oh, how they get it. He ain't got shot yet. It's a long story, but not yet. If you see him, call me. I know you didn't let him rob you. "F" no. Carrie, I'm going to call you because hell, no, didn't go to jail. Don't go to jail. You got to be smooth about it. Don't ask when this happened. You all know when that girl stay up there. WTF, Mook, hell on our head. It's at a trailer somewhere, I don't know, but I'm about to find out.

Q And Mook as Carlton Leach; is that correct?

A That's his name.

Q I believe we just offered these as exhibits just for the Court to review.

Is there -- did you interview any of the females?

A Yes, sir.

Q And did they identify Mr. Smith as who they were communicating with?

A They did.

Q Okay.

MR. KENDALL: Nothing further, Your Honor.

THE COURT: Yes, sir.

MR. SCHULTZ: Couple of follow-up questions.

CROSS-EXAMINATION

BY MR. SCHULTZ:

Q Did you track any metadata or anything from Facebook?

A I did not.

Q What about a hash value or anything like that?

A I didn't.

Q All right. And --

MR. SCHULTZ: That's all I have. Thank you, Judge.

THE COURT: Sir, you may step down. Please be careful.

MR. KENDALL: The State at this time would call Josh Mata.

THE CLERK: Please raise your right hand.

Do you solemnly swear or affirm that the information you're about to give this Court will be the truth, the whole truth, and nothing but the truth so help you God?

THE WITNESS: I do.

THE COURT: Sir, tell us who you are, please, and spell your last name for my court reporter.

THE WITNESS: Joshua Mata, M-a-t-a.

THE COURT: M-a-t-a?

THE WITNESS: Yes, sir.

THE COURT: I'm going to ask you to speak a little louder, sir.

THE WITNESS: Joshua Mata, M-a-t-a.

THE COURT: Okay. Solicitor.

WHEREUPON:

JOSHUA MATA,

after having been sworn, testified as follows:

EXAMINATION DIRECT

BY MR. KENDALL:

Q Mr. Mata, do you know Mr. Bryson Smith?

A Yes.

Q How long would you say you've known him for?

A Three or four years.

Q Back in 2009, was he a -- you guys were friendly,

is that fair to say?

A 2009?

Q Yes, sir.

A I wasn't friends with him then.

Q In August of 2009 when this took place?

2012, I'm sorry.

MS. LESKANIC: 2019.

BY MR. KENDALL:

Q 2019. I'm sorry.

A Oh. Oh, yes. Yes, we was friends.

Q I apologize. And what sort of stuff did you all do?

A Well, we was just friends. We hung out on the 1000 block and we'd drink.

Q And how would you get in contact with him?

A Usually through Facebook.

Q Okay. And what sort of things on Facebook would you use? Would you use the messenger, post on the page, would you use the call stuff?

A Messenger and call.

Q Okay. And did his phone number during this time period stay consistent? Like, did he have the same phone number the whole time?

A I think I had his phone number at one time, but other than that --

Q Okay. So you all basically communicated through Facebook; is that correct?

A Yeah.

Q Okay. I'm going to show you what is marked State's Exhibit 1. It's two-sided. If you would, just take a look at this. And are those the messages that you sent to the account of --

MR. KENDALL: Your Honor, we'd offer State's Exhibit 1 for purposes of hearing.

THE COURT: It's in.

MR. SCHULTZ: For purposes of hearing, no objection.

BY MR. SCHULTZ:

Q And these message, where were they sent? What Facebook name are they sent to?

A I just remember the picture. I really can't, because he had a couple.

Q Whose name is on there? Like, what name does it say? Where it says Josh Mata is talking to somebody.

A Oh, it says Buddy Dawkins.

Q Okay. And who is Buddy Dawkins?

A Bryson.

Q That was Bryson.

All right. Now, there are some parts within this conversation here that required -- or first off,

I just want to talk any -- over the course of these here, about midway down, there's some video chats. Did you engage in those video chats?

A Yeah, there were just texts or video chats.

Q Who was the person -- and you'd video chat through Facebook; is that correct?

A Yeah.

Q All right. And who was the person on the other end of that video chat?

A Bryson.

Q So you would video chat with the account of -- with this person on the other side, Bryson Smith. You were you able to see him?

A Yeah.

Q Okay. And there are some sections in here where it would say things like OMW. What was that?

A On my way.

Q Okay. So you were going to meet him?

A Well, he drives my car a lot of times.

Q Okay.

A Because mine was always insured. We didn't know too many women.

Q Okay. And so, for example, on this -- in this conversation here, he -- on August 10, 2019, what does he say there?

THE COURT: I can't hear. If you'll speak a little louder.

THE WITNESS: I said, I'll give you -- let you use the car.

BY MR. KENDALL:

Q Did you let him use the car?

A Yes.

Q And the person that used the car was Bryson Smith. Is that fair to say?

A Yeah.

Q And likewise here, this conversation from 8/12, what does that say?

A Yes.

Q If you could, just keep reading from Bryson to yourself?

A I said, Grandma's house. Come out, I'm coming to get you. I'm on my way.

Q All right. And when you went there, was the person on the other end Bryson Smith?

A Yeah.

Q Could you go ahead and identify Mr. Smith? Is that Mr. Smith sitting over at defense table?

A Yes.

MR. KENDALL: I have nothing further, Your Honor.

THE COURT: Mr. Schultz.

MR. SCHULTZ: Yes, sir.

CROSS-EXAMINATION

BY MR. SCHULTZ:

Q Your name is Mr. Mata, you said?

A Yes, sir.

Q Have you been in trouble before?

A Yes.

Q All right. In other states as well? In another state?

A Yes.

Q In North Carolina?

A Yes, sir.

Q All right. You said you knew Bryson Smith in 2019?

A Yeah.

Q All right.

A I knew him before too.

Q Did you know him previously?

A No, I really don't know him before like that.

Q All right. And what did you call him?

A Bryson. I've always called him Bryson.

Q You always called him Bryson, okay.

All right. Did you ever drive his car?

A His?
Q Yeah.
A We switched a couple times.
Q Okay. What kind of car was that?
A His car? He had a Mustang.
Q What was your car?
A Hyundai Sonata.
Q Okay. So your testimony here today is he drove your car and you drove his car?
A Not that day. We always switched. But that time, he had got my car and I was at the bootlegger's house.
Q The what?
A The bootlegger.
Q The bootlegger.
A Yeah.
Q Okay. Where was the bootlegger's house?
A Right by -- it was on Watson. At that time, it was over there by the trailer park.
Q All right. Did you ever go to Bryson Smith's mom's house?
A (Witness moves head from side to side.)
Q No?
A No.
Q Okay. Did you ever see Bryson Smith over at his

mom's house?

A I didn't know -- I thought that was his Grandma's house. I knew about where. I never been in, but I came to pick him up before.

Q Okay.

MR. SCHULTZ: All right. That's all I have, Judge. Thank you.

REDIRECT EXAMINATION

BY MR. KENDALL:

Q Was his Grandma's house on Maplewood Drive?

A I don't know the name. I just know -- they call it Filter Plant.

Q Grandma's house was on Filter Plant.

MR. SCHULTZ: Judge, I couldn't hear that. Filler Plant?

THE WITNESS: The area was. I don't know -- I just know they call it -- it was over by Filter Plant.

BY MR. KENDALL:

Q Somewhere by -- you don't know the name, just somewhere in the area?

A I just know the main road over there. I don't know.

Q Okay.

MR. KENDALL: Nothing further,

Your Honor.

MR. SCHULTZ: I apologize, Judge. I just couldn't hear. It could be the face mask.

RECROSS EXAMINATION

BY MR. SCHULTZ:

Q But you said what, Filter Plant? I couldn't understand you.

A This is an area over there. I didn't know -- I just know where his grandma stays. In Gaffney we call that area Filter Plant.

Q Could you spell that?

A Filter.

Q Okay.

A Plant.

Q So F-i-l-t-e-r?

A Yes.

Q P-l-a-n-t?

A Yeah.

Q Thank you.

MR. SCHULTZ: Thank you, Judge.

THE COURT: Than you.

MR. KENDALL: I have no further questions for this witness, Your Honor.

THE COURT: You may step down, sir.

MR. KENDALL: Next, we call

Captain Anderson.

And, Your Honor, I don't know if we'll be able to play this in the courtroom. They want to take it back and listen to it. Either way, it's fine.

THE COURT: How long is it?

MR. KENDALL: It's about a 15-minute jail call.

THE CLERK: Do you solemnly swear or affirm the information you give this court will be the truth, the whole truth, and nothing but the truth so help you God?

THE WITNESS: I do.

THE COURT: Sir, tell us who you are and spell your last name, please.

THE WITNESS: Major Stephen Anderson, A-n-d-e-r-s-o-n.

WHEREUPON:

STEPHEN ANDERSON,

after having been sworn, testified as follows:

DIRECT EXAMINATION

BY MR. KENDALL:

Q Major Anderson, where are you employed?

A Cherokee County Detention Center.

Q What are your responsibilities over at the

detention center?

A I'm over the entire operation of the jail. I just make sure everything gets done that's supposed to get done.

Q Are you the custodian of -- how do phone calls work at the jail between inmates and people on the outside?

A I am custodian of all the records, medical and phone calls. How phone calls work is, if anyone wants to contact a family member, they use a secured system. They call. The phone call says this is from the Cherokee County Detention Center and it is being recorded.

Q I've already got this loaded up. We'll see if this is going to be a problem. Did you listen this morning to a phone call between Bryson Smith?

A Yes, sir. I know Bryson Smith was on one side of the phone call. I don't know the other person. I was never really given the name.

Q Is that a fair and accurate representation of the phone call that was retained and you guys keep in your records?

A Yes.

MR. KENDALL: Josh, you might want to look at the disk. It's loaded up there right now.

It's the same one that we spoke about.

We would offer -- the disk has three tracks on it, Your Honor -- four tracks. For the purposes of this hearing we would offer track 3.

THE COURT: Any objection?

MR. SCHULTZ: Not for the purposes of this hearing.

THE COURT: All right. Track 3.

MR. KENDALL: I'm sorry, Your Honor. This morning it was working. We will have to shut everything down and restart it. I think I played it through the system here.

(Track 3 played at 10:00 a.m.)

MR. KENDALL: Do you think it's up now?

MS. LESKANIC: I can try.

MR. KENDALL: Can you pause that just a minute?

THE COURT: I'm going to go get my headset. He's going to get my head buds so I can hear better.

MR. KENDALL: Okay.

THE COURT: We've been going for about an hour and 40 minutes. We are going to take about a 15-minute break so you can sort that out for us.

MR. KENDALL: Thank you, Judge.

(A break was taken from 10:17 a.m. to 10:33 a.m.)

THE BAILIFF: Come to order.

THE COURT: Please be seated.

MR. KENDALL: For purposes of time, I jumped ahead a bit so we can, kind of, speed things along. If the defense wants to, I'm not playing it.

THE COURT: You think you got it going now.

(Track 3 played at 10:34 a.m.)

MR. KENDALL: No further questions, Your Honor.

THE COURT: Okay.

CROSS-EXAMINATION

BY MR. SCHULTZ:

Q Captain Anderson, you don't have any personal involvement in this case, correct?

A No, sir.

Q All right. Do you even know Bryson Smith?

A Just that he's an inmate.

Q All right. Thank you.

MR. SCHULTZ: Nothing further, Judge.

THE COURT: You may step down.

MR. KENDALL: Nothing further from the State, Your Honor.

MR. SCHULTZ: Your Honor, nothing further, other than the arguments. I'm not going to present any witnesses.

THE COURT: All right. You will be heard.

MR. KENDALL: Yes, sir, Your Honor. I believe this information is properly authenticated pursuant to Rule 901 in the Green case.

In this, the Court has heard one acknowledgement by the defendant conceding that this was, in fact, his Facebook page acknowledgement that he used a false name on that Facebook page.

Records received from Facebook from -- indicated that, one, the email address was associated with Bryson Smith. You've also heard testimony elicited on cross-examination about how this relates and is contact with other people.

You've also heard from Josh Mata. This is particularly important, Your Honor, for a couple of reasons. Most importantly, with regard to Mr. Mata, the messages sent by Facebook were, one, some of those were videos. He was actually able to physically see the human being on the other side of that and that person was

Bryson Smith.

Two, that also elicited action similar to the Green case. When he's saying, "on my way," he's on his way to pick him up. When they're talking about borrowing cars, the first person he borrowed a car was Bryson Smith. He's talking about "that night," that's where he went, was to meet up with Bryson Smith.

I think based on that, we've established the fact this was, in fact, Mr. Smith's Facebook page. We would subsequently at trial seek to offer State's Exhibit 2 for this which he discusses having Percs, or, basically, Percocets, which is -- what he ended up being caught with was large quantities of heroin and Fentanyl, which would be, sort of, the similar opiate family to that. These were pressed into pills that the State would assert is an acknowledgement that he did have these narcotics.

Based on that, Your Honor, the State feels we met the standard. I point out the Rule 901 does not require an absolute authentication. It's not required that the Court specifically addresses that in Green. We're not required to get the IP address. We're not required to

eliminate all other potential sources. It's whether -- it's ultimately a jury issue. But for the Court decide is a gatekeeping function. Is there sufficient evidence, really, for the jury to determine whether it's authentic.

In this case, I believe that's the case based on the testimonies of Officer Gardner, the jail phone calls presented by Major Anderson, and the testimony of Mr. Mata, Your Honor.

MR. SCHULTZ: Thank you, Judge. May it please the Court? Can I take off my face mask for a little bit?

THE COURT: Yes.

MR. SCHULTZ: Thank you. Your Honor, my objection to hearsay authentication, I do not believe the State has met their burden here to authenticate these documents here, or, at least, what's purported to be documentation or Facebook correspondences from my client.

I'm quoting Green here, State v. Green, the second to the last page. We recognize some cases may require more technical methods to authenticate social media. Some courts have held, for example, that tracking a defendant's Facebook page, an account to his email address by Internet

protocol, IP evidence can satisfy authentication. In the testimony that I elicited from the first witness there, there was no information obtained of any kind of Internet protocol address. In fact, the officer said that he's never done anything, I think that was the correct testimony, as far as any protocol goes.

I know that's a high standard and everything, but, at the same time, Your Honor, in an important case like this -- well, all these cases are important -- in an important case like this, where you have a lot of narcotics, or at least what the State is accusing, is a lot of narcotics, I think the proof must be very valid and the standard must be high.

So I'm asking that under hearsay authentication objections, and, presumably, because there was no IP address linked to any account, Buddy Dawkins used -- whoever Buddy Dawkins is, I'm asking that that be excluded in the State's case in chief. Thank you.

THE COURT: While you're there, Mr. Schultz, I have that case before me as well.

MR. SCHULTZ: Yes, sir.

THE COURT: I want you to read the very

last sentence in that paragraph. It's on page 6.

MR. SCHULTZ: Yes, sir. May it please the Court? "We understand that social media could also be authenticated by evidence related to hash values and metadata. We express no opinion on these methods of proof."

Is that what the Court is referring to?

THE COURT: Yes, sir. We express no opinions on these matters.

MR. SCHULTZ: Yes, sir, Your Honor. And the only response that I would have to that is that -- I think in a case such as this I think -- even though the Court has not expressed any opinion as to that, I guess the Court would argue that -- that State would argue that that would be dicta, to use an old law school phrase.

My objection is based upon the fact that the standard must be high. We have -- there's a lot of fraud on the Internet.

You know, State v. Green actually brought up a very good point. I mean, fraud in writings are as old as the written word. Facebook, social media accounts, they are rife with fraud. They are rife with people posing as other people to try

and get other people in trouble. I have several cases where a client comes to me, oh, that wasn't me. That was someone else. Turns out, it wasn't the person.

I know what the State is arguing, but I think the standard must be high, especially when it comes to this day and age. And especially in a case like this, where there was no -- and I understand the Court's position and everything, but there wasn't Internet protocol investigation done. A Facebook officer, or at least a Facebook records custodian was never presented to the Court as far as the State's case here.

So that would be the nature of my objections. Thank you.

MR. KENDALL: Just very brief in reply, Your Honor. The IP address argument, the hashtag argument seems to be exactly contemplated by the court.

In this case, and I believe in Green, they did not have any of that information and they upheld that as authenticated.

The standard is not for the State to eliminate any possibility of any fraud. There has not been any presented today, if that's even an

issue. It's ultimately, is this sufficiently reliable to present to the jury?

Mr. Schultz could argue this wasn't his. And he has no objection to, but he certainly can argue this wasn't his, or Mr. Bryson Smith could testify it wasn't his, any number of things could happen to try to cause that before the jury for him to have doubts on that. He certainly has the right to challenge anything, any other piece of evidence just like any piece of evidence.

But the crux of the Green ruling was, the rules really haven't changed with respect to 901. There's no additional Internet rule, there's no additional anything. We use the standard 901 practice -- or 901 jurisprudence and apply that judicially to the facts of this case.

I think based on that, the Court found, and really looked at the technical analysis that Mr. Schultz has presented, that, quite frankly, it's not required. If you look at the entirety of the thing, in Green, that the situation is extraordinarily similar to the one here. Things were said, people were acting on what people said, and, subsequently -- I think it was a jail letter in that case where he all but admits it.

I think in this case, it's certainly similar. We would ask to be allowed to present that evidence, Your Honor.

THE COURT: I haven't seen the messages.

MR. KENDALL: Yes, sir.

(Hands document.)

THE COURT: Thank you.

Okay. Mr. Schultz, I understand your argument, but I disagree that the standard has to be higher. In fact, in the Green case, and I quote, "The authentication standard is not high." That's Deep Keel, LLC vs. Atlantic Private Equity Group, LLC at 413 S.C. 58. That's Court of Appeals 2015 case.

"As we all know, all evidence must be authenticated when the trial court acts as the gatekeeper. The defendant raises the question about possibly someone else, not this defendant, our court has said a party need not rule out any possibility. The evidence is not authentic. The rule of authentication, the law, like science, is content with the probabilities. The State need only make a prima facie showing that the true author is who the State claimed it to be. And once a prima facie showing is met, the evidence is admitted, and the jury decides whether or not to

accept it and what weight it carries. Our Court has recognized a social meeting as a writing under 901 of our rules of evidence and commonly authenticated under 901(b)," as in Bravo, the numeral 4, "using circumstantial evidence."

The Facebook user here has been identified as being this defendant, also under bryson.com, bryson87 from the pictures and other distinct characteristics. Emails about where he was, arguing the dispute, reference to a Franklin Dover and a shooting and a trial.

Which I will note for Mr. Schultz and maybe his client, Mr. Dover was tried in this courtroom and I presided.

The reference about the five routes, the money, and also under 901, Rule 901(b), as in Bravo, the numeral 1, personal knowledge sent and received by Josh Mata, M-a-t-a, along with the video chat where he actually was able to see this individual.

So, at this point, the Court denies the defense's motion and will allow the induction the these documents.

MR. SCHULTZ: Thank you, Your Honor.

THE COURT: Anything further?

MR. KENDALL: I don't believe so, Your Honor. Just, kind of, housekeeping stuff.

THE COURT: Do we need that on the record?

MR. KENDALL: I don't believe so.

THE COURT: Madame Court Reporter, we will be off the record.

(Off the record.)

(A recess was taken from 11:45 a.m. to 1:02 p.m.)

MR. KENDALL: Your Honor, reviewing some of the camera footage, as Your Honor knows, this case represents an interesting logistical issue. If it wraps up a couple things and we want to make sure that we're not, best possible, separating the two distinct cases.

Because of that, we watched the videos and we found -- in the audio, we found one that could actually get in. We've agreed on that. I wrote it up. On the first video, it's going to be -- it's just the beginning. There's no issue with the clocks or anything like that. I do want to double-check with that. If it works the same as the one we used back there at some point, that should be three or four weeks from now. It's really just out of an abundance of caution.

But basically what it entails is Officer Fuller's body camera. We're going to play from the beginning to 11 minutes, 9 seconds, and 9 minutes, 19 seconds, and then that can have audio.

Officer Dorsette's camera, we are going to run and put the entire thing in, but with no audio. It's impossible to separate out things that can't be on there. I will not play the entire two-hour video. My intention is actually just to play just what they actually find. They're standing there for an hour and a half.

We've also gone through jail calls. There are four listed on the disk mark that's been marked as exhibits. I'm going to play portions of two of them and the time frames that are, sort of, set out.

In one, the defendant basically acknowledges it's his house. In one, he discusses selling drugs. Basically, how he sells drugs. He does it around kids.

And then, as Your Honor heard, the Facebook, we're going to play about a minute just to give the jury an introduction of what's going on, and then I'll skip to the two portions of that

that actually dealt with his Facebook, Your Honor.

There's a fourth video on there, I originally intended to play that. Me and Mr. Schultz listened to that after lunch. I think it's probably best not to involve, so that's not --

THE COURT: Okay. That's the agreement, Mr. Schultz?

MR. SCHULTZ: It is, Your Honor. I'd just like to put a couple more things on the record.

Mr. Kendall is, indeed, correct. The attempted murder case and the trafficking drug-related cases are, as I said before a couple hours ago, they are intrinsically linked. I've gone over this with Mr. Kendall. And I want to make sure that -- I know there was technical difficulties with the jail phone calls today. I want to make sure when he stops -- when Matt stops it that it doesn't keep going on. So I don't want the jury to hear anything like that.

But I agree with everything that he said as far as the Officer Dorsette, no audio. I agree with that. The body camera, we're beginning that at 11:09.

MR. KENDALL: Ending at 11:09.

MR. SCHULTZ: What?

MR. KENDALL: Ending at 11:09.

MR. SCHULTZ: Ending at 11:09. I'm sorry. It does say beginning here, Matt.

MS. LESKANIC: Beginning to. Beginning to 11:09.

MR. SCHULTZ: I see. My apologies, Your Honor.

Beginning at the start of the tape continuing on to 11:09. I have no problem with that, and -- that's all I have. Thank you.

THE COURT: Okay. Are we ready for the jury?

MR. SCHULTZ: We are.

MR. KENDALL: Let me just put this in as a Court's exhibit.

THE COURT: Joint exhibit, Court's Exhibit. Whatever you want.

(Jury enters the courtroom at 1:08 p.m.)

THE COURT: Okay. Thank you for your patience. Thank you for being here this morning.

We had some matters -- pretrial matters that just took longer than we thought that they would. Again, thank you for your patience.

Madame Clerk, swear in this jury to try this case.

THE CLERK: Ladies and Gentlemen, please stand and raise your right hand. Do you solemnly swear to truly try the issues in this case and a true verdict render according to the law and evidence so help you God?

JURY PANEL: Yes.

THE CLERK: You may be seated.

THE COURT: Ladies and Gentlemen, you are now the jury in this case, and I will take a few moments to tell you a few things about your duty as jurors and to provide instruction.

At the close of this trial, I will give more detailed instructions, and those instructions will control your deliberations.

We are here today in the matter of the State of South Carolina vs. Bryson Jamar Smith. It is alleged in the indictment 20-GS-11-01151 that he did in Cherokee County, South Carolina on or about August 12 of 2019 commit the criminal offense known as trafficking in heroin. I tell you, and I will say this more than once, that he entered a plea of not guilty to the indictment and he is presumed innocent of the allegations

contained in this indictment.

In the indictment 2020-GS-11-01149 it is alleged that he did in Cherokee County, South Carolina on or about August 12 of 2019 commit the criminal offense known as trafficking in methamphetamine. He has entered a plea of not guilty to this indictment. He is presumed innocent of the allegations contained in that indictment.

Indictment 2020-GS-01148 alleges that he did in the county of Cherokee, state of South Carolina on or about August 12 of 2019 commit the criminal offense known as possession with intent to distribute cocaine. He has entered a plea of not guilty. He is presumed innocent of the allegations contained in the indictment.

In indictment 2020-GS-11-01147, it is alleged that he did in Cherokee County, South Carolina on or about August 12 of 2019 commit the criminal offense known as possession with intent to distribute marijuana. He has entered a plea of not guilty. He is presumed innocent of the allegations contained in the indictment.

And lastly, in indictment

2020-GS-11-01150, it is alleged that he did in Cherokee County, South Carolina on or about August 12 of 2019 commit the criminal offense known as possession with intent to distribute Fentanyl in violation of state law. He has entered a plea of not guilty. He is presumed innocent of the allegations contained in the indictment.

Ladies and Gentlemen, the indictment is a charging instrument. It is not evidence against this defendant, nor any defendant. It is merely a document, an instrument that brings him before the Court for trial.

Now, under South Carolina law, you 12 on the jury become the finders of facts. You 12 are alone are the finders of facts and it is your duty to decide from the evidence what the facts are. You will hear the evidence, decide what the facts are, and apply those facts to the law that I give to you at the close of this case, and that is how you reach a verdict in this case.

In doing so, you must follow the law as I give it to you whether you agree with it or not.

The evidence will consist of testimony of witnesses, and documents, and other items received

into evidence as exhibits, and any facts on which the lawyers agree or stipulate.

The same state law that makes you 12 the finders of facts makes me the judge of the law. Our rules of evidence control what can be received into evidence. And when a lawyer asks a question or offers an exhibit into evidence and the lawyer on the other side thinks that it is not permitted by the rule of evidence, that lawyer may object.

This simply means, Ladies and Gentlemen, that the lawyer is requesting that I make a decision on a particular rule of evidence. When we're talking about evidence, we're talking about one of our evidence rules contained in this books.

Now, this means that the lawyer is requesting to make a decision under South Carolina law. South Carolina law forbids a trial judge from making a comment to a jury about a fact in a case. Therefore, because it may be necessary for me to make a comment on a fact in applying our rules of evidence, it may be necessary for me to speak with the lawyers outside of your hearing by having what I call a bench conference. If I have bench conference, you will see me wave the lawyers

up. I usually do so with my fingers. They will come up here. I will move the microphone down so that we can talk about whether or not a particular rule applies in that particular objection.

Now, sometimes I can do this in the courtroom and sometimes I must remove you from the courtroom because the conversation might be lengthier than one or two -- or just a few seconds. The purpose of the conferences is to decide how certain evidence is to be treated under the rules and to avoid confusion and error.

Now, certain things are not evidence. Statements, arguments, questions, and comments by lawyers in a case are not evidence. Objections by a lawyer is not evidence. Lawyers have a duty to object when they believe something is improper or not permitted under the rules. If I sustain an objection, you must ignore the question or exhibit and try not to guess what the answer might have been. But if I overrule the objection, the evidence will be admitted, but you are not to give any special attention because it drew an objection. Testimony that is stricken from the record is not evidence. And anything that you hear or see about this case outside of this

courtroom is not evidence.

Furthermore, a particular item of evidence is sometimes received for a limited purpose; and that is, it can be only be used for limited purpose. If that were to the happen, I tell you when that occurs and instruct on the purpose from which that item can and cannot be used.

Now, some of you may have heard the term direct evidence and circumstantial evidence. Ladies and Gentlemen, direct evidence is testimony by a witness about what that witness personally saw or heard or did. Circumstantial evidence is indirect evidence. It is proof of a fact which one can infer another fact. You may consider both direct and circumstantial evidence because our law permits you to give equal weight to both, but it is up to you to decide how much weight to give any evidence.

Ladies and Gentlemen, you should not take anything that I say or do during this trial to indicate that I have -- that I believe one witness over another or no witnesses or have any significance about with your verdict should be. Again, state law does not allow a trial judge to

have an opinion about the fact in a case.

In deciding what facts are, you have to decide what testimony you believe and what testimony you disbelieve. You may believe everything a witness says or only a part of the witness's testimony or you may disbelieve all of that witness's testimony. Whatever your common sense tells you is credible is the evidence you should receive and disbelieve the rest.

Now, to ensure fairness, you, as jurors, must not talk among yourselves about this case or anyone involved with the case until the case has ended and you have retired to the jury room to deliberate.

Please do not speak with anyone about this case or about anyone in this case until it has ended. Anyone includes members of your family and friends. You may advise them that you are a juror, but you cannot talk about this case until it has ended. So do not let anyone talk to you about a case, or, if someone tries to do so, please report that to me immediately.

During the trial, do not speak or talk with the parties, the lawyers, or the witnesses. You should not even pass the time of day with

them. As I told you yesterday, an innocent conversation can be misunderstood.

It is only -- it is important -- not only that you do justice, but you also give the appearance of doing so.

Now, the lawyers and the witnesses and the participants have been instructed by me not to speak to you. So if they see you in a parking lot, or they walk down the hall and they do not speak to you, maybe just their head, they are following my instructions.

Do not do any research on the Internet or any social media to try to learn something about this case. Do not consult a blog, or a dictionary, or any reference materials. Please do not do any independent investigation on your own. You must make up your mind. You must determine from the evidence in this courtroom what the verdict will be.

Ladies and gentlemen, I'm often asked about note-taking. You are not to take notes during the trial of this case. The reason is, we very much want you to pay close attention to each witness as he or she testifies and not be fixated on taking notes.

Now, the first step of the trial will be opening statements. The State in its opening statement will tell you about the evidence it intends to put before you so that you will have an idea of what the case is about. Just as the indictment is not evidence, neither is an opening statement by a lawyer. Its purpose is only to help you understand what the evidence will be and what the State will try to prove.

After the State's opening statement, the defense attorney may, if he chooses, make an opening statement.

At this point in the trial, no evidence has been offered by either side.

The next step will be the State offering evidence it says will support the charges against this defendant. The defendant in this case will consist of testimony of witnesses and it may include documents or other exhibits such as diagrams or pictures. I remind you that this defendant is presumed innocent and the State must prove his guilt beyond a reasonable doubt. The defendant does not have to prove his innocence.

After you have heard all of the evidence on both sides, the State and the defense will be

given time for a final statement or a final argument sometimes known as a closing argument.

As I just told you about the opening statement is not evidence, neither is a closing argument. But in their closing arguments, the lawyer for each side will attempt to summarize so they can help you understand what evidence was presented.

And, of course, the final part of the trial occurs when I instruct about the rules of law that you are to use in reaching your verdict. And after hearing my instructions, you will then leave the courtroom and retire to your jury room for you consideration of the warrant -- of the indictments.

At this time, Juror Number 66, Miss Phillips, you are hereby officially appointed the forelady of this jury, and I thank you for serving in that capacity.

Anything from the State?

MR. KENDALL: No, sir, Your Honor.

THE COURT: Anything from the defense?

MR. SCHULTZ: No, sir.

THE COURT: Are you ready?

MR. KENDALL: Yes, sir, Your Honor.

THE COURT: All right. Please pay attention to the State.

OPENING STATEMENT

MR. KENDALL: Good afternoon, Ladies and Gentlemen. Thank you for coming here today. We are all here because on August 12, 2019, the defendant, Bryson Smith, was charged with one count of possession with intent to distribute Fentanyl, trafficking in methamphetamine, possession with intent to distribute cocaine, trafficking heroin, and possession with intent to distribute marijuana.

This occurred on August 12th, Ladies and Gentlemen, at [redacted] Maplewood Drive here in Cherokee County.

Law enforcement came to this address to serve warrants on Mr. Smith. They were given permission to enter the home by his mother and went back to his bedroom. There, when they got there, they saw narcotics sitting on the bed in plain view. From that point, Your Honor -- or Ladies and Gentlemen, they stopped, they pulled back, and secured a search warrant. They executed a search warrant on that room and found 2.55 grams of cocaine, over a hundred Fentanyl tablets, 7.78

grams of heroin, 11.15 grams of methamphetamine, 149 grams of marijuana. Some of this was found in a backpack sitting next to the bed, some in storage boxes, and some in a box addressed to B. Smith.

In addition, Ladies and Gentlemen, they found paraphernalia, drug paraphernalia in the room, including packaging materials for these narcotics, as well as scales. They also found in this room mail addressed to Mr. Smith, as well as his personal paperwork in a box addressed to B. Smith that contained some of these narcotics.

Ladies and Gentlemen, arrest warrants were signed at that point. At the end of this case, we would ask you to return a verdict of guilty. But now, I ask of you three things: First, listen carefully to the instructions given to you by the Judge. This will ensure a fair trial for all involved. Second, please listen carefully to all the evidence presented in the courtroom today. And, finally, Ladies and Gentlemen, in this case, use common sense. It will go a long way.

Thank you.

MR. SCHULTZ: Thank you, Judge. May it

please the Court? Counsel.

OPENING STATEMENT

MR. SCHULTZ: Ladies and Gentlemen, my name is Attorney Joshua Schultz. I represent Bryson Smith. This is an interesting year, to say the least. We're all wearing face masks and practicing social distancing. But, yet, at the same time, what we're doing here today is a very, very important part of our judicial process, or legal process, and our democratic process.

Some of you, perhaps yesterday, perhaps before, voted in not only our presidential election, also our gubernatorial election, and also or local elections as well.

Voting is a very important part of what we do here as citizens of this great country, and what you're doing right now, serving on a jury, I believe is either about the same or even more important than your right to vote as a citizen of the United States. It's guaranteed by the institution.

What Mr. Kendall, the prosecutor in this case, said is correct. On August 12, 2019, the police charged my client with several offenses. And the judge, a couple minutes ago, said that

when you're looking at the indictments, and, perhaps, tomorrow, maybe even Friday, those charging paperworks -- paperwork where it says Bryson Smith did this or Bryson Smith did that, they are not evidence. They are only charging documents. They are not an admission of guilt. They are not an admission of anything approaching that.

So, what is your job here today, tomorrow, perhaps Friday, we don't know, what is your job? Well, your job is to render a fair and impartial verdict in the case, or verdicts in the day.

How do we do that? The most important thing that Mr. Kendall said is to be fair-minded. Listen very closely to what's going on.

What is my job? I don't have to prove anything in this case. I don't have to present evidence. I may, but I do not have to present any evidence in the case. It is the State's responsibility to present the case. If they do -- obviously, if they do not present any evidence in the case, you probably will return a verdict of not guilty. They obviously plan on presenting witnesses. They plan on presenting photographs,

they plan on presenting audio evidence. They plan on presenting video evidence.

My job is to cast reasonable doubt upon what the State is attempting to do with this case. You've heard -- well, I assume, most of you have heard the words reasonable doubt before. Well, what does that mean? Reasonable doubt is doubt that causes a reasonable person some hesitation -- hesitation to act.

At the end of this trial, and Judge Kelly is going to instruct you on this, you must be firmly convinced of the defendant's guilt.

Right now, you cannot be firmly convinced of anything. You haven't seen anything. You haven't seen the evidence. You haven't seen what the State is intending to prove. In a couple hours, you will see at least the very beginning of the State's case, but it is my thinking and it is Bryson's thinking, my client, that after you hear from the State, and perhaps me, that you will not be firmly convinced of the defendant's guilt. And it is my opinion that, perhaps tomorrow, perhaps Friday morning, we don't know, that you will return a verdict of not guilty on all counts. And whenever it is, perhaps tomorrow afternoon, I will

be speaking to you again. Mr. Kendall and I will be speaking to you again. And speaking at this podium here, I am going to be asking you all for a verdict of not guilty.

It is my strong opinion, and I hope that each and every one of you will share that opinion that the State will not have met their burden of proof. Okay, we've heard that before.

Burden of proof, what does that mean? Well, the State has a burden of proof in order to carry the weight of the evidence. They have to prove their case.

Let me circle around here. Reasonable doubt. Or what reasonable doubt is. Reasonable doubt is something -- some doubt that causes a reasonable person some hesitation to act. I am convinced that at the end of the State's presentation in this case that you will not be firmly convinced, and that you will have reasonable doubts in this case. And if you have one -- one reasonable doubt in this case, then you cannot come back with a verdict of guilty. You have to find Bryson Smith not guilty if you have one reasonable doubt. That's what the State has to do; they have to prove their cases guilty

beyond a reasonable doubt. I present to you today, as we stand here that they cannot.

Thank you very much for your attention. I look forward to this case.

THE COURT: Ready, Solicitor?

MR. KENDALL: Yes, sir, Your Honor. At this time, the State will call Officer Fuller to the stand, please.

THE CLERK: Please raise your right hand. Do you solemnly swear or affirm the testimony you shall give the Court will be the truth, the whole truth, and nothing but the truth so help you God?

THE WITNESS: I do.

THE COURT: Officer, please give us your full name and speak a little louder than usual. Please give us your full name and spell your last name for Madame Court Reporter, please.

THE WITNESS: John Fuller, F-u-l-l-e-r.

THE COURT: Thank you.

Solicitor.

MR. KENDALL: Thank you very much, Your Honor.

WHEREUPON:

JOHN FULLER,

after having been sworn, testified as follows:

DIRECT EXAMINATION

BY MR. KENDALL:

Q Mr. Fuller, where are you currently employed?

A Cherokee County Sheriff's Office.

Q And what is your rank at the sheriff's office?

A Narcotics sergeant.

Q All right. And what are your responsibilities in that job?

A Investigate any crimes related to drugs, narcotics.

Q Do you also perform other functions?

A Yes.

Q What are some other functions?

A Serve the arrest warrants, search warrants, just investigating.

Q Okay. And on August 12, 2019, did you attempt to serve arrest warrants on Mr. Bryson Smith?

A Yes, sir.

Q And where did you attempt to serve those warrants?

A It was on Maplewood Drive.

Q All right.

A I don't remember the exact address.

Q Do you know what county and state that's located in?

A Cherokee County, South Carolina.
Q Cherokee County, South Carolina?
A Yes, sir.
Q And what did you see upon entering that address? Or what happened when you got to that address?
A I got to the address and went up and knocked on the door. A gentlemen had come to the door. I asked if Bryson Smith was home. He said he wasn't. I asked him if he would mind if we come in and check to see if he was there.

At that time, the mother come to the door and stated that we could come in. I went in the residence hallway to the right as soon as you go in the door. Checked the first bedroom, like the storage room. Went to the second door, which is another bedroom, immediately smelled the odor of marijuana.

Q Okay.
A And went in. Told Lieutenant Smith I smelled marijuana. On the floor was a set of scales. I looked at Smith and seen marijuana laying on the bed.
Q All right.

(STATE EXH. 17, Photo, was marked for identification.)

(STATE EXH. 18, Photo, was marked for

identification.)

(STATE EXH. 19, Photo, was marked for identification.)

BY MR. KENDALL:

Q And I'm going to show you State's Exhibit 17, 18, and 19. Do you recognize these?

A Yes. Those are the items that was laying on the bed in the bedroom.

Q Is that a fair and accurate representation of what you saw when you came in there and saw in the bedroom?

A It is.

MR. KENDALL: We would offer 17, 18, 19 into evidence.

MR. SCHULTZ: No objection.

THE COURT: Without objection, they are admitted.

(STATE EXH. 17, Photo, was marked for identification.)

(STATE EXH. 18, Photo, was marked for identification.)

(STATE EXH. 19, Photo, was marked for identification.)

BY MR. KENDALL:

Q And could you please explain to the jury what's in

those?
A Yes. In the photos, the picture, contains guts of a cigar, a baggie of marijuana, and what was later, I believe, identified to be crack cocaine.
Q Okay.
A And the one here on the floor, is a set of digital scales.
Q Okay.
A On the side.
Q Could you point those out to the jury?
A The scales are here on the floor.
Q Okay.
A The marijuana was here, the guts from the cigar, and what was later found out to be crack cocaine there.
Q Okay. And is it the same in that other picture as well?
A Sir?
Q Same in that other picture as well?
A Yes.
Q All right. And those were -- did you have to look for those? Did you have to open any drawers or go through anything at that point?
A No, they was laying right there on the bed.

Q All right. And during the course of this investigation, did you have a body camera?

A I did.

Q And did you have that activated?

A I did.

(STATE EXH. 9, Video, was marked for identification.)

BY MR. KENDALL:

Q I'm going to show what is marked State's Exhibit 9. Now, have you had the opportunity to watch this body camera?

A Yes, sir.

Q Is that a fair and accurate representation of what you saw and experienced that day?

A Yes, sir.

MR. KENDALL: Your Honor, we would offer State's Exhibit 9 into evidence.

MR. SCHULTZ: No objection.

THE COURT: Without objection State's 9 is admitted.

(STATE EXH. 9, Video, was marked for identification.)

MR. KENDALL: And subject to our previous agreement, request to play for the jury.

THE COURT: Yes, sir.

MR. SCHULTZ: Yes, Your Honor. I just want to confirm. Subject to the previous agreement.

(Video played from at 1:35 p.m.)

BY MR. KENDALL:

Q What are you doing at this point?

A At that point, I was just looking for Bryson. I was having to use my taser for a flashlight. I left my flashlight in the car.

(Video continued.)

BY MR. KENDALL:

Q Just to be clear, what did you all do after you discovered that?

A After we discovered that, that's when I called for Captain Painter to come back there. He made a phone call, I believe, to Detective Doughtery at the time.

Q All right. And what did you do? Did you all stay out of scene? Did you leave? What happened next?

A We stayed on the scene. I believe the family stayed outside.

Q Okay. So law enforcement officers secured the scene, is it fair to say?

A Yes, sir.

Q At any point in time after this, did you handle

those narcotics personally?

A No.

Q Okay. So you didn't run any testing or anything like that --

A No.

Q -- to see what that substance was sitting on the bed, correct?

A Did not.

Q But you have worked in narcotics for quite a while.

A Yes, sir.

Q Is that fair to say?

A Yes, sir.

Q Are you able to identify marijuana?

A Yes, sir.

Q It's something that, it's fair to say, you commonly see and smell?

A It is.

Q Okay. But as to the other substance, you were just looking at that from afar?

A Yes, I was.

Q So, at that point in time, no testing had been done?

A No, sir.

Q All right.

MR. KENDALL: Please answer any questions Mr. Schultz may have.

CROSS-EXAMINATION

BY MR. SCHULTZ:

Q Officer, how long have you been in Cherokee County?

MR. SCHULTZ: You just want him to stay there, Judge? Okay.

BY MR. SCHULTZ:

Q Officer, how long have you been in Cherokee County?

A How long have I been in Cherokee County?

Q Yes, sir. As an officer. I'm sorry.

A As an officer, I started with Gaffney City in '05.

Q Gaffney City in '05. Around 15 years, you've been in law enforcement; is that correct?

A Yes, sir.

Q And do you remember the address of that house that you came to that day?

A No, sir, not right off the top of my head. I don't.

Q Not off the top your head?

A No, sir.

Q But you recognize it on that video that we just

watched, right?

A Yeah.

Q Okay. This is not the only house that you've searched in your approximately 15-year career, right? You searched plenty of houses, right?

A That's correct.

Q After you left the house that day, was this the only involvement in this case?

A That's my only involvement, yes.

Q Okay, your only involvement in this case.

Okay. And you usually have a body cam on?

A Yes.

Q And your question there that you asked, "Is Bryson here," right?

A Uh-huh.

Q Now, you go into the room that is on the body cam. Do you remember that?

A I went into the room.

Q You went into the room, okay.

And did you go in any other rooms that day or just that one?

A I went into the first room as you're going down the hall on the right, which appeared to be a storage room or a junk room. And then I went into the room that was said to be Bryson's, and then I

also stepped into the mother's room to see if anyone was hiding in there.

Q Now, it was said to be Bryson's, correct?

A Yes.

Q All right. So it will be fair to say --

MR. SCHULTZ: Judge, could I remove my face mask?

THE COURT: Yeah, I'm okay with that. Are you okay with that, Miss McBee?

THE CLERK: Oh, yes, sir.

MR. SCHULTZ: Thank you, Judge. It's just my glasses are fogging up. I apologize.

BY MR. SCHULTZ:

Q You were the first person in the room that day, right?

A Correct.

Q You go in there. You said, according to your testimony, you would notice some scales and some weed laying on the floor, correct?

A I noticed the scales laying on the floor, and I could smell the marijuana.

Q You could smell the marijuana.

A I can smell the odor of marijuana.

Q I'm sorry, sir?

A The odor of marijuana.

Q The odor of marijuana.
A Yes, sir.
Q Okay. Did you see in plain view any marijuana?
A Not right first. I looked in at Smith, seen it laying on the bed, and I went and visually observed it. It appeared to be marijuana.
Q Okay. So you did personally observe it?
A Yes.
Q All right. Now, you didn't field test anything, right?
A No, I did not.
Q Explain to the jury what field testing is.
A Field testing is a basically a presumptive test for the type of narcotics that they're testing for.
Q Explain what "presumptive" is for the jury.
A I don't know that I have an exact definition of it.
Q Okay. Well, let me ask you this: Would presumptive be you presume the --
A He presumed it to be marijuana, yes.
Q Okay. You presumed it to be marijuana based upon your experience, right?
A Yes.
Q All right. But your testimony here today is you

never did any presumptive test, right?
A No, sir. I did not.
Q Okay.
MR. SCHULTZ: Your Honor, can I move around to the State's exhibits there.
THE COURT: Yes, sir. Get the exhibit, just come back. We want you to stay in one spot.
MR. SCHULTZ: Yes, sir. Thank you.
BY MR. SCHULTZ:
Q Officer, I'm referring to the State's Exhibit 17. You took this picture, sir?
A No, sir. I did not.
Q But this was a fair and accurate representation of --
A Yes.
Q -- what it was that day, right?
A That is correct.
Q Okay. And in -- I see in what appears to be some kind of Apple Watch there?
A I can't see that far.
Q (Hands document).
A It appears to be some type of watch.
Q Did you submit that into evidence?
A I did not collect the evidence.
Q Okay. Do you know if it was submitted into

evidence?

A No, sir.

Q All right. Could I see that back, sir?

A (Hands document).

Q Thank you.

Officer, I'm referring to State's Exhibit 18. What is that black rectangular object on the floor there?

A The black rectangular object here with the shiny face.

Q Yes, sir.

A That is set of digital scales.

Q I know you don't collect evidence, but did you suggest to anybody that that evidence be collected?

A No. Once we go in on a search warrant and we see possible evidence, we do not touch it. And whoever is collecting the evidence handled that. We let them know it's there, but --

Q Okay. And would it be safe to say that you weren't in charge of possibly lifting fingerprints off that at all?

A No, I was not.

Q That was another officer's responsibility, right?

A I didn't mess with it.

Q You didn't mess with it.

A I left it for evidence.
Q Okay. Let me circle back around. After you left the house that day, did that conclude your involvement?
A That concluded my involvement, yes.
Q Okay. Did that conclude your involvement with this case?
A It did, yes.
Q It did.

MR. SCHULTZ: Thank you, Your Honor. No further questions.

THE COURT: Anything at all?

MR. KENDALL: Nothing further, Your Honor.

THE COURT: Okay, thank you. Sir, you may step down. Please be careful.

MR. KENDALL: Your Honor, at this time the State would call Josh Mata.

THE COURT: Okay.

THE CLERK: Please raise your right hand and place your left hand on the Bible. Do you solemnly swear or affirm the testimony you give to this Court will be the truth, the whole truth, and nothing but the truth so help you God?

THE WITNESS: Yes.

THE CLERK: Okay. Watch your step.

THE COURT: Sir, I'm going to ask you to speak louder than usual because of the mask. You can remove it, if you'd like. But speak louder than usual and tell us who you are and spell your last name for my court reporter, please.

THE WITNESS: Joshua Mata, M-a-t-a.

THE COURT: Solicitor.

(STATE EXH. 20, Facebook posts, was marked for identification.)

MR. KENDALL: Thank you, Your Honor.

WHEREUPON:

JOSHUA MATA,

after having been sworn, testified as follows:

DIRECT EXAMINATION

BY MR. KENDALL:

Q Mr. Mata, are you currently employed?

A Yes, sir.

Q And where do you work?

A Brown's Packing.

Q How long have you worked at Brown's?

A About a year and three months.

Q Okay. And you've been in Cherokee County for a while?

A Yes, sir.

Q About how long have you been in Cherokee?
A I've been here all my whole life.
Q All right. And before we get into testimony, I just want to let the jury know you do have a couple criminal convictions on your record. Is that fair to say?
A Yes.
Q It looks like receiving stolen goods; is that correct?
A That's correct.
Q And do you know the defendant Bryson Smith?
A Yes.
Q Do you see him in the courtroom?
A Yes.
Q And would you please point him out?
A (Complies.)

MR. KENDALL: Your Honor, I'd like to let the record reflect he pointed to the defendant.

THE COURT: So ordered.

BY MR. KENDALL:
Q And how long have you known Mr. Smith?
A About three years.
Q What is the nature of you-all's relationship prior to recent times?
A Friends.

Q Okay. And how would you all, as friends, communicate with one another?

A Through Facebook.

Q Through Facebook? Now, did you have his phone number?

A I had it at one time, and I think he just disconnected it. We always did Facebook.

Q Okay. When you say always do Facebook, what means of communication did you all use?

A Texting and video chat.

Q Texting and video chat.

(STATE EXH. 11, Facebook posts, was marked for identification.)

BY MR. KENDALL:

Q All right. I'm going to show you what is marked State's Exhibit 11. If you could, take a look at that. And what is that?

A This is messages between us.

Q Between you?

A Yes.

Q When you say "us," who are you referring to?

A Bryson to me.

Q Okay. Now, is his Facebook name in these conversations, Bryson Smith?

A No.

Q Now, what he going by on the Facebook at that point?
A Buddy.
Q Buddy?
A (Witness nods head up and down.)
Q Did he use a last name?
A Smith.
Q Do you want to take a look at it?
A I do. He had several. Buddy Dawkins on this one.
Q Okay. And is this a fair and accurate representation of conversations you all had on Facebook?
A Yes.

MR. KENDALL: Your Honor, we would offer State's Exhibit 11 into evidence.

MR. SCHULTZ: Objection as previously noted under authentication and hearsay.

THE COURT: The objection is overruled. It's admitted.

MR. SCHULTZ: Thank you, Your Honor.

MR. KENDALL: Thank you, Your Honor.

(STATE EXH. 11, Facebook posts, was entered into evidence.)

BY MR. KENDALL:

Q Now, looking at these messages, are there references in here -- and don't, please, comment on anything that's not here -- are there references in there to the use of an automobile?

A Yes.

Q All right. And were you all friendly enough to share automobiles?

A Yes.

Q Okay. And in that, could you just please read to the jury, with regards to the automobile, what it says? It should be on that first page.

A He said, "Where you at." I say, "Home." He said, "I'll give a gram to use your car."

Q Okay. And in that situation, did you let him use the car?

A Yes.

Q All right. Now, throughout these messages as well, there are references to video chats. Or, excuse me. Before I do that, let me just say this. There are references to video chats; is that correct?

A Yes.

Q Did you video-chat with the defendant?

A Yes.

Q And when you were doing these video chats with the person listed as Buddy Dawkins, who was the person on

the other end of that video chat?
A Bryson.
Q So you were able to physically see him as the person who was doing that; is that correct?
A Yeah.
Q Okay. Likewise, I'm going to show you this last page. And, if you could just, sort of, read through this.
A "Where you at?" I said, "My grandma's house." He said, "Come out. I got you, okay?" I said, "On my way."
Q All right. In that conversation, what did you do? Did you go see him?
A Yes.
Q Was the person you went and saw Bryson Smith?
A Yes.
(STATE EXH. 12, Photo, was marked for identification.)
BY MR. KENDALL:
Q Okay. I'm going to show you what is marked State's 12. Could you take a look at this, please? And what is that?
A This is at the house.
Q Okay. Have you ever been there outside of there before?

A One time.
Q Okay. And what were you there for?
A Getting in my car. We was going somewhere.
Q When you say we are going somewhere, who are you referring to?
A Bryson.
Q Okay. So is that a house Bryson stayed at sometimes?
A He stayed there. Yes, sir.

MR. SCHULTZ: Your Honor, I couldn't hear what the witness said there.

THE WITNESS: Yeah, he stayed there.

MR. KENDALL: I believe, if I've not already, we offer State's Exhibit 12 into evidence.

THE COURT: Any objection?

MR. SCHULTZ: No objection.

THE COURT: Without objection, 12 is admitted.

(STATE EXH. 12, Photo, was entered into evidence.)

MR. KENDALL: Please answer any questions Mr. Schultz may have.

THE COURT: Mr. Schultz.

MR. SCHULTZ: Thank you, Judge.

CROSS-EXAMINATION

BY MR. SCHULTZ:

Q Mr. Mata, you've been convicted of more than a couple of crimes, haven't you?

A Two.

Q Two? That's it?

A (Witness nods head up and down.)

Q What about petty larceny eight years ago?

A Yes, eight years ago.

Q Okay. What about -- obtaining signature under false pretense, right?

A That was part of it.

Q Oh, that was part of it. Okay. You just forgot?

A No.

Q What about a felony and larceny?

A Yeah, that was eight years ago.

Q What state did it happen in?

A North Carolina.

Q Okay. So now I've counted three. Is that it?

A Yeah.

Q Okay. See you've been -- twice you've been convicted of property crimes; is that correct, Mr. Mata?

A Yeah.

Q All right. Three times.

Now, you said something interesting there a couple minutes ago about my client there. You indicated that my client when you're talking to him over social media he goes by different names; is that correct?

A He has a couple accounts. But, at that time I was talking to him, it was Buddy Dawkins.

Q Okay. Now, when you were allegedly talking to Buddy Dawkins, you mentioned that you were videoconferencing with him; is that correct?

A Yeah.

Q Okay. When you were chatting with him without videoconferencing or chatting with a Buddy Dawkins, texting, I guess, would be the better word, were you positive that it was Bryson Smith?

A It was his page and he be -- we might be doing video-chatting, and I would text him. Yeah.

Q But it could have been somebody else, right?

A I don't -- yeah.

Q Was that a yes?

A I doubt it -- that it was.

Q Now, you said that you -- I believe in your direct testimony there you swapped out cars; is that correct?

A Yeah, we had before. We swap out cars or he used mine.
Q All right. What about the house referring to State's Exhibit 12 here. Do you recognize this car in this picture?
A Yeah, I recognize him. That wasn't his car.
Q That wasn't his car?
A No.
Q Right. Okay. Have you been to this house before?
A One time.
Q One time. That's all you've been to that house before?
A (Witness nods head up and down.)
Q Okay. So you go to the house. Who did you see there at the house?
A I picked him up.
Q Picked him up.
A (Witness nods head up and down.)
Q Okay. But that was just one time, right?
A Yeah, one time.
Q Okay. What about if -- did you ever pick Bryson up in another house?
A Yes.

Q Right. What other houses did you pick him up?
A North Grenard Street.
Q North Grenard or Bernard?
A Grenard.
Q Grenard, okay. What other houses?
A These really about it. The main area.
Q All right. Did he ever pick you up at your house?
A No.
Q No. Okay.

You said with a phone call, too, or at least a phone, you said that Bryson disconnected his phone number.

A He gave me his phone number one time or -- we never used it but one time. I think I lost it. I don't save names in my contacts.
Q All right.

MR. SCHULTZ: That's all I have. Thank you.

THE COURT: Anything at all?

MR. KENDALL: Just very quickly, Your Honor.

REDIRECT EXAMINATION

BY MR. KENDALL:
Q At any point in time when you were having these

shared rides with Mr. Smith, did anybody else show up? In other words, when you said, give me a ride, did somebody else show up there when you were trying to give him a ride?

A No.

Q At any time on these video chats, was there anybody else that showed up on the screen?

A No.

Q When you all were talking, was there anything that led you to believe that some other person was involved other than Bryson Smith?

A No.

MR. KENDALL: Nothing further, Your Honor.

THE COURT: Anything at all?

MR. SCHULTZ: No, sir.

THE COURT: Okay. Sir, you may step down. Please be careful.

MR. KENDALL: Your Honor, the Court calls Brandon Gardner at this time.

THE COURT: All right.

THE CLERK: Please raise your right hand. Do you solemnly swear or affirm the testimony you give to this Court is the truth, the whole truth, and nothing but the truth so help you God?

THE WITNESS: Yes, ma'am.

THE COURT: Sir, tell us who you are and spell your last name for the court reporter, please.

THE WITNESS: Brandon Gardner, G-a-r-d-n-e-r.

THE COURT: Thank you.

Solicitor.

WHEREUPON:

BRANDON GARDNER,

after having been sworn, testified as follows:

DIRECT EXAMINATION

BY MR. KENDALL:

Q Officer Gardner, where are you currently employed?

A I'm currently employed for the South Carolina Department of Natural Resources.

Q All right. Back in August of 2019, where were you employed then?

A I was an investigator with the Cherokee County Sheriff's Office.

Q And how long did you work for the sheriff's office?

A I started with the sheriff's office at the beginning of 2009.

Q See about -- how long did you work there?
A Up until the beginning of this year, so almost 11 years.
Q Why did you go to DNR?
A Telling a long story, generic, me and my wife lost a child to a stillbirth two years ago. And she owns her own business. And, kind of, just releasing some stress, I enjoyed the outdoors. The opportunity come up with the South Carolina Department of Natural Resources and it was just a better fit for me and my family.
Q And you're a very active hunter and fisherman as well, is that fair to say?
A Yes, sir.
Q Back in August of 2019, what were your responsibilities then?
A I was assigned to the criminal investigation division, so investigating any crimes outside of what the narcotics unit investigated. So any crimes from theft, larceny, shootings, any crime requiring an investigation.
Q And before that, did you work any other kind of crimes as well?
A I was in the narcotics unit, special investigation division, from 2011 up until

beginning of 2018.

Q All right. In conjunction with a case dealing with Mr. Smith and just dealing with narcotics, did you execute a search warrant on his Facebook records?

A I did.

Q All right. Did you receive records back from Facebook?

A I did.

Q How would you describe those records, like one page?

A It's several pages.

Q Hundreds, is that fair to say?

A Yes, sir. Yes, sir.

Q We're not going to go through all of those, but I do want to show you State's 20.

(STATE EXH. 20, Facebook posts, was marked for identification.)

BY MR. KENDALL:

Q If you could, please take a look at that.

A Yes, sir.

Q And what is that?

A It's page 1 of the Facebook business records. Just one of the documents that was provided to us through Facebook.

Q All right. On that page, does it have -- what Facebook name is that in reference to?

A The user name is Buddy Dawkins.

Q All right. What is the email address associated with that account?

A The two registered emails addresses provided as one was bryson.smith87@yahoo.com, and the other one is bryson.smith.587@facebook.com.

Q So for both of those, the name was Buddy Dawkins. The actual email associated with it was Bryson Smith?

A That's correct.

Q All right. Is that a fair and accurate representation of what you received from Facebook?

A Yes, sir.

MR. KENDALL: Your Honor, we offer State's Exhibit 20 into evidence.

MR. SCHULTZ: Objection as previously noted on authentication and hearsay.

THE COURT: Objection is overruled. It's admitted.

MR. SCHULTZ: Thank you, Judge.

(STATE EXH. 20, Facebook posts, was entered into evidence.)

(STATE EXH. 10, Facebook posts, was marked

for identification.)

BY MR. KENDALL:

Q Now, I'm also going to show you State's Exhibit 10. Could you take a look at that, please?

A Yes, sir.

Q And what is that?

A It is part of the chat log between Buddy Dawkins and the other individuals.

Q All right. And that's a fair and accurate representation of what you received?

A Yes, sir.

MR. KENDALL: Your Honor, we offer State's Exhibit 10 into evidence.

MR. SCHULTZ: Objection previously noted under authentication and hearsay.

THE COURT: Objection is overruled. It's admitted. State's Exhibit 10 is admitted.

(STATE EXH. 10, Facebook posts, was entered into evidence.)

BY MR. KENDALL:

Q All right. On this conversation, could you please take a look at -- starting here and going down as to what this conversation entails.

A August 9th, 2019, Adonis Willis sent, "Cous, you got some beans?" Buddy Dawkins responded, "I

can get them." Adonis sent, "Hell, I did want that many. You don't have to go out of your way, Buzz." Buddy Dawkins responds, "I can get Percs, too." Adonis, "I don't do them." Buddy said, "Hit me for five bails," to Q. Longway Horton. He responded, "Shid," s-h-i-d. Buddy Dawkins, "Hell, ya." Longway Horton said, "Cant trust these...," N word, "Fam, they be hating on the law."

Q Okay. I'm sorry. Sorry, if you could continue on reading that. I apologize.

A Yes, sir. Buddy Dawkins said, "FR fam." Q. Longway Horton said, "I got these when I see you though on my GMA." Q. Longway Horton said, "What's up...," F word, "...give me three run. Go meet on my Grandma Gloria. I ain't never shit you." Buddy replied, "What you trying to get, Fam?" Q. Longway Horton says, "Weed." Buddy Dawkins said, "I only got Percs right now." Q. Longway responded, "Word, word."

Q Okay. What was the date -- I'm sorry. What was the date on that last conversation?

A The last sent messages on that was August 11th, 2019.

Q Okay.

A Universal time was 0038.

Q So on that one, Mr. Smith has Percs. Is that fair to say?

A He sent a message saying, "I've only got Percs," August 10th, 2019 at 3:23 universal time.

Q All right. So a day or so ahead of this, is that fair to say?

A Yes, sir.

Q All right. And going back to his previous conversation, when did he say he could get Percs?

A He sent a message to Adonis P. Willis on August 9, 2019. He says, "I can get Percs, too."

Q Okay. So, initially, on August 9th, he did not have any. By the 10th or the 11th he does, is that fair to say?

A By this information, yes, sir.

Q Okay. And what does using "Percs" typically refer to?

A Percocets would be -- Percs or Percocets, it means, would be my opinion, some type of pill.

Q Okay. And what are Percocets? Do you recall that from your narcotics days, generally speaking?

A It's a pain medication.

Q Okay.

MR. KENDALL: Please answer any questions

Mr. Schultz has.

THE WITNESS: Yes, sir.

CROSS-EXAMINATION

BY MR. SCHULTZ:

Q Officer Gardner, you are no longer with the Cherokee County Sheriff's Office, correct?

A I'm not. I'm a game warden for the Department of Natural Resources.

Q Game warden, okay.

I'm referring to State's Exhibit 10 now. You testified at least you thought that Buddy Dawkins was Bryson Smith, my client.

A That's correct.

Q All right. And you're positive of that?

A I'm certain that that is Buddy Dawkins.

Q You're certain of it.

Okay. Did you -- when you -- and I want to really know, kind of, how you went about requesting these Facebook business records. When you request Facebook business records, what do you do as far as -- you went through it briefly with Mr. Kendall, but could you detail to the jury what you do again when you request Facebook records?

A Sure. So Facebook, there's a police or law enforcement rights. What it is is that you have

to write credentials to prove to them that you're law enforcement. Once that's approved, you can preserve, just, kind of, hold that. So if there's an active investigation, then, you know, you believe that there may be information on Facebook. You can preserve it, which means that that user couldn't delete anything. I'm not exactly how long they'll preserve it. They preserve it for an amount of time, and then you have to send them a search warrant. So we had to obtain a search warrant, send it to them, their legal team reviews the search warrant to make it's authenticated, and they provide the results which was requested through the search warrant. And they send it back -- it's similar to an email. It comes back through the Facebook portal.

Q Do you know what an Internet protocol address is?

A An IP address.

Q Yes, sir. What is it?

A To my knowledge, I'm not a computer expert, the IP address would associate what device activated it, or the Internet home, I guess.

Q All right. So would this be a fair statement to say, I go on a -- I go on Facebook and I use a different name, right, but I'm at my house using my

whatever Internet provider I use, right?

A Correct.

Q You got me so far?

A Yes, sir.

Q Okay. So, if you wanted to investigate me, for instance, you could trace me back to whatever ISP or Internet service provider, or IP, Internet protocol address, I use on Facebook; is that correct, officer?

A A lot of times in other investigations, I wish it was that easy. There's a lot of device software out there that you can clean out IP addresses. Sometimes IP addresses is associated with different accounts.

But, yes, it is possible that if you serve an IP address, you can come back to the Internet server and be able to associate a home residence associated with that.

Q So I guess it is possible. Under those complications regarding it and everything. But it is possible in the example that I used for you to trace me back to the Internet protocol address that I use when I log into Facebook, correct?

A It would be possible.

Q All right, thank you.

Was anything like that, that Internet

protocol search, done in this case? Yes or no?

A It was not.

Q So the answer is no?

A That's correct.

Q Okay, thank you.

The correspondences that you read here to Mr. Kendall a couple of minutes ago, do any of these correspondences -- do they reference any marijuana deals?

A Yes, sir.

Q Do they reference any Percocet deals?

A Yes, sir.

Q Do they reference any methamphetamine?

A Those that I read, I don't believe do. No, sir.

Q Do they reference any heroin?

A No, sir.

Q All right. Do they reference any other drug besides Percocet and marijuana?

A The reference of "beans," and I don't know -- in my experience in narcotics people call drugs beans. I'm not sure what beans was referring to. If I had to guess, it would be pills.

Q What kind of pills?

A Like I say, you know, kind of dealing with

different areas and investigating narcotics, different people call different drugs different things. It's just my opinion, it's only my opinion, it's some type of pill. I wouldn't know whether it would be -- I would assume it would be illegal. You know, we'd call it Tylenol, but anything from Tylenol to Fentanyl to some type opiate. I'm not sure.

Q But the correct answer is, really, you don't know, right? It could be Tylenol. It could be anything, right?

A I would assume that if they were dealing with legal drugs, they would call it by their name instead of beans.

Q All right. What about Xanax? Any references to Xanax or anything like that in their correspondences?

A To my knowledge, I never heard of people calling Xanax beans. There's typical other names, but it could have been a name for Xanax, but I'm not sure.

Q Are you familiar with a nickname of beans for Xanax?

A I said I'm not.

Q Okay, thank you.

So, where is the -- I'm curious. What about

Ectasy, anything with that in here?

A There's no Ectasy mentioned in there.

Q Did you want to see it again just to make sure?

A I'm pretty certain.

Q All right.

MR. SCHULTZ: I beg the Court's indulgence, Your Honor.

THE COURT: Sure.

MR. SCHULTZ: Thank you. That's all I have, Judge. Thank you.

THE COURT: Anything at all, Mr. Kendall?

MR. KENDALL: Very quickly, Your Honor.

REDIRECT EXAMINATION

BY MR. KENDALL:

Q Just a couple things. When we talk about pills and Percocets and things like that, are we always talking about, like, pharmaceutical grade things that were, like, created in a lab and sent out to a pharmacy?

A Sometimes people can make their own.

Q And things like Fentanyl, heroin, hydrocodone, and things like that, what kind of general family would that be in?

MR. SCHULTZ: Objection, Your Honor. I think Mr. Kendall is purporting to almost

establish this officer as a drug expert.

MR. KENDALL: We'll just get the expert to do it. That's okay. We'll just get the expert to do it. That's no problem.

THE COURT: Okay.

BY MR. KENDALL:

Q You testified a moment ago when Mr. Schultz asked you why you were certain it was Bryson Smith. How did you know that?

A Typically, I understand that there can be fraud, so to speak, on Facebook, and all social media. But having investigated other cases where the possibility of having been fraud, in this particular case, all the photos were of Bryson, and I understand that they can be obtained if you make your profile public, or whatnot.

But the messages back and forth, like I said, there was hundreds of results from very intimate details, and then through other investigations, people that we spoke to admitted that they were talking to Bryson.

Q Did you know Bryson apart from this?

A I did.

Q So you were able to identify him as well.

A Yes, sir.

Q Is that fair to say?

A That's fair to say, yes, sir.

THE COURT: No further questions, Your Honor.

MR. SCHULTZ: Just a couple more on that into.

THE COURT: Okay.

MR. SCHULTZ: Yes, sir.

RECROSS-EXAMINATION

BY MR. SCHULTZ:

Q You said you were certain it was Bryson -- Bryson Smith was Buddy, right?

A Right.

Q So you mentioned that -- just in redirect there, that, yes, there is fraud, right?

A In other cases, yes, sir.

Q In other cases, okay. But you never saw -- okay, I just want to be clear on this, okay, you never saw Bryson Smith behind the computer or behind a phone actually texting whom you allege Mr. Smith to be texting, right? You never saw that actually happen in your personal knowledge, right?

A I was never with Bryson while he was on Facebook. We're not that type of friends.

Q Or Buddy Dawkins, whoever that is?

A Correct.
Q Okay. So how could you be certain?
A Once again, typically, when they fake a profile, you might have pictures, conversations with people that are very close to that person, they're going to know he's a fake person. You know, if I'm talking to a buddy of mine about something we did yesterday, I'm not going to have that information unless it's really me.
Q But it could be, indeed -- you just admitted, it could be a fake person?
A It's highly unlikely.
Q But it could be, correct?
A My answer is, it's highly unlikely in this case.
Q But it could be.
THE COURT: Let's not get argumentative with the witness.
MR. SCHULTZ: Yes, sir.
THE COURT: Move on.
MR. SCHULTZ: Thank you.
THE COURT: Thank you.
Sir, you may step down. Please be careful.
MS. LESKANIC: The State calls Alexis

Fowler.

THE COURT: Let's do this. We've been running an hour and a half. Let's take a 15-minute break.

THE COURT: Madame Forelady, Ladies and Gentlemen, I have to tell you we've been going about 90 minutes, about an hour and a half, and we're there. We're right on that top of that, so let's take about a 15-minute break. Let me ask you real quick, is there a smoker? I hope not, but is there a smoker on the jury? Okay, very good. If there were, you would have to be escorted outside the building.

All right. With that, we'll take a quick 15-minute break. Just, kind of, refresh yourselves. Get some water. They're going to split you between two rooms so that you have some more social distance area. I think they're going to be the two rooms right back here.

Is that what you're going to do, Ms. Brandy?

THE CLERK: Yes.

THE COURT: Very good. Madame Forelady, take the jury out. Don't talk about the case.

(Jury exits the courtroom at 2:24 p.m.)

THE COURT: Okay. For planning purposes,

we've got somebody that came here from Tennessee to do a plea at, like, 4:45 that Brandy had set up.

MS. LESKANIC: I'm on that, Your Honor.

THE COURT: But they're here.

MS. LESKANIC: Okay.

THE COURT: Supposed to be. Brandy is telling me, so we need to do that before we end the day.

MS. LESKANIC: Yes, sir.

THE COURT: We have to stop at 5:00 today. I have a meeting in Spartanburg at 5:30.

MS. LESKANIC: Yes, sir.

THE COURT: So just for planning purposes, I know you got folks you got to get up today.

We will take a quick break here.

(A break was taken 2:26 p.m. to 2:45 p.m.)

THE BAILIFF: Remain seated. Come to order.

MR. KENDALL: We have one issue, if we could discuss it with Your Honor?

THE COURT: Yeah.

(Bench conference off the record 2:45 to 2:53 p.m.)

THE WITNESS: Remain seated. Come to

order.

THE COURT: Remain seated. Thank you. Thank you.

Are we ready for the jury?

MR. KENDALL: Yes, sir.

MR. SCHULTZ: Yes, sir.

THE COURT: We'll have the jury.

(Jury enters the courtroom at 2:53 p.m.)

THE COURT: All right. Everybody good, Madame Forelady?

FOREPERSON: Yes, sir.

THE COURT: There you go.

Solicitor.

MS. LESKANIC: May it please the Court? The State calls Alexis Fowler.

THE CLERK: If you'll step up here, and raise your right hand, place your left on the Bible. Do you solemnly swear or affirm the testimony you give to this Court will be the truth, the whole truth, and nothing but the truth so help you God?

THE WITNESS: I do.

THE COURT: Agent, if you would tell us -- in a little louder voice if you will tell us who you are, and spell your last name for my court

reporter.

THE WITNESS: My name is Alexis Fowler, and my name is spelled F-o-w-l-e-r.

THE COURT: Thank you.

Solicitor.

MS. LESKANIC: Thank you, very much.

WHEREUPON:

ALEXIS FOWLER,

after having been sworn, testified as follows:

DIRECT EXAMINATION

BY MS. LESKANIC:

Q Miss Fowler, will you please tell the ladies and gentlemen of the jury where you were employed?

A I am employed with the South Carolina Law Enforcement division, commonly known as SLED.

Q Where is SLED located?

A It's located in Columbia, South Carolina.

Q All right. And what are your duties currently at SLED?

A As a forensic technician, I retrieve evidence from evidence control, maintain the chain of custody, perform preliminary screening for cannabis analysis, as well as give aliquot to the analysis for the processing.

Q Okay. What type of education or training have you

received in order to become a forensic technician?

A I received my bachelor's of science degree from Francis Marion University in biology, and I received in-house training from SLED in cannabis analysis from the drug analysis department.

Q So do you work specifically with cannabis analysis?

A Yes.

Q All right. And, approximately, how many times have you tested a substance to determine whether there's a presence of cannabis?

A Well over 500 times.

Q And for the rest of us, what is cannabis? What do we call cannabis on a day-to-day basis?

A Cannabis is -- could also have a street term name as marijuana.

Q Okay, very good. So you analyze substances to determine whether cannabis is present to make a determination or part of the determination of whether it will be marijuana?

A I perform a screening for cannabis analysis.

Q Okay, very good. And you've done that well over 500 times?

A Yes.

MS. LESKANIC: Your Honor, at this time, I would offer Alexis Fowler as an expert in the field of cannabis identification.

THE COURT: Any questions?

MR. SCHULTZ: No, not at this time, Your Honor, as far as officer her qualifications go. But I do not object to her qualifications as a witness.

THE COURT: Ladies and Gentlemen -- it's without objection, right?

MR. SCHULTZ: Yes, sir. As far as the cannabis identification goes.

THE COURT: Ladies and Gentlemen, this witness is now being offered as an expert in cannabis identification. That does not mean -- and she's offered as an expert due to her skill, training, and education, she is now qualified as an expert. You give what weight you deem appropriate to her testimony.

Thank you.

MS. LESKANIC: Thank you, Your Honor. May I approach the witness?

THE COURT: Yes, ma'am.

MS. LESKANIC: Thank you.

BY MS. LESKANIC:

(STATE EXH. 1, Cannabis evidence, was marked for identification.)

BY MS. LESKANIC:

Q I'm going to show what you what's been marked State's Exhibit 1. If you would take a look at that for a moment, and tell me if you recognize that?

A I do.

Q Okay. And what is that, and how can you identify it?

A This is a SLED evidence bag, and it is heat sealed. And I can identify it with my initials as well as the date, which is sealed.

Q And can you please explain to the jury how that particular item of evidence came into your possession?

A Yes. May I refer to my notes?

Q Ma'am?

A May I refer to my notes?

Q Yes, please.

A I received this item on -- sorry. I received this item on August the 14th from the secured upstairs drug analysis vault.

Q Is that located at SLED?

A It is.

Q Okay. And then what do you do once you retrieve

the item of evidence from the secured vault?
A After retrieving this item, I make sure that it was sealed when I received it. In this instance, it was sealed. I then open the heat-sealed pouch. After I open the pouch, I remove all items. After removing the items, I then itemize each item, take a wick and perform an indicative screening.

After that, I take an aliquot, which is just a representative sample of the item, and then put the aliquot in a test tube cap -- a water-sealed cap, label it with my initials as well as the lab number and item number, and I directly transfer the aliquot to the analyst for further processing.

Q Okay. I want to back up a little bit because we've taken you a little bit out of order today as far as witnesses.

Now, you stated when you received this item of evidence, State's Exhibit 1, it was in a heat-sealed pouch. Is that a tamper evident package where if someone had tried to open it or do anything with it that would have been obvious to you?

A Yes. It would be obvious to me. Again,

because when I received it, it had the previous analyst who sealed it, initials and date, and it was heat sealed. So if it was tampered with in any way, I would be able to tell.

Q Okay. And, in this case, had anything been tampered with?

A No.

Q And so, at that point, you went forward with your indicative testing?

A Correct.

Q Now, do you weigh the substance first or do you do your indicative testing first?

A After removing all items from the heat-sealed pouch in this case, I itemize it, which is just writing down what I see. I then take a net weight of the sample and then perform my indicative tests.

Q And, in this case, what was the net weight of State's Exhibit 1?

A The net weight for this item was -- excuse me. The net weight of this item was 149 grams.

Q After weighing the substance, what is the next process that you do? I know you briefly gone over it but just again.

A I perform an indicative screening for

cannabis.
Q And what does that entail? How do you do that?
A For this item, I perform a microscopic test, and this test looks for three hairs that are consistent with the cannabis plant.
Q And did you find those three hairs? Was it a positive indicative test in this case for cannabis?
A Yes.
Q And so then what did you do with the sample from State's Exhibit 1?
A I took an aliquot sample from the evidence -- again, that's just a representative sample -- and I placed it in a test tube that's capped and is watertight. I labeled it with my lab number, item number, and initials, and directly transferred it person-to-person to the analyst for further processing.
Q And who was that other analyst that you did the hand-to-hand transfer with?
A Ashley Lyles.
Q Okay. So, just in simple terms, you took a sample from State's Exhibit 1 and placed that sample into a test tube that is capped, and you handed just a small portion, a sample, of State's Exhibit 1 to the next analyst.

A Yes.
Q Okay. And then what do you do with State's Exhibit 1 once you have taken the sample and delivered that to the other analyst?
A Once my analysis is completed I then initial and date the heat-sealed pouch. Well, I initial and date it, and then I heat sealed the pouch and placed it into our secured drug analysis vault upstairs until it's needed to be taken downstairs.
Q Okay. And is this State's Exhibit 1 in the same condition that it was when you sealed it back?
A Yes.
Q Okay. Those are all the questions I have for you. Please answer any questions that Mr. Schultz may have.

CROSS-EXAMINATION

BY MR. SCHULTZ:
Q You only tested marijuana, correct, in this case, or no?
A I performed a preliminary screening for cannabis analysis.
Q Okay. So cannabis analysis, right?
A Correct.
Q That's the only thing you did in this case, right? That was the only test you performed, right?
A Indicative screening for cannabis analysis,

right?

Q All right. Cannabis analysis.

Now, there's two types of cannabis, correct?

A I know of just cannabis.

Q Okay. What about cannabis sativa?

A It is a cannabis plant.

Q Okay. What about cannabis indica?

A It's a cannabis plant.

Q Okay. Are both illegal?

A So I don't deal with legality. I do a screening for cannabis analysis.

Q All right. What did this -- that bag that you have in front of you there, okay, State's Exhibit 1, is that cannabis indica or cannabis sativa?

A Our screening does not require that. I just simply identify if it is, indeed, cannabis.

Q So it's part of the cannabis family?

A My results were positive for cannabis.

Q All right. Is cannabis the same as marijuana?

A For my scope, all I do is identify if the item is cannabis.

Q So you can't say right now if it's marijuana, can you?

A I cannot.

Q Thank you.

MR. SCHULTZ: That's all I have, Judge.

THE COURT: All right. Anything.

MS. LESKANIC: Briefly, Your Honor.

REDIRECT EXAMINATION

BY MS. LESKANIC:

Q Just to clarify: How many analysts at SLED are involved in the identification of whether or not a plant is marijuana?

A We have a few analysts that actually deals with the reporting of marijuana.

Q Okay. And is your role to look at a green plant-like substance and do the microscopic indicative test to look for the three hairs to say yes or no, this is cannabis?

A Yes.

Q Okay. And if it's not cannabis, does it go to another analyst, or is it done?

A Yes. If it is not cannabis, I would then transfer to the appropriate analyst.

Q Okay. But, in this case, the indicative test was that it is cannabis.

A Yes.

Q And because of that, you were then going to -- you did the hand-to-hand transfer with the next analyst to actually make a determination of whether or not --

what the level of THC or whether or not it is marijuana. You were simply doing the indicative test to determine where it needs to go next?

A Yes.

Q Okay. Thank you very much.

MR. SCHULTZ: Nothing further.

THE COURT: Okay. Agent, you may step down. Please be careful.

MS. LESKANIC: The State calls Ashley Lyles.

THE CLERK: Please raise your right hand and place left on the Bible. Do you solemnly swear or affirm the testimony you give to this Court will be the truth, the whole truth, and nothing but the truth so help you God?

THE WITNESS: Yes, I do.

THE CLERK: Okay.

THE COURT: Agent, I'm going to ask you to speak a little louder than usual. You have a soft voice. But if you'll speak a little louder, please, due to the mask, and tell us who you are and spell your last name for my court reporter.

THE WITNESS: My name Ashley Lyles, L-y-l-e-s.

THE COURT: Thank you.

Solicitor.

MS. LESKANIC: Thank you, Your Honor.

WHEREUPON:

ASHLEY LYLES,

after having been sworn, testified as follows:

DIRECT EXAMINATION

BY MS. LESKANIC:

Q Will you please introduce yourself to the jury, tell them where you work, and how long you have been employed there?

A Yes. My name is Ashley Lyles. I work at the South Carolina Law Enforcement Division. We are commonly referred to as SLED. And I've been there for approximately five and a half years.

Q What are your current duties at SLED?

A My current duties include cannabis analysis and analyzing evidence items for the presence or absence of controlled substances.

Subsequently, I document the results of my findings, I generate a report based on my findings, and I testify to those reports.

THE COURT: Let me ask this: Can the jury hear?

JURY PANEL: No.

JUROR: Not through the mask.

THE COURT: Do you mind moving your mask down.

THE WITNESS: Is this better?

MS. LESKANIC: Thank you, Your Honor.

BY MS. LESKANIC:

Q Would you please tell the jury about your education and training to do the job that you do at SLED?

A Yes, ma'am. I have a bachelor of science degree in biochemistry from Washington and Lee University. I have undergone training at SLED in cannabis analysis and forensic drug chemistry. I have also successfully completed on-line coursework with West Virginia University in forensic drug chemistry and mass spectrometry.

Q So you are a forensic scientist at SLED and you work in the drug analysis department?

A That is correct.

Q And, in your, I think, over five years at SLED, have you always worked in the drug analysis department?

A I have been employed with SLED for a total of eight years. However, I've spent the past five and a half years in drug analysis.

Q Have you always worked just with cannabis

analysis?

A I have. Currently, in a slightly different way, though.

Q In this case, were you asked to analyze State's Exhibit 1?

A Yes, I was.

Q Okay. Let me get back --

MS. LESKANIC: Your Honor, before I continue, at this time, I would like to offer Miss Lyles as an expert in the field of cannabis identification and analysis.

THE COURT: Any questions as to her qualifications?

MR. SCHULTZ: No, sir.

THE COURT: Ladies and Gentlemen, once again, most people cannot give opinion in testimony. They must testify to something they see or know of their own personal knowledge.

However, the law does allow for someone to be qualified as an expert due to their training, skill, and education.

This person is now qualified as an expert in cannabis identification and analysis. That does not mean you must accept her opinion. You give it whatever weight you deem advisable.

Solicitor.

MS. LESKANIC: Thank you.

BY MS. LESKANIC:

Q I believe you were just in here for Miss Fowler's testimony who testified that she had done an indicative test on plant-like material from State's Exhibit 1, that she found the presence of cannabis, and that she placed those items into a test tube that was capped so it was airtight and watertight. She testified that she hand-delivered that test tube to you; is that correct?

A Yes, that is correct.

Q Okay. Can you please explain to the jury why you have that process and then what you do with the test tube with a portion of State's Exhibit 1?

A That process, or the process is done in that manner because of the way that SLED sub-itemizes evidence items that are brought in.

In this particular case, because of the transfer taking place, there's already been some itemization and we cannot create more, so the transfer is person to person.

That test tube, again, is capped. It's airtight and it's safe from water. It comes with the lab number and the item number on the test

tube so I always know that that sample belongs to this case.

In terms of what I do, once I receive that test tube, I will go through an extraction process which involves chemicals and solvents. And I place an extract in the extraction process. And I take an extraction from my test tube and place it into a small vial that goes on to our vile that goes onto our gas chromatograph, mass spectrometer, which is our instrument that we use for confirmatory testing.

That vial undergoes confirmatory testing on the GCMS instrumentation, and I am able to identify plant material that has a THC concentration that's greater than the lower limit through that confirmatory testing.

Q And were you able to do the confirmatory testing in this case with the sample that was provided?

A Yes, I was.

Q And what were your results of that confirmatory testing?

A Marijuana C-1 found in the sample testing, one tested. Net weight 149 plus or minus one gram, 5.25 plus or minus 0.04 ounces.

Q Okay. And when you say marijuana C-1, for the

benefit of the jury, what does that C-1 stand for?
A That is the controlled status of marijuana. All controlled substances are placed into a controlled status or a schedule starting with number one and going down to number five.
Q So marijuana is a schedule I drug in the state of South Carolina?
A That is correct.
Q Okay. And that is what your confirmatory test showed was that the sample that was provided to you by Miss Fowler that was taken from State's Exhibit 1 was, in fact, marijuana?
A That is correct.
Q Okay. And how were you able, again, to link the test tube with the larger sample that Miss Fowler had in her possession?
A Miss Fowler would have labeled that test tube with the item number and the lab number that was present on the evidence in that exhibit. And that lab number and item number and item number is on the test tube linking back to that packaging?
Q Very good. And then you have a computer system, I assume, at SLED that links these cases together and a chain of custody showing that?
A That's correct.

Q And then what happens to the sample that was provided to you in the test tube after you finish your testing?

A Since it is a representative sample and it has been saturated with chemicals and solvates and it's such a tiny amount, it is actually discarded in a specific waste and glass container.

Q Okay. So it is not returned back to the sample that Miss Fowler had and resealed?

A That is correct. It's what has been through a long process, so it does not return to that packaging.

Q During your testing, were you able to determine a threshold amount of THC present in this sample?

A I was able to -- can you word your question another way for me, please?

Q How do you make the determination whether or not this is marijuana in the confirmatory testing? What do you look for?

A Okay. We are using a screening method through our GCMS instrumentation and we have a reporting limit that is set. And that reporting limit is three times the legal limit of what is allowed to be present in cannabis.

Q And so was the amount that you found in this case

over the legal limit allowed?

A Yes, it was.

MS. LESKANIC: Thank you very much. Please answer any questions Mr. Schultz has.

MR. SCHULTZ: Thank you, Judge. May it please the Court?

THE COURT: Yes, sir.

CROSS-EXAMINATION

BY MR. SCHULTZ:

Q What does THC stand for?

A I want to make sure I'm saying this correctly. THC stands for Delta-9-tetrahydrocannabinol. It's a very long word.

Q So tetrahydrocannabinol, right?

A Yes.

Q Okay, very good. There was 149 grams of this substance that you tested, right? You did the test for that, right?

A Yes, sir.

Q Okay. And this was not an indicative or presumptive test. This was an actual test, right?

A I did a confirmatory test on the sample given to me, yes.

Q All right. And you've done, probably, at this

point, probably thousands of tests, right?

A Hundreds, perhaps thousands, yes.

Q And the question I have for a previous witness there, was this cannabis indica or cannabis sativa?

A That is not a part of our reporting procedure. This confirmatory test looked at the concentration of THC present in the plant material.

Q Thank you.

MR. SCHULTZ: That's all I have, Judge. Thank you.

THE COURT: Thank you. Anything else?

MS. LESKANIC: No, Your Honor.

THE COURT: Agent, you may step down. Please be careful.

MS. LESKANIC: The State calls Maribeth McCormack.

THE CLERK: Please raise your right hand. Do you solemnly swear or affirm the testimony you give to this Court will be the truth, the whole truth, and nothing but the truth so help you God?

THE WITNESS: Yes.

THE COURT: Agent, if you will tell us who you are and spell your last name for my court reporter, please.

THE WITNESS: Yes. My name is Maribeth McCormack, M-c-C-o-r-m-a-c-k.

THE COURT: Solicitor.

MS. LESKANIC: Thank you, Your Honor. May it please the Court?

WHEREUPON:

MARIBETH MCCORMACK,

after having been sworn, testified as follows:

DIRECT EXAMINATION

BY MS. LESKANIC:

Q Would you please tell the ladies and gentlemen of the jury where you are employed?

A Yes. I'm employed at the South Carolina Law Enforcement Division, commonly known as SLED.

Q And how long have you been employed there?

A For 12 and a half years.

Q Okay. Would you please tell the jury what your duties are currently at SLED?

A Yes. I'm a forensic scientist in the drug analysis department, and I analyze evidence for the presence of controlled substance.

Q How long have you held that position?

A For 12 and a half years.

Q Would you please tell the jury about your education and training in order to hold that position

at SLED?

A I have a bachelor of science degree in chemistry and also a master of teaching chemistry and physics both from the University of South Carolina. I completed training at the drug analysis department. I've also attended the Drug Enforcement Administration forensic chemist training.

Q Okay. And do you have occasions as a drug analyst at SLED to look at substances to determine whether they are a narcotic or they're some sort of narcotic present in that substance?

A Yes.

Q And, approximately, how many times have you analyzed substances at SLED to determine if they are, in fact, a drug?

A Approximately 10,000 times.

MS. LESKANIC: Your Honor, at this time, I would like to offer Maribeth McCormack as an expert in the field of chemistry and the analysis of narcotics.

THE COURT: Anything about the qualifications?

MR. SCHULTZ: No, sir.

THE COURT: Ladies and Gentlemen, once

again, this person is now being qualified as an expert in chemistry and identification of -- narcotics?

MS. LESKANIC: Yes, sir, Your Honor.

THE COURT: Okay. Narcotics. That does not mean you must accept her testimony. You give whatever weight to the testimony as you deem appropriate.

Solicitor.

MS. LESKANIC: Thank you, Your Honor.

BY MS. LESKANIC:

Q Miss McCormack, did you receive items of evidence related to this case that you were asked to analyze?

A Yes.

Q Okay. I'm going to start: Did you prepare a report of each item that you analyzed in your findings?

A Yes.

Q Okay. Could you access -- do you have that report with you?

A Yes.

Q Do you know how many separate items of evidence you received?

A There are nine items.

Q Did you receive -- well, let me just back up.

How did you first receive the evidence in this case?

A I received the evidence in a sealed box from our evidence log-in department.

Q Okay. And did you then break the seal on that box to see what was inside?

A Yes.

Q And what was inside that box?

A There were a variety of items inside. Would you like me to go through them?

Q Yes. We have State's Exhibit 1, and then I have several exhibits with you. Was everything contained in one box?

A Yes.

Q Okay. So what has been determined to be marijuana was in the box, and then items of evidence that you were asked to analyze; is that correct?

A Yes.

(STATE EXH. 2, White powder, was marked for identification.)

BY MS. LESKANIC:

Q Okay. I would like to go through your report. I want to first show you what's been marked State's Exhibit 2, and tell me if you can identify this?

A Yes. I have the corresponding lab number, item number, and my initials on the back.
Q Okay. And can you tell the jury what you did -- what item number is that for SLED? I know it's State's Exhibit 2. What was your item number?
A It says item 1.1.
Q Okay. And what type of testing do you do with that substance?
A Well, the first thing I did was take a weight and I perform a preliminary test, which is a chemical spot test. And then I performed a confirmatory test which was gas chromatography, mass spectrometry.
Q Okay. Did you document a weight on State's Exhibit 2?
A Yes.
Q And what was the weight?
A May I refer to my notes?
Q Please.
A The weight was 28.19 grams.
Q And the chemical test and confirmatory test results?
A My final results were no controlled substances found.
Q So in that sample, you didn't find anything

illegal in that white powder substance; is that correct?

A Yes.

(STATE EXH. 3, Cocaine sample, was marked for identification.)

BY MS. LESKANIC:

Q Now, I would like to show you what has been marked State's Exhibit 3. If you would take a look at that and see if you can identify that and how you can identify that?

A Yes, I see the lab number, the item number, and my initials.

Q And what did you do with that sample?

A I weighed the sample. I performed a preliminary test and a confirmatory test.

Q Okay. And what weight did you receive on that sample?

A 2.55 grams.

Q Okay. And the results of your preliminary and confirmatory testing?

A The final result was cocaine found.

Q Okay. And is that a controlled substance?

A Yes.

Q And what schedule?

A II.

Q So State's Exhibit 3 contains 2.55 grams of cocaine; is that correct?

A Yes.

(STATE EXH. 4, Fentanyl pills, was marked for identification.)

Q Now, I'd like to show you State's Exhibit 4. Take a look at that and see if you recognize that.

A Yes, I do.

Q How do you recognize it?

A It has the lab number, item number, and my initials.

Q Okay. And did you do weight and preliminary and confirmatory testing on State's Exhibit 4?

A I did not weigh these tablets. I did a preliminary test and a confirmatory test.

Q Okay. Did you count the tablets?

A Yes.

Q And how many tablets are there?

A Eighty-four, and there were also partial tablets and crushed powder.

Q And how do you perform your test on tablets?

A I check the tablets for markings. In this case, they did have markings on both sides. The first side is RP, the second side 10/325. And I took a sample for the preliminary test, spot test,

and the confirmatory test.

Q Okay.

A And I also compared the markings with published literature for pharmaceutical preparations.

Q Okay. And what did your investigation show?

A The confirmatory test confirmed Fentanyl.

Q Okay. Which is a controlled substance?

A Yes.

Q A Schedule II?

A Yes.

Q And what about your looking at the markings on these pills, what did those markings indicate to you and was that different than from the results that you found?

A Yes. The markings are consistent with pharmaceutical grade tablets that are oxycodone and acetaminophen.

Q But that's not what the tests showed that these are?

A Correct.

Q Are these counterfeit tablets or created by someone of a pharmacy?

A Yes.

Q And how do you do the testing on those tablets?

What is the process?

A I would break off a portion of the tablet and go through the same extraction process confirmatory tests as the powder substance. Treat it the same.

Q And looking at these pills, you may think that they were prescription or pharmaceutical grade oxycodone, acetaminophen, but the testing showed that they were, in fact, Fentanyl pills?

A Yes.

(STATE EXH. 5, Pills, heroin and Fentanyl, was marked for identification.)

BY MS. LESKANIC:

Q I'm going to show you State's Exhibit 5. If you would look at that and see if you can identify that, please?

A Yes. I see the corresponding lab number and item and my initials.

Q Okay. What did you do with State's Exhibit 5?

A I -- well, inside is Ziploc bag are two separate plastic bags, so I separated those two. And the first plastic bag, I counted the tablets. There were 69 blue tablets and partial tablets. I made note of the markings. These had markings of A/215, which is consistent with the pharmaceutical

preparation of oxycodone, and I performed the preliminary spot test as well as the confirmatory test.

Q Okay. And what did those tests show?

A Heroin and Fentanyl were found.

Q So, again, they are counterfeit. They appear to be a pharmaceutical oxycodone pill, when, in fact, they are heroin and Fentanyl pills; is that correct?

A Yes.

Q Are you familiar with Percocet?

A Yes.

Q What are the ingredients found in a Percocet?

A The ingredients in Percocet would be oxycodone and acetaminophen.

Q So the same ingredients that are the markings that were on State's Exhibit 4 --

A Yes.

Q -- the 84 tablets had a marking of a Percocet?

A Yes.

Q But they were not pharmaceutical grade pills?

A Correct.

Q Okay. And in this case, going back to State's Exhibit 5, they had markings of oxycodone but were, in fact, heroin and Fentanyl and there were 69 of those blue tablets?

A Yes.

(STATE EXH. 6, Blue tablets, was marked for identification.)

BY MS. LESKANIC:

Q Now, I'm going to show you State's Exhibit 6. Take a look at that and see if you recognize it?

A May I back up a second?

Q Please.

A The previous item, I only spoke about the first Ziploc.

Q Yes, ma'am. Please go back. I'm sorry. That was State's Exhibit 5.

A Yes. As I stated, there were two Ziploc bags. One containing the 69 blue tablets. The other bag contained blue powder substance. It appeared to be either not made into a pill yet or either a crushed tablet.

So on those, I only performed the preliminary spot test. The results were consistent with the previous item, so I did not do a confirmatory test on those.

I did take a weight, and that weight added with the previous item would not push it to the next statutory weight threshold. That's why I did not do confirmatory testing on that.

Q On the second bag with the powder.
A Yes.
Q But the presumptive test showed the same thing as the earlier confirmatory test of heroin and Fentanyl?
A Correct.
Q Okay, thank you very much. And thank you for going back to that.
State's Exhibit 6 now.
A I recognize the lab number and the item number and my initials.
Q Okay. And please tell the jury what you did and what you found in that bag.
A There were 50 blue tablets and partial tablets, so I made a note of the markings, which were A-215 which is consistent with an oxycodone tablet. I weighed it. I did a preliminary spot test and a confirmatory test, and my result was Fentanyl found.
Q Okay. And there were 50 blue tablets you said?
A Yes, with partial tablets.
Q Okay. Was that everything contained within that bag?
A Yes.
(STATE EXH. 7, Empty baggie, was marked for

identification.)

BY MS. LESKANIC:

Q I'm going to show you State's Exhibit 7, an empty baggie just so I can give you everything and you can explain everything we have and why?

A Yes. This is an empty Ziploc that did contain other items.

Q Okay. What other items did that bag originally contain?

A That contained a plastic bag containing 73 multi-colored tablets and partial tablets. They were in the shape of the State of Georgia.

(STATE EXH. 8, Pills; Georgia shaped, was marked for identification.)

BY MS. LESKANIC:

Q If I may approach, I'm going to show you State's Exhibit 8 and see if you recognize that.

A Yes. I see the lab number, item number, and my initials.

Q Okay. And is that the bag containing the 73 multi-colored tablets and partial tablets?

A Yes.

Q And they are in the shape of what, I'm sorry?

A The state of Georgia.

Q And what did you do for testing with these pills?

A I weighed the tablets. I did a preliminary spot test and a confirmatory test.

Q Okay. And what was the weight?

A The weight was 11.15 grams.

Q Okay. And the preliminary and confirmatory testing showed the substance in those pills was?

A Methamphetamine.

(STATE EXH. 9, Baggie; not tested, was marked for identification.)

BY MS. LESKANIC:

Q And then you have what is your item 1.6.2, State's Exhibit 9. Will you please tell the jury what you did with that item?

A Yes. I weighed this item and performed a preliminary test. As I stated with one of the other items, the white added with the other previously tested item, would not move it to the next weight threshold. Therefore, since the results were consistent with the previous items, the other multi-colored tablets, I did not do a confirmatory test.

Q Okay. Now, I would like to go back through your report to make sure that I have asked you everything.

On State's Exhibit 3, item 1.2, that was cocaine with a net weight of 2.55 grams; is that

correct?
A Yes.
Q And State's Exhibit 4, which is your item 1.3, was 84 Fentanyl tablets and no weight obtained.
A Yes.
Q State's Exhibit 5, 69 blue tablets and partial tablets containing heroin and Fentanyl with a net weight of 7.78 grams.
A Yes.
Q And State's Exhibit 6, 50 blue tablets and partial tablets containing Fentanyl.
A Yes.
Q No weight contained, correct?
A Yes.
Q And then item 1.6.1, or State's Exhibit 8, was the 73 multi-colored tablets containing methamphetamine with a net weight of 11.15 grams?
A Yes.
Q Okay. And when you received these items, where do you initially pick up the package and what do you do when you first get the box that contained all of this evidence?
A I picked this up in our evidence log in department.
Q Okay. And then what do you do with it?

A If I'm going to analyze it right away, I would take it to my area and get started.

May I check the chain of custody to see the time?

Q Please.

A Okay. It looks like I got started on this right away, so it would have gone from the evidence log in department to my work area, and there I would check the seal on the box to make sure it had not been tampered with. In this case, it wasn't. Otherwise, it would have been photographed and documented on my report.

Q So everything was sealed properly when you received it?

A Yes.

Q Okay. And then what do you do with that?

A At that point, I would open the box and itemize and begin my testing.

Q Okay. Now, do the packages of State's Exhibit 3 through 9 that are in front of you, are they in the same bags that they were when you returned them to the Cherokee County Sheriff's Department?

A No.

Q Okay. Can you explain why, to the jury, they are packaged differently today?

A Yes. They are each in a heat-sealed bag. The purpose of this was so you can see the evidence, otherwise it would be in the box and not visible. So, the sheriff's office opened the box on November 4th and separated the items into these heat-sealed bags.

Q Okay. Is there a danger with any of the drugs contained in these packages that they are not sealed properly?

A Yes.

Q Can you explain that, please?

A Anytime you're dealing with controlled substances there could be danger. Especially Fentanyl could be harmful. So just for extra precaution and so you can see the evidence, they repackaged my packaging.

(STATE EXH. 14, Photo, was marked for identification.)

(STATE EXH. 15, Photo, was marked for identification.)

(STATE EXH. 16, Photo, was marked for identification.)

BY MS. LESKANIC:

Q Okay. And if I may show you State's Exhibit 14, 15, and 16. Could you take a look at those?

A Yes.

Q And do those photographs show how you had the individual substances packaged when they were sent back to the Cherokee County Sheriff's Department?

A Yes.

MS. LESKANIC: Your Honor, at this time, I would offer State's Exhibit 14, 15 and 16.

BY MS. LESKANIC:

Q And by the time they were sent back to us, all of your testing had been done? All of the results were done your substances, correct?

A Yes.

(STATE EXH. 13, Photo, was entered into evidence.)

BY MS. LESKANIC:

Q All right. I'd like to show you also State's Exhibit 13. If you can take a look at that and tell me if you recognize that?

A Yes.

Q And what is that?

A It is the box containing the evidence.

Q Okay. That was sent back that was sealed by you and sent back to the sheriff's department after all the testing was done?

A Yes.

Q Thank you.

MS. LESKANIC: Your Honor, we would offer State's Exhibit 13 for admission.

MR. SCHULTZ: No objection.

THE COURT: No objection to 13, 14, 15, and 16.

MR. SCHULTZ: 13, 14, 15, 16, those are all pictures, correct?

MS. LESKANIC: That's correct.

THE COURT: 13, 14, 15, 16.

MR. SCHULTZ: Yes, sir.

THE COURT: They are admitted without objection.

(STATE EXH. 13, Photo, was entered into evidence.)

(STATE EXH. 14, Photo, was entered into evidence.)

(STATE EXH. 15, Photo, was entered into evidence.)

(STATE EXH. 16, Photo, was entered into evidence.)

BY MS. LESKANIC:

Q And when you finished your testing, I know we've briefly gone over it, but what do you do with each of the substances after you finish your testing?

A I make sure it's secure, whether it be in the bag it originally came in, or I repackage the bag. And then I placed all the evidence back into the original box and taped it with packaging tape and evidence seal tape.

Q Okay. And that's what is shown in State's Exhibit 13, how everything was sealed back by you when it was returned?

A Yes.

Q Now, when you first opened the box of evidence, was State's Exhibit 1 in that box?

A Yes.

Q And what did you do? Did you do any testing on the marijuana?

A No.

Q And what did you do with this?

A I repackaged it in that evidence bag, and I placed it in the drug evidence vault in our department.

Q Okay. And does that go to a different department or a different group to do the marijuana testing?

A It's the drug analysis department. However, Miss Fowler would have taken it over there for the cannabis analysis.

Q And then would all of those items been sent back

at the same time, the marijuana, as well as your substances, repackaged and sent back to our agency?

A Not necessarily since we were on different -- I had my analysis and that had a different analyst. So they wouldn't necessarily been sent back at the same time. I can check the chain of custody.

Q Thank you.

A It looks like it was different days.

Q Okay.

MS. LESKANIC: Thank you very much. Please answer any questions that Mr. Schultz has.

MR. SCHULTZ: May it please the Court?

CROSS-EXAMINATION

BY MR. SCHULTZ:

Q What is your correct title? Should I call you officer or doctor?

A Just -- you mean what you refer to me as?

Q Yes. Miss McCormack?

A That's fine.

Q Miss McCormack, you've done 10,000 tests up until now; is that correct?

A Approximately.

Q And you've been working at SLED for approximately

more than a decade, right?

A Yes.

Q Okay. And, in that time, you've tested a lot of substances, right?

A Yes.

Q Okay. Now, I'm specifically referring -- well, first of all, I want to establish a fact. You never tested the cannabis, right?

A Correct.

Q You never did anything involving that, right? That was another chemist, or that was another scientist working for SLED?

A Yes.

Q Okay. And not you, right?

A Correct.

Q I'm referring to State's Exhibit 2. That was 1.1 under your paperwork?

A Yes.

Q And the weight on that was, to my recollection, and you correct me if I'm wrong here, was 20.19, right?

A 28.19 grams.

Q What did that -- do you remember what that package looked like?

A Yes. A Ziploc bag containing a plastic bag

contained a powder substance.

Q Okay.

MR. SCHULTZ: Beg the Court's patience, Your Honor.

THE COURT: Yes, sir.

MR. SCHULTZ: Sorry about that.

BY MR. SCHULTZ:

Q This is --

MR. SCHULTZ: I'm sorry, Your Honor. May I approach the witness?

THE COURT: Yes, go ahead.

MR. SCHULTZ: I'm going to be careful. Thank you.

BY MR. SCHULTZ:

Q This had no narcotics in it, right?

A Correct.

Q Okay. Did you often get pieces of evidence there that the police think or know they have narcotics in them but it turns out they don't?

A Yes. It's common.

Q It's common, okay.

And was that -- did SLED do a presumptive test on State's Exhibit 2?

A Yes.

Q Okay. And what of the presumptive test on that?

A I'm sorry. I have lot of papers.
Q That's okay. Take your time.
A I performed two presumptive tests and the first one I had a light blue -- light blue color. The second no color change.
Q What does that mean?
A With presumptive chemical tests, each free agent will give or may not give a certain color reaction, and that just indicates what the substance might be.
Q And so what did the presumptive test -- you correct me if I'm wrong here. What did the presumptive test indicate? Nothing, right?
A Correct.
Q So, being that the presumptive test didn't indicate any, you didn't do a confirmatory test, right?
A I did.
Q You did?
A Yes.
Q Okay. And the confirmatory test indicated what?
A No controlled substance.
Q Okay, thank you.
And then you did another test on 1.2 that's State's Exhibit 3, right?

A Yes.
Q And that was about two and a half grams of powder cocaine, right?
A Yes.
Q All right. Did you ever test anything for crack cocaine or anything like that?
A No.
Q All right. So no crack cocaine was found in your analysis at all?
A No.
Q Okay. State's Exhibit 4, and I'm particularly interested in this. You said that you found Fentanyl in that, right?
A Yes.
Q Okay. And it was a bunch of pills, right, in it?
A Yes.

MR. SCHULTZ: Judge, could I approach the witness again?

THE COURT: Yes, sir. Put your mask on.

MR. SCHULTZ: Yes.

BY MR. SCHULTZ:
Q State's Exhibit 4 right here. Now, as you see this -- I don't know if the jury can see this, but there's a bunch of pills in here, right?

A Uh-huh.

Q Question for you: Did you take samples of every pill in that baggie?

A No, I didn't.

Q Okay. What did you test then?

A I tested a portion of one tablet.

Q A one portion of one tablet. So one portion of one tablet. So you didn't test every pill in that baggie, right?

A I did not.

Q Okay. Could it have been possible -- sorry. Could it have been possible that the other pills in there were not controlled substances?

A It is possible. However, the likelihood of me picking out the only tablet in the bag containing Fentanyl is not -- not a good chance.

Q But -- I understand that. But, A, is it possible? Yes or no.

A Yes.

Q Okay. And, B, and I just want to confirm this, you didn't test every pill in State's Exhibit 4, your 1.3, right?

A Correct.

Q So you just did a sample of it, right, and you assumed that everything else was a controlled

substance, right?
A I took a representative sample based on the markings all being consistent and they were packaged together.
Q Okay. But you assumed that every pill in there was a controlled substance, even though you don't know for sure?
A I don't know for sure, except for the one tablet I tested.
Q All right.
MR. SCHULTZ: Sorry, Judge.
BY MR. SCHULTZ:
Q Going to the State's Exhibit 5. State's Exhibit 5 is what number that you have?
A That is 1.4, 1.41, and 1.42.
MR. SCHULTZ: Can I approach, Judge?
BY MR. SCHULTZ:
Q Could you hand me that?
A Uh-huh.
Q Thank you. Same thing, pills, right?
A Yes.
Q Blue pills?
A Yes.
Q Okay. Same question -- as to the State's Exhibit 4 the other tablets, same question. You took a

representative sample, and then you just assumed that everything else was a controlled substance, right?

A Yes.

Q Okay.

A I tested -- I fully test the representative sample, and that is what's reported.

Q So there could be a possibility that all of the other pills in there could not be controlled substances, right?

A It's possible.

Q It's possible, okay.

So, you said you found 7.78 grams of narcotics in there, right?

A Heroin and Fentanyl.

Q Legal controlled substances, right?

A Yes.

Q Okay. But, you just extrapolated that from the sample that you tested, right?

A Yes, I tested one of the tablets.

Q Right. And then you extrapolated that out?

A Yes. They are treated as one population because they all look the same and are packaged the same.

Q All right. That's what I'm getting at.

Tell the jury what extrapolation means.

A It means doing one test, and I would say that the rest were also heroin and Fentanyl based on the testing of that one tablet.
Q So it's a guess, right?
A I'm not stating -- I only tested one of the tablets, and they were in the same population, so...
Q But it's a guess, right?
A I am assuming they all contain the same substances, yes.
Q It's an assumption.
MS. LESKANIC: Objection, Your Honor. Asked and answered.
MR. SCHULTZ: I'll move on, Judge.
THE COURT: Okay.
MR. SCHULTZ: Thank you.
BY MR. SCHULTZ:
Q Referring to State's Exhibit 6, 50 blue tablets, right?
A Yes.
Q Okay. You said, and my notes indicate, no weight was obtained from there.
A Correct.
Q But you found Fentanyl, or no?
A Yes.

Q Okay. But no weight was obtained, so you don't have a measurement for that, right?

A I did not report the weight. I did take a weight in my notes.

Q Okay.

A And it was 3.84 grams.

Q All right. Thank you.

State's Exhibit 7, my notes indicate -- I just want to confirm this with you. It didn't contain anything legal, right?

A Which one?

Q 7, State's Exhibit 7?

A I'm sorry. The numbers don't respond with my report, so it's kind of hard to --

Q It's okay. Take your time.

A 7, yes. That was just the Ziploc that contained the next two items.

Q Did it contain anything illegal? Were there narcotics in there? I don't want to confuse you. Take your time.

A Okay. Exhibit 7 is a Ziploc Bag.

Q Yes.

A That contained -- minus the outer packaging, it contained the tablets. So, yes, there is no testing done on the Ziploc bag.

Q Okay. For State's Exhibit 7, right?
A Yes, sir.
Q Okay, thank you. So no testing.
State's Exhibit 8 --
MR. SCHULTZ: Can I approach?
THE COURT: Yes, sir.
MR. SCHULTZ: Thank you.
BY MR. SCHULTZ:
Q All shaped in the shape of Georgia.
A Yes.
Q Do you know -- I'm just curious -- what's the significance of that?
A I don't know. It's something we've seen recently. We get all sorts of logos and shapes.
Q All right, thank you.
Same question that I have previously, you tested one of those pills in the shape of Georgia and then you just extrapolate it out and then you assume that everything else in there was illegal narcotics, right?
A Yes. Based on how they were packaged and they were all the same shape, yes.
Q And you extrapolated out 11.15 grams?
A I weighed them all as one population and that was 11.15 grams.

Q But, again, not to belabor the point, I apologize for this, you didn't test every pill, right?

A I did not.

Q Thank you. Number 9 -- I'm almost done, I promise. Number 9, State's Exhibit Number 9, there was no weight threshold so you didn't do a confirmatory test, right?

A There is a weight threshold for methamphetamine, but testing -- based on the weight of those, it would not move it to the next level. Therefore, I did not do a confirmatory test.

Q So there's nothing in there?

A I don't know. I didn't do a confirmatory test.

Q But nothing that would be scientifically valid there to report to the Court, right?

A Correct.

Q All right.

MR. SCHULTZ: All right. That's all I have. Thank you, Judge.

THE COURT: Thank you.

Solicitor, anything?

MS. LESKANIC: Just briefly.

REDIRECT EXAMINATION

BY MS. LESKANIC:

Q Okay. Just briefly, looking at State's Exhibit 4, which is your item 1.3 --

A Yes.

Q -- that was 84 white tablets -- partial tablets and powder, correct?

A Yes.

Q I know that you only tested one pill. And what did you find in the one pill that you happened to pick out of that package?

A Fentanyl.

Q And did you examine all of the pills that were contained in that package?

A Yes, I physically examined each to make sure that the markings were similar.

Q And were all of the markings of those 84 white tablets the same?

A The mark for the whole tablets, yes. And there were partials in the bag, so they wouldn't have had the markings.

Q Okay. And were they all packaged in the same bag when you received it?

A Yes.

Q So, they look alike; is that correct?

A Yes.

Q They're packaged together?
A Yes.
Q And you picked a random pill and it tested positive for Fentanyl?
A Yes.
Q Do you have any reason to believe that the other pills in that bag are something different based on your 12-plus years of looking at drugs and pills and analyzing substances based on your education, your training, and your over a decade of experience, do you have any reason to believe that there is something other than Fentanyl pills contained in the rest of that bag?
A Based on my experience, I would not think there would be a different substance.
Q Okay. You didn't see anything that gave you concern?
A No.
Q Now, looking at State's Exhibit 5, that was 69 blue tablets. That is your item 1.4?
A Yes.
Q Can you look at that particular item because I believe we have two sets of blue pills?
A Yes.
Q Now, out of those tablets, do they all appear to

be the same color of blue?
A Yes.
Q Did you physically examine each of those tablets?
A Yes.
Q Did all of the tablets have the same markings that were full tablets?
A Yes, they did.
Q Okay. And you picked a representative sample again from that group?
A Yes.
Q Were they all packaged together?
A Yes.
Q And your result was that it contained heroin and Fentanyl?
A Yes.
Q Then looking at State's Exhibit 6, which is your item 1.5, that was 50 blue tablets, are they the same color blue as State's Exhibit 5?
A No, they are a different shade.
Q So we have a different color. Did you physically examine each of the items in State's Exhibit 6, which is item 1.5?
A Yes.
Q And did they all have the same markings?

A Yes.
Q And you pick a representative sample and that sample tested positive for Fentanyl?
A Yes.
Q Did you see nothing in those 50 blue tablets that gave you concern that all of them were the same?
A No.
Q Then looking at items 7, 8, and 9, which is your item number 1.6, 1.6.1 and 1.6.2, you discussed that with Mr. Schultz. There's an empty Ziploc bag.
A Yes.
Q But when you received that bag, did it have something in it?
A Yes, it did.
Q Okay. And what was in that bag?
A It had a plastic bag containing 73 multi-colored tablets and partial tablets in the shape of Georgia as well as another plastic bag containing various multi-colored tablets.
Q So there were two plastic bags with the multi-colored tablets all contained inside one Ziploc back sealed up together?
A Yes.
Q Okay. And on those multi-colored tablets, you've got a weight of 11.15 grams, did you physically

examine each of the Georgia-shaped pills?
A Yes.
Q Okay. And were they all packaged together?
A Yes.
Q Did you see anything that gave you concern that those were not all the same type of pills based on their appearance and their packaging?
A No.
Q And your testing showed that the representative sample that you picked contained methamphetamine?
A Yes.
Q So in each of the these cases where you analyzed separate pills, you physically examined them and looked at them and they appeared to be the same with the same markings?
A Yes.
Q And they were -- that the pills that you tested were packaged individually a group of pills?
A Yes.
Q In their own packaging?
A Uh-huh.
Q And you selected one.
A Yes.
Q And in each of those Baggies where you selected a pill, they came back positive for a controlled

substance?

A Yes.

MS. LESKANIC: Thank you.

MR. SCHULTZ: I'll be brief, Judge.

THE COURT: Yes, sir.

MR. SCHULTZ: Thank you.

RECROSS-EXAMINATION

BY MR. SCHULTZ:

Q Just by physically examining pills, you can't tell if all those pills were illegal narcotics, right?

A I cannot.

Q You cannot. What you're doing is -- you used a very exact word there. You're testing for population, right?

A I'm treating it as one population, yes.

Q You're treating it as one population, okay. Almost like polling in an election, right, and you're extrapolating data based upon that, right?

A Perhaps.

Q It's the same kind of statistical analysis, right?

A Right.

Q Okay. And polls can be wrong, correct?

A Yes.

MR. SCHULTZ: Thank you.

THE COURT: Thank you.

Agent, you may step down. Please be careful.

THE WITNESS: Thank you.

MR. KENDALL: Your Honor, the State would call Stephen Anderson at this time.

THE CLERK: Please raise your right hand. Do you solemnly swear or affirm that the testimony you give this Court will be the truth, the whole truth, and nothing but the truth so help you God?

THE WITNESS: I do.

THE CLERK: Take a seat.

THE COURT: Officer, tell us who you are and spell your last name for the court reporter, please.

THE WITNESS: Stephen Anderson, A-n-d-e-r-s-o-n.

THE COURT: Solicitor.

WHEREUPON:

STEPHEN ANDERSON,

after having been sworn, testified as follows:

DIRECT EXAMINATION

BY MR. KENDALL:

Q Could you please state your name?

A Stephen Anderson.

Q And what is your rank, Mr. Anderson?

A Major. I'm over at the jail. The Cherokee County Detention Center.

Q All right. And how long have you worked at the detention center?

A I've been at the detention center for 10 years.

Q And what are your responsibilities down there as the major at the detention center?

A I'm the director of the jail. I manage every person that's in my employ, and also I keep those records for any person contained in the jail.

Q Okay. And what about phone calls. How does the phone call system work down at the jail?

A We have a phone service though Securus Technologies, and they offer the phone service to inmates. They make phone calls and then all those phone calls are recorded, and it does tell them that the phone calls are recorded. The only time phone calls wouldn't be recorded is if we set it up so that the attorney get to speak to their clients.

Q Okay. And are you a custodian of records?

A Yes.

Q All right. You had the opportunity to listen to

these phone calls earlier; is that correct?

A Yes, sir. I listened to four different phone calls this morning.

Q Okay. Was that a fair and accurate representation of what you all maintained on this?

A Yes, sir. The phone call starts out with, "This is a phone call from the Cherokee County Detention Center..." The inmate gets to state his name or her name. And then it says, if you would like to keep talking to this person, press the number and understand that it is recorded.

MR. KENDALL: Your Honor, we would offer State's Exhibit Number 21 into evidence.

MR. KENDALL: We had agreed upon --

MR. SCHULTZ: That was stipulated before.

THE COURT: State's 21.

(STATE EXH. 21, Disk of jail calls, was marked for identification and entered into evidence.)

MR. KENDALL: We would request permission to publish that at this time.

THE COURT: Yes, sir.

(State's Exhibit 21 published to the jury at 4:09 p.m.)

BY MR. KENDALL:

Q And was that consistent with -- what you heard there, this Securus from the Cherokee County jail, is that consistent with how you all handle --

A Yes, every phone call would begin just like that.

MR. KENDALL: I apologize. We got some fairly specific times.

THE COURT: Yes, sir.

(State's Exhibit 21 continued.)

BY MR. KENDALL:

Q Were you able to hear that?

A Yes, sir.

Q And what was basically conveyed?

A He just said he was being charged. They found stuff.

MR. SCHULTZ: Your Honor, I want to object to this. It's not his job to interpret what the recording said.

THE COURT: That's sustained.

(State's Exhibit 21 continued.)

BY MR. KENDALL:

Q And to be clear, the person making that call -- or receiving that call was Bryson Smith?

A The person making that call was Bryson Smith.

MR. KENDALL: I believe we offered that

into evidence. Please answer any questions Mr. Schultz may have.

CROSS-EXAMINATION

BY MR. SCHULTZ:

Q You don't have any connection to this case other than --

A Just the keeper of the records.

Q Yeah, you're keeper of the records and you're the custodian of the records. You weren't involved in the active investigation of my client, right?

A No, sir. No investigation at all.

Q Thank you.

MR. KENDALL: Just to be clear, we did offer Exhibit 21 into evidence.

THE COURT: It's in evidence.

MR. KENDALL: I've got nothing further, Your Honor.

THE COURT: Thank you, sir.

Major, you may step down. Thank you. Please be careful.

THE COURT: Thank you. Next will be longer?

MS. LESKANIC: Yes, sir.

THE COURT: Madame Forelady, Ladies and Gentlemen of the Jury, we're going to stop just a

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few minutes early today. The next witness will be longer. I really don't like to break up testimony where you hear part of a witnesses testimony unless I have to. So it's going to run longer than five o'clock, as I understand it. So we're not going to do that.

Please do not try to learn anything about this case, don't do any research on this case. If there's something that happens to be in a newspaper or on TV, or whatever, just put that aside. Do not read it. Do not listen to it. Don't pay any attention to it.

Again, you and I have to learn about this case in this courtroom. That is our system of justice. Okay? It must be learned in this courtroom.

So don't discuss the case. Don't make a conclusion about the case. This certainly isn't the end. We're just getting started. Okay?

With that, I'm going to excuse you. I'm going to work on, not this case, but I got a couple other things that I can do up until five o'clock that are non-jury and I'm going to work on those. It has nothing to do with this case. But because you are on the jury, I'm going to ask that

you not come back into the courtroom.

Now, once you are no longer sitting on a jury, you are welcome to my courtroom any time you like. But, please, don't come by while you're serving as a juror.

Madame Forelady -- do you need anything else, Miss Brandy?

THE CLERK: No, sir.

THE COURT: We need you back in the morning at 9:00 a.m. We're going to start at 9:00 a.m. in the morning. I'll be here at about a few minutes after 8:00 a.m. And I don't have anything we have to do first thing that I'm aware of. Nothing? Nothing else, so we'll start right here on this at 9:00 a.m.

Have a good evening.

(Jury excused at 4:20 p.m.)

THE COURT: Okay. We are going to be in recess in this case.

(The trial was adjourned for the day at 4:20 p.m.)

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CERTIFICATE OF REPORTER

I, SHARON G. HARDOON, Official Circuit Court Reporter, III for the State of South Carolina at Large, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in General Sessions in Gaffney, South Carolina, Cherokee County, South Carolina.

I do further certify that I am neither kin, counsel, nor interest to any party hereto.



_____
Sharon G. Hardoon, CSR
Official Court Reporter, III

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STATE OF SOUTH CAROLINA
IN GENERAL SESSIONS
COUNTY OF CHEROKEE

State of South Carolina,

Plaintiff,

vs.

Transcript of Record
2020-GS-11-01147,
2020-GS-11-01148,
2020-GS-11-01149,
2020-GS-11-01150,
2020-GS-11-01151

Bryson Jamar Smith,

Defendant.

November 4, 2020
Gaffney, South Carolina
Volume III of IV

B E F O R E:

The HONORABLE R. KEITH KELLY

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

Kim Leskanic, Representing the State of South Carolina
Matt Kendall, Representing the State of South Carolina
Joshua Schultz, Representing the Defendant

SHARON G. HARDOON, CSR
Official Circuit Court Reporter, III

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THE COURT: Is the State ready?

MR. KENDALL: Yes, sir.

MR. SCHULTZ: Yes, sir.

THE COURT: We'll have the jury.

Good morning, Ladies and Gentlemen. Everybody good this morning?

FOREPERSON: Good morning. Yes.

THE COURT: Ready, Solicitor?

MR. KENDALL: At this time, we call Brandon Dorsette to the stand, please.

THE CLERK: Please raise your right hand. Place your left on the Bible. Do you solemnly swear or affirm the testimony you give to this Court will be truth, the whole truth, and nothing but the truth so help you God?

THE WITNESS: I do.

THE COURT: Sir, if you would tell us who you are and spell your last name for my court reporter.

THE WITNESS: Lieutenant Brandon Dorsette, D-o-r-s-e-t-t-e.

WHEREUPON:

BRANDON DORSETTE,

after having been sworn, testified as follows:

DIRECT EXAMINATION

BY MR. KENDALL:

Q Lieutenant Dorsette, where are you currently employed?
A Cherokee County Sheriff's Office.
Q And how long have you been in the sheriff's office?
A Since 2010.
Q All right. What are your current responsibilities, and what were your responsibilities back in August of 2009 with the sheriff's office?
A Lieutenant in the narcotics division.
Q All right. And what did that job entail? What sort of things did you do?
A We do investigations anywhere from drug sales, uncovering distributions, prostitution, anything within that division.
Q All right. And did you participate in a search warrant executed at the home of Bryson Smith on August 12, 2019?
A I did.
Q And do you recall what address that was at?
A [redacted] Lynwood drive.
Q Okay. What county and state is that located in?
A It's in Cherokee County.
Q South Carolina?
A South Carolina, yes, sir.

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Q And while you were there executing that search warrant, did you have a body camera active?
A I did, sir.
(STATE EXH. 22, Disk, was marked for identification.)
BY MR. KENDALL:
Q All right. I am going to show you what is marked State's Exhibit 22. Have you had the opportunity to review that?
A I did review it.
Q Was that a fair and accurate representation of what happened that day?
A Yes, sir.
MR. KENDALL: Your Honor, we would offer State's Exhibit 22.
MR. SCHULTZ: Any objection?
MR. SCHULTZ: No.
THE COURT: It will be admitted as State's Exhibit 22.
(STATE EXH. 22, Disk, was entered into evidence.)
MR. KENDALL: We would ask permission to publish at this time. It would be on mute.
THE COURT: Yes, sir.
BY MR. KENDALL:

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Q Lieutenant Dorsette while this is loading up, let me just ask you some interim questions about the search.

How long were you out there? Was this something you were out there for ten minutes on?

A I'm not sure of the time. It was a long time we were out there.

Q And is it fair to say that a lot of that time you all were just standing around?

A Once we go out to a house, if we see something, we would stop. We don't touch anything. If we want to secure a search warrant, we don't touch anything, do anything else until we have it signed by the judge.

Q And is that what happened in this case?

A Yes, sir.

Q And were you with the initial team that came and initially came in to the residence?

A Yeah, I went there. I went over to the left of the house initially while they -- before I went to their front door, I went to the left. We had warrants for Bryson at the time. Sometimes people open the back door.

Q After that was initially found, did you stay on scene to secure the residence?

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A I did, sir.
Q Just give me a second.
I'm going to jump ahead. The body evidence is in evidence. I apologize for not being able to search on this type of video.
(Portion of video played.)
BY MR. KENDALL:
Q What is going on right there?
A Just waiting -- waiting for him to read the warrant to the homeowner.
(Portion of video played.)
BY MR. KENDALL:
Q All right. I'd like to start right here. What room are you in right now?
A I'm in his mother's room.
MR. KENDALL: Can you just mark this?
(STATE EXH. 23, Photo, was marked for identification.)
BY MR. KENDALL:
Q All right. I'm going to show you State's Exhibit 23. If you could, take a look at this. And what is this?
A I believe this is his mother's room.
Q All right. So that's the room that you all are in right there? Are you able to see?

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A I can see it.

MR. KENDALL: Permission to have that witness step down?

MR. SCHULTZ: Your Honor, just for clarification, is that previously marked or is that already entered into evidence?

MR. KENDALL: That's State's Exhibit 23. We would offer State's Exhibit 23 into evidence.

MR. SCHULTZ: No objection.

THE COURT: Without objection.

(STATE EXH. 23, Photo, was entered into evidence.)

THE COURT: If you need him to step down, you can. Do you need him to step down?

MR. KENDALL: Yes, please, your Honor.

(Portion of video played.)

BY MR. KENDALL:

Q What is taking place right now?

A This is taken before we removed anything in the room.

Q Okay. And did you have the opportunity to observe the interior of that room?

A I did.

(STATE EXH. 24, Photo, was marked for identification.)

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(STATE EXH. 25, Photo, was marked for identification.)

(STATE EXH. 26, Photo, was marked for identification.)

BY MR. KENDALL:

Q I'm going to show you what is marked State's Exhibit, State's Exhibit 25, State's Exhibit 26.

THE COURT: Any objection?

MR. SCHULTZ: Not at this time, Your Honor.

MR. KENDALL: Your Honor, we offer State's exhibit --

BY MR. KENDALL:

Q Well, would you take a look at these?

THE COURT: They are admitted without objection; 24, 25, 26.

(STATE EXH. 24, Photo, was entered into evidence.)

(STATE EXH. 25, Photo, was entered into evidence.)

(STATE EXH. 26, Photo, was entered into evidence.)

MR. KENDALL: Your Honor, they are submitted and admitted without objection.

THE COURT: Without objection.

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MR. KENDALL: All right.

BY MR. KENDALL:

Q And what were those pictures of?

A Those are the interior of -- when we look at the body camera, the interior.

Q So these are just still frames is what we're seeing up there, is that fair to say?

A That's correct.

MR. KENDALL: Your Honor, the court reporter has asked if you can allow him to lower his mask and speak louder so she is able to hear.

THE COURT: Okay.

(Portion of the video played.)

BY MR. KENDALL:

Q What is taking place now?

A This was me and Tony Moss basically on the bed out in the open where he was going over it. He actually had clothing items. When you do a search warrant, you put item by item so you make sure you put everything there. You want to make sure there are no weapons. Nothing was going to be knocked off.

(Portion of video played.)

BY MR. KENDALL:

Q All right. So this after you all had already

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gotten the search warrant, correct?
A Yes, sir. That's true.
MR. KENDALL: Can you pause that?
BY MR. KENDALL:
Q And what is happening at this point?
A We're just conducting the search of the house.
Q Let me clear that issue. That is you conducting a search of that bag.
A That's correct.
(STATE EXH. 27, Backpack, was marked for identification.)
BY MR. KENDALL:
Q I'm going to show you what is marked State's Exhibit 27.
A Yes, sir.
Q Do you recognize this?
A I do, sir.
Q And what is that?
A It's the blue bag I found in the room that day.
MR. KENDALL: Okay. We would offer State's Exhibit 27 into evidence, please.
MR. SCHULTZ: No objection.
THE COURT: Without objection, admitted.

(STATE EXH. 27, Backpack, was entered into evidence.)

(Portion of video played.)

BY MR. KENDALL:

Q I'm going to continue. Now, upon opening the bag, what did you find?

A There was a green plant-like material in there, a styrofoam cup, and it had white pills inside of it.

MR. KENDALL: Go ahead and pause that.

(STATE EXH. 28, Cup, was marked for identification.)

BY MR. KENDALL:

Q I'm going to show you what is marked State's Exhibit 28. Do you recognize this?

A Yes.

Q What is this?

A That's the styrofoam cup I found in the room that day.

(STATE EXH. 29, Photo, was marked for identification.)

(STATE EXH. 30, Photo, was marked for identification.)

(STATE EXH. 31, Photo, was marked for identification.)

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BY MR. KENDALL:

Q I'm going to show you State's Exhibit 29, 30, 31. Do you recognize these?

A Yes, sir.

Q What are those?

A These are all the photos of the cup and the green plant-like material, and the ball when I opened it up.

MR. KENDALL: We would offer State's 30 -- 29, 30, 31 into evidence at this time, Your Honor.

THE COURT: 29, 30, 31?

MR. KENDALL: Yes, sir.

THE COURT: Without objection?

MR. SCHULTZ: Yes, sir.

(STATE EXH. 29, Photo, was entered into evidence.)

(STATE EXH. 30, Photo, was entered into evidence.)

(STATE EXH. 31, Photo, was entered into evidence.)

MR. KENDALL: We also offer State's Exhibit 28 into evidence as well.

THE COURT: Any objection to 28?

MR. SCHULTZ: Is that the cup?

MR. KENDALL: Yes.

MR. SCHULTZ: No objection.

THE COURT: Without objection.

(STATE EXH. 28, Cup, was entered into evidence.)

(Portion of video played.)

BY MR. KENDALL:

Q And what's happening here?

A We just opened up the items inside the bag. There was two socks. I believe a black one that had a white powder in there.

Q Okay.

(STATE EXH. 32, White sock, was marked for identification.)

(STATE EXH. 33, Black sock, was marked for identification.)

MR. KENDALL: If you could, pause it real fast.

BY MR. KENDALL:

Q Let me show you State's Exhibit 32 and 33. Do you recognize State's Exhibit 32 and 33?

A Yes, those appear to be the same socks.

MR. KENDALL: All right. We would offer State's Exhibit 32 and 33 into evidence, Your Honor.

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MR. SCHULTZ: No objection.

THE COURT: Without objection.

(STATE EXH. 32, White sock, was entered into evidence.)

(STATE EXH. 33, Black sock, was entered into evidence.)

BY MR. KENDALL:

Q So just to be clear at this point in time, basically when you opened up this bag, you found marijuana, as well as these pills and this powder in the socks; is that correct?

A Yes, that's correct.

MR. KENDALL: All right. If you go ahead and continue to play.

(Portion of video played.)

BY MR. KENDALL:

Q And what do you have there that you just picked up?

A Those are black Nike shoes.

Q Okay.

(STATE EXH. 34, Bag with shoes, was marked for identification.)

BY MR. KENDALL:

Q I'm going to show you what is marked State's Exhibit 34.

MR. KENDALL: If you go ahead and pause it for a second.

BY MR. KENDALL:

Q I'm going to show you what is marked State's Exhibit 34. Do you recognize these?

A Yes, sir.

Q And are these the shoes you located in the room?

A Yes, sir, they were.

Q Are these men's shoes or women's shoes?

A They appear to be men's shoes.

MR. KENDALL: I would offer State's Exhibit 34 into evidence.

MR. SCHULTZ: No objection.

THE COURT: Without objection.

(STATE EXH. 34, Bag with shoes, was entered into evidence.)

MR. KENDALL: If you go ahead and continue.

(Portion of video played.)

BY MR. KENDALL:

Q What is he doing now?

A I'm asking him to take still photos of what I found in the room so we can document everything we found and where it was found at.

(Portion of video played.)

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BY MR. KENDALL:
Q And who did you give that bag to?
A When that was placed on the bed, I believe Captain Anthony Evan took possession of it.
Q What else was on that bed?
A A tray that had marijuana -- a bag of marijuana. It looks like some cocaine there.
Q Was there any clothing on the bed?
A Huh?
Q Was there any clothing on the bed?
A There was some clothing, a black pair of pants with some underwear.
(STATE EXH. 35, Bag with pants, was marked for identification.)
BY MR. KENDALL:
Q I'm going to show you State's Exhibit 35. Do you recognize that?
A Yes, it's pants.
Q The pants up on the bed?
A Yes.
MR. KENDALL: Your Honor, we offer State's Exhibit 35 into evidence.
MR. SCHULTZ: No objection.
THE COURT: Without objection, 35 is admitted.

(STATE EXH. 35, Bag with pants, was entered into evidence.)

BY MR. KENDALL:

Q Can you take a look at the pants? What can you tell us about the pants? Can you tell what size they are?

A It says U.S. medium.

Q Okay.

A About my size, what I wear.

Q Approximately how tall are you?

A About five six.

Q Okay.

MR. KENDALL: All right. Your Honor, we would ask the defendant to stand up at this time to gauge his height.

THE COURT: Defendant please stand.

(Defendant stands.)

THE COURT: Thank you. You may be seated.

BY MR. KENDALL:

Q And do these appear to be men's or women's pants?

A Men's pants.

Q Okay. Just to be clear, those were found on top of the bed, correct?

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A That's correct.
Q Not back in some closet, or anything like that?
A No, sir. They were just on the bed.
MR. KENDALL: If would you continue, please.
(Portion of video played.)
BY MR. KENDALL:
Q What do you got there?
A That's the tray that we saw that was in plain view when we first came in. It was marijuana -- excuse me -- green plant-like material.
Q All right. And what else --
MR. SCHULTZ: Your Honor, I'm sorry. I can't hear the witness.
THE COURT: It's a little hard to hear. If you could speak a little clearer, sir. Maybe a little louder.
THE WITNESS: Yes, sir, I will.
It was a -- a tray with green plant-like material on it and what appeared to be a little bit of cocaine and then the marijuana. So out of plain view when we came in the room.
MR. KENDALL: All right. Continue on.
(Portion of video played.)
MR. KENDALL: If you pause it right

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there. I'm sorry. Keep going.
BY MR. KENDALL:
Q And what are you doing now?
A Just continuing the search right now.
Q What did you discover there?
A A Food Saver vacuum seal bag.
Q Vacuum seal bags.
A Yes, sir. Like a Food Saver vacuum seal bag.
Q What would be the relevance of that in the narcotics trade?
A Typically, to seal up marijuana in that. Because the smell is really strong, so they try to hold in the odor.
Q All right.
(Portion of video played.)
MR. KENDALL: You can pause it right there.
(STATE EXH. 36, Photo, was marked for identification.)
(STATE EXH. 37, Photo, was marked for identification.)
(STATE EXH. 38, Photo, was marked for identification.)
BY MR. KENDALL:
Q I'm going to show you what is marked as

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State's Exhibit 37 -- 36, 37, 38. Do you recognize these?

A Yes, sir.

Q What are those? Or is that a fair and accurate representation of what you found?

A It is.

MR. KENDALL: We would offer State's Exhibits 36, 37, and 38 into evidence, Your Honor.

MR. SCHULTZ: No objection.

THE COURT: Without objection, they're admitted.

(STATE EXH. 36, Photo, was entered into evidence.)

(STATE EXH. 37, Photo, was entered into evidence.)

(STATE EXH. 38, Photo, was entered into evidence.)

BY MR. KENDALL:

Q All right. And what was located -- what was that?

A It was paperwork with the name Bryson J. Smith on it.

Q So personal effects -- or personal paperwork of Mr. Smith?

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A Correct. It was.
Q And where was that located?
A Under the bedspread right there.
Q What's shown on the screen before you?
A Yes.
(Portion of video played.)
BY MR. KENDALL:
Q All right. And what was that?
A It was a baggie of green plant-like material that was located in the tub.
MR. SCHULTZ: Your Honor, I cannot hear the witness.
THE WITNESS: It was another bag of plant-like material that was located.
MR. SCHULTZ: Thank you. Your Honor, if it pleases the Court, can I move over there?
THE COURT: Yes, sir.
(Portion of video played.)
BY MR. KENDALL:
Q And what part of the room are you in now?
A It looks like the closet. The closet area.
Q Okay. Do you recognize that?
A Yes, sir.
Q And what is that?
A U.S. Postal Service mail bag.

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(STATE EXH. 39, U.S. Postal mail bag, was marked for identification.)

BY MR. KENDALL:

Q I'm going to show you what is marked State's Exhibit 39. Do you recognize this?

A Yes, sir, I do.

Q And what is this?

A It's a U.S. Postal mail bag.

MR. KENDALL: Now, we offer State's Exhibit 39 into evidence.

MR. SCHULTZ: No objection.

THE COURT: No objection. It's admitted.

(STATE EXH. 39, U.S. Postal mail bag, was entered into evidence.)

BY MR. KENDALL:

Q And to be clear, this postal service bag the same as what's on the screen right there?

A It is.

Q Now, taking a look at this, are you able to determine what address that's made out to?

A It's partial on there. Someone ripped off the check number, but that's a check package from USPS on there.

MR. SCHULTZ: I still can't hear, Judge. I'm sorry.

THE WITNESS: I said, somebody ripped off the -- it looks like the U.S. tracking number was took off of there. You can see the little bit of partial address. Maplewood Drive is the address, and all I see is a V.R. for an address. There's an H, for a last name, and Smith, and then possibly the Zip code. [redacted] which is here in Gaffney.

Q All right.

MR. KENDALL: If you continue playing.

BY MR. KENDALL:

Q You just hold on to that for a second.

A All right.

MR. KENDALL: We offer State's Exhibit 39 into evidence. I believe we did.

THE COURT: It's in.

(Portion of video played.)

BY MR. KENDALL:

Q What is that right there that you just pulled out of that box?

A Sandwich baggies.

MR. KENDALL: Pause it, please.

BY MR. KENDALL:

Q Sandwich baggies?

A Ziploc baggies.

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Q What relevance is that to the narcotics trade?
A That's how they pack the material for sale. Typically, they sell them in the baggies.
Q All right And what was found in that bag that we got right there?
A In this bag, there was different types of packaging. I can pull it out. This one is called runts. It's got a marijuana symbol on the back. This is called Alien Labs. You can buy these on the Internet and have them sent to you.

MR. SCHULTZ: Your Honor, I'm sorry to interrupt. I cannot hear him.

THE WITNESS: I said these are -- this is different sizes. This one is called runts. It has the marijuana symbol on the back. This one is called Alien Labs. You can buy them and then have them sent to you.

MR. SCHULTZ: Your Honor, I would object to him testifying to, "You can buy them and have them sent to you." I would just object to that.

THE COURT: Just testify to what it is you found.

THE WITNESS: Yes, sir.

I found all these -- these are typically used to package drugs in.

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MR. SCHULTZ: Your Honor, again, I would object to that, "typically used." He's not qualified as an expert.

MR. KENDALL: Your Honor, they're empty with marijuana symbols on the back of them. I would think, as a narcotics officer, he can say.

THE COURT: Just tell us what you found.

THE WITNESS: I found this bundled package from Alien Labs, otherwise known as runts. There was others inside. The same thing.

BY MR. KENDALL:

Q All right. Well, you also found additional sandwich baggies in that box; is that correct?

A That's correct.

MR. KENDALL: You can continue.

(Portion of video played.)

MR. KENDALL: Okay. If you could pause it right there.

BY MR. KENDALL:

Q There is a box found in that room, correct?

A That's correct.

(STATE EXH. 40, Photo, was marked for identification.)

(STATE EXH. 41, Photo, was marked for

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identification.)

BY MR. KENDALL:

Q I'm going to show you State's Exhibit 40 and 41. If you could take a look at that?

A Yes, sir.

Q All right. Is that a fair and accurate representation of what you saw and found in the box?

A Yes, sir. That's the box I found and it's labeled right here. It said to B. Smith, [redacted] Maplewood.

MR. KENDALL: I offer those into evidence, Your Honor.

MR. SCHULTZ: No objection.

THE COURT: What numbers are we talking about?

MR. KENDALL: 40 and 41.

THE COURT: 40 and 41 without objection.

MR. KENDALL: If you could continue.

(STATE EXH. 40, Photo, was entered into evidence.)

(STATE EXH. 41, Photo, was entered into evidence.)

(Portion of video played.)

MR. KENDALL: We can go ahead and pause

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it now.
BY MR. KENDALL:
Q What did you do -- when you found narcotics, what did you do with them? Who took possession of the narcotics?
A The captain took possession of them. He boxed them and took them right there. He was just in the kitchen doing the search warrant.
Q Okay.
A He was doing the search warrant and everything we found connected to that person, they write it down where it was found at and what it was.
Q This was always in the custody and control of the sheriff's office?
A It was.
Q And that is applicable to State's Exhibit 9; is that correct? You can step back up here. That's State's Exhibit 9, 8, 4, 5, 3, 2, 6, 7, and all the narcotics encased in Number 1; is that correct?
A Yes, sir.
Q You all had control over those? You were able to see the narcotics in the room and stuff?
A That's correct.
Q Do you recall if there were any other mail or

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anything like that was also found in Mr. Smith's room?
A I believe an envelope that had a piece of mail.
Q Okay. Do you recall where that was found?
A I could be wrong. I think it was in that drawer you saw open a minute ago. I think there was a piece of mail right there. I told Joe to take a picture of it as well.
(STATE EXH. 42, Photo, was marked for identification.)
BY MR. KENDALL:
Q I'm going to show State's Exhibit 42. Do you recognize that?
A Yes, sir, I do.
Q And what is that?
A It's a piece of mail that I had that said Bryson Smith [redacted] Maplewood Drive, Gaffney, South Carolina.
MR. KENDALL: All right. We offer State's Exhibit 42 into evidence.
MR. SCHULTZ: No objection.
THE COURT: 42 is admitted without objection.
(STATE EXH. 42, Photo, was entered into evidence.)

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BY MR. KENDALL:

Q Now, when you walked into the room, did you see any other indication of marijuana? Any other paraphernalia or devices used for packaging or weighing?

A I saw the set of digital scales that were in the room.

Q Okay.

(STATE EXH. 43, Digital scales, was marked for identification.)

BY MR. KENDALL:

Q Do you recognize this?

A Yeah, it appears to be scales that were in the room.

MR. KENDALL: We offer State's Exhibit 43 into evidence, Your Honor.

MR. SCHULTZ: No objection.

THE COURT: Without objection.

(STATE EXH. 43, Digital scales, was entered into evidence.)

MR. KENDALL: I'm just going to show the jury.

Would you go ahead and play this for a second.

(Portion of video played.)

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MR. KENDALL: You can stop that there.

BY MR. KENDALL:

Q Now, to be clear, Lieutenant Dorsette, once you found narcotics, they were turned over to a central location?

A Yes, that's correct.

Q And who is that?

A Captain Anthony who got the bag.

Q He was inventorying that, is that fair to say?

A Yes, sir.

Q Okay. And you have been a narcotics officer for how long?

A Since 2012.

Q And based on that experience, what sort of things do you do as a narcotics officer?

A In 2012, we do patrol. We do investigations. We get tips on houses and we do an investigation on that. I'm also on the Homeland Security Task Force in South Carolina in Greenville. So anything that comes through the mail that's shipped to Gaffney and we're aware of it, we do investigations. We do undercover VICE. Other agencies, when they come here, we control that, and I have a couple people that work underneath me to do that.

Q All right. Because of that, are you familiar with some of the slang used in narcotic sales?

MR. SCHULTZ: Your Honor, I would object to this. I believe that Mr. Kendall is purporting to present him as, possibly, an expert. I'd like to proffer that first outside the presence.

THE COURT: Let me see the lawyers.

MR. SCHULTZ: Yes, sir.

(Bench conference off the record.)

THE COURT: Madame Forelady and Ladies and Gentlemen of the Jury, as I explained to you, it might be necessary, it usually is necessary, at least one or more times, to be removed from the courtroom while we talk about a matter of law. This is now a disagreement between the lawyers about whether or not -- about a legal issue.

All right. We'll use this as your morning break, so we're going to work. Just expect about a 20-minute break maybe, or a little more. Because we're going to work on this for a few minutes and then we'll take our break, too, so that we don't have you coming in and out.

Don't talk about the case. The case is has not ended.

Madame Forelady, if you will take the

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jury out.

(Jury exits the courtroom at 10:13 a.m.)

THE COURT: Okay, Mr. Schultz, you want to be heard on the record?

MR. SCHULTZ: I do, Your Honor.

Your Honor, at this time, I believe what the State is trying to do is they're going to present the officer as -- for the purposes of this trial, I think they are going to present him as an expert in the field of drug transactions and for value on the streets, or street value.

I would like to, at this time -- well, I would like the State to proffer this witness. I would be allowed -- I would ask the Court to be allowed to present questions to him as to his expert qualifications, and then I'll object at the appropriate time to his alleged qualifications as a, for lack of a better word, expert on the street value of narcotics.

THE COURT: Solicitor.

MR. KENDALL: Just two things on this, Your Honor. I think his testimony is extraordinarily relevant. We will call Traci Smith, which we plan to do, based on -- at some point -- this house is a rental house and she

was -- at some point, it was rental house. One of the things we were trying to establish is based on the quantity of drugs and the value of these narcotics, it would be very unlikely for someone to leave thousands of dollars of narcotics abandoned. I believe there's some case law to that effect, too, and I could refer that to Your Honor.

With regards to -- I can certainly go through his qualifications.

THE COURT: Okay. Well -- so, you're anticipating that Traci Smith -- that's somebody you're going to call.

MR. KENDALL: Yes, sir. And she owns -- this is a rental house?

MR. KENDALL: She actually, I believe, owns the home. It's her house and this is her son. Initially, I think this is going to come out, she told law enforcement very clearly whose room that was, where it was located, whose it was, she had nothing to do with that. Her story has changed a bit and now focuses on previous renters who were there months before.

And the State is attempting to establish that based on the value of these narcotics, it

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would be extraordinarily unlikely that he would leave, I believe this is totaling around $11,000 or $10,000 of narcotics that are sitting in there, the street value of those.

THE COURT: Mr. Schultz.

MR. SCHULTZ: I don't think -- absent an expert, I don't think that the State can infer what the street value is.

THE COURT: Okay. You want to proffer his testimony while we got the jury out?

MR. SCHULTZ: Yes, sir.

PROFFERED TESTIMONY OF BRANDON DORSETTE

BY MR. KENDALL:

Q Can you please state your name again on the record? You're Brandon Dorsette?

A Yes, sir.

Q How long have you worked in narcotics?

A About 2012 I started.

Q So approximately eight years?

A That's correct.

Q And during that time, what sort of things have you done in narcotics?

A We do a number of things. One of the things we do is, we purchase street narcotics in undercover distribution buys.

Q Okay. So you actually make purchases. Why would the value of narcotics be typically relevant? What does doing a street purchase allow you to do?
A We do distribution buys. If we buy drugs from someone -- you know, if I got an informant that comes in, I'm going to buy pills or I'm going to buy weed or whatever I want. They tell us how much people charge for those drugs.
Q All right. And do you take action or rely on that? In other words, who generates the money when you're doing these buys?
A We supply the money.
Q So you basically have to match the value of the narcotics to the amount of money that you're giving them, correct?
A That's correct.
Q And this is something you check on as a part of that case, is that fair say?
A We do check on it. The DEA sends out a list every so often of the value.
Q I was referring to the CI.
A The CI --
Q You actually track it so the CI is not pocketing $20 dollars and keeping $10.
A That's correct, yeah.

Q And how many of those CI buys would you say you've done over the years?
A How many I participated in?
Q Yes.
A Maybe hundreds. A lot.
Q Okay. And are these for all types of narcotics, pills, and methamphetamine, and cocaine and --
A Yeah. Pills, marijuana. All types of pills; marijuana, Ecstasy, cocaine, heroin, methamphetamine, Fentanyl.
Q Okay. And you, kind of, received additional training in narcotics?
A I have.
Q Okay. What kind of training have you received?
A I didn't bring my book. I got probably maybe hundred hours or so of different classes of training that I've been to throughout that Homeland Security sent me to. St. Petersburg College they sent me to.
Q Okay. So the purchase of narcotics is something -- or the price and purchase the narcotics is something you deal with fairly often, is that fair to say?
A That is fair to say. Every time we do an order -- I'm allowed to say, but you'd be

surprised of the spiked increase in methamphetamine. Once the border got shut down -- it was really cheap now -- it's back up to $18,000 a kilo, where you was getting it for half of that price.

Q Are there different -- when you're pricing narcotics, is there different amounts based on where someone is in the chain? So if somebody is, let's say, wholesaling kilos, is the price per gram different than street level?

A No. It's the same usually.

Q So when you purchase them, what quantities do you typically deal with?

A We purchase, the majority of the times, street level value drugs. So we might purchase $20 or a $40 pill or $20 worth of marijuana.

Q Okay. And what about at -- and you also -- do you ever do trafficking as well?

A We do trafficking buys, yes, sir.

Q Obviously, it's more expensive?

A They are. They're real expensive right now.

Q Have you had the opportunity to purchase and know the price of cocaine?

A Yes, sir.

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Q How much does cocaine, you know, cost approximately per gram?
A $100.
Q $100 a gram?
A Yes, sir.
Q Okay. And is there -- what are the differences you see in the price of cocaine? Like, is it quality, is it quantity?
A Cocaine is pretty steady. It don't really fluctuate too much.
Q Okay. What about -- I'm going to ask this, sort of, two ways. Do you guys typically see pure uncut powder form Fentanyl?
A Not a lot. I have found it.
Q Where do you typically find Fentanyl, in what sort of form?
A For all of us, right now we find it when people press the pills.
Q Pressing pills?
A Uh-huh.
Q Was that consistent with what we saw -- you found during that search warrant?
A That's correct.
Q And approximately -- those Fentanyl were pressed like Percocets. Approximately, how much would

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something like that go. I'm saying the Percocet as not necessary a direct quote for the pharmaceutically prepared thing made by a drug company but for, like, the street Percocet. How much do those go for a piece?

A Probably around $30.

Q So that would be on the low end of that?

A Yes.

Q All right. And he had 84 of those; is that correct?

A That's correct.

Q And what about Fentanyl as oxycodone? What about oxycodone pills?

A So oxy pills, they usually run $10 a milligram, so he had 30. So if blue roxies are 30s -- that's $30. He can get eight milligrams oxies that are $80, so it's $10 a milligram.

Q Okay. And now, again, we're talking street level drugs. There is some give and take, is that fair to say?

A (Witness nods head up and down.)

Q Okay. What about heroin?

A Heroin pretty much stays steady. It doesn't move at all. The low end is $100 a gram.

Q And that would be the cheap heroin, is that fair

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to say?
A Yes.
Q So he had 69 of those marked as oxies. You're looking at -- even on the cheap end of 30 bucks a piece -- is that the lowest end you usually find those, 30 milligram?
A Those roxies, yeah, they're going for 30. People buy them for 30.
Q Okay. So you're looking at 69 of those at $30 a gram, is that fair to say?
A Yeah, $30 per dosage unit.
Q That were the roxies, okay.
How much does heroin typically go for?
A The heroin? It's typically $100 a gram or $20 a ten.
Q What about methamphetamine?
A Methamphetamine right now is going 4- to $600 an ounce right now.
Q Four to $600 an ounce?
A Uh-huh.
Q What about if you buy it -- I believe there's a -- so this was a little less than half an ounce.
A It's half an ounce. It's back to around $100 a gram.
Q Okay. So 11.15 grams would potentially be

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$1,000?
A Yes.
Q Okay. And what about marijuana? What does an ounce of marijuana run?
A I would say -- you know, it's grade marijuana where you have trash marijuana. You have mid-low-marijuana which people grow, and then you have -- get a shipment in the mail of hydroponic, or everybody calls it lab on the street. It's $20 a gram typically around here.
Q All right. What would an ounce of relatively low-grade marijuana go for?
A A hundred-something dollars.
Q Over $100?
A Yeah.
Q So, in this case, he's got 149 grams, which equate to about five ounces; is that correct?
A It's close to that, yeah.
Q So we're looking at another $500 or so of marijuana?
A Just my opinion, yeah. That's not low-grade marijuana, though.
Q Okay. So this is a better quality of marijuana?
A Yeah. This is actually $20 a gram. But we purchased that. I don't know how many hundreds of

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times we purchased that.
Q What about methamphetamine, is that something you all purchase fairly regularly?
A Yes, sir.
Q Now, there were some substances in there that had no controlled substance too. Why would somebody keep something that contains no controlled substance?
A You got some narcotics there, you want to try to push your own pills. Say you want to cut about an ounce of pure cocaine, you got to mix it with some cut to make money.
Q So you're basically doing the equivalent of watering down --
A Watering it down to make more money.
Q Okay. Is that something fairly common to see on the distribution side?
A That is, yes, sir.
Q People wouldn't do that as a user, is that fair to say?
A I wouldn't think that made sense.
Q So, basically, the equivalent, if you order a drink from a restaurant and they fill the whole thing up with ice that would be --
A Yes, that's correct.
MR. KENDALL: Nothing further,

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Your Honor.

THE COURT: Yes, sir.

MR. SCHULTZ: Thank you, Judge. Do you mind if I take off the face mask.

THE COURT: That's fine with me.

MR. SCHULTZ: Thank you.

CROSS-EXAMINATION

BY MR. SCHULTZ:

Q Officer, you've been on a -- well, you still work for Cherokee County?

A Yes, sir.

Q And you also do some work for Homeland Security, or are you a liaison with Homeland Security?

A Yes, sir. I'm a task force officer.

Q You work for the State -- or excuse me -- the county, but you also work for the federal government?

A Yeah, I'm a task force officer at the Greenville office. Yes, sir.

Q How long have you worked for Homeland Security?

A Right around 2012, in that area.

Q Now, do you have a CV? Do you have a curriculum vitae, resume designating you as an expert?

A What I typed out before of everything that I've done?

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Q Yes.
A I do. I didn't bring it with me.
Q You don't have that today?
A I didn't bring it, no, sir.
Q Do you have a bachelor's of science or a bachelor of arts?
A I do not.
Q What is your education?
A I finished high school. Went to work and just studying on-line at the St. Petersburg College. I took those.
Q So you have a high school diploma and on-line -- some on-line classes?
A Yeah, St. Petersburg College and then you take classes there. They have in-person as well.
Q But you don't have a degree from the St. Petersburg College; is that correct?
A I don't have a degree from there. No, sir.
Q You do not have a degree. Do you have a associate's degree or anything?
A I did not go to college, sir.
Q Okay. Are you a drug recognition expert?
A I did not take the DRE. I took the ARIDE class before that, when I went on patrol.

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Q You said ARIDE?
A It's called ARIDE. It's a prerequisite to the DRE. You have to take that class.
Q All right. So you just took the prerequisites to be drug recognition expert, right?
A As far as DUI is concerned. You're talking about the effects of the drugs on the body, correct?
Q Yeah, that's what I'm talking about. So, for instance, like, you couldn't -- well, if you stopped somebody -- if you were working traffic stops --
A Yes, sir.
Q -- and you stop somebody for a DUI, you could not test that person for intoxication as far as marijuana, right?
A I can call somebody.
Q Yeah, but you couldn't do it yourself?
A Not for the fix. I didn't take that class.
Q Okay. But you took the prerequisite courses, but you never received any kind of certification or any kind of advanced training with DRE, right?
A That's correct.
Q Okay, thank you.
Did you ever sign a warrant on my client, Bryson Smith, before?

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A Before what, sir?
Q Before this whole thing.
A For the charges, I believe my name is on the warrants.
Q Sir?
A You're talking about for the charges for today?
Q No, I'm talking about previously. Have you ever served a warrant on him?
A I don't recall if I did.
Q Okay. Did you ever have any contact with him before?
A Mr. Smith?
Q Yeah.
A I have not.
Q Okay. What about any known associates of Mr. Smith?
A I don't know who all his associates are.
Q Okay.
A He lives in Gaffney. I don't know.
Q What about any family members of Mr. Smith?
A I wouldn't think I did.
Q All right. So other than just seeing him here today, you don't know him from a hill of beans?
A I don't know any more than just by his

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nickname.
Q Right. This is the first time you heard of Bryson Smith, correct?
A You're talking about before this case?
Q Yeah, before this case.
A I would say -- like, I hear in our office other agents work cases, you know what I'm saying? So Detective Gardner, he might know him by Bryson. He works out of that area. He knows all those people in that circumspect or whatever. I may know him in passing, but I do not know him.
Q You, specifically, never heard of him, correct?
A That's correct.
Q You never investigated him?
A That's correct.
Q Okay, thank you.
A Not that I remember. I stopped a lot of people in 12 years.
Q I understand. I understand. And you specifically work Cherokee County, right?
A Most of the time, yeah.
Q Do you work other counties?
A We do. Yes, sir.
Q Okay. Do you go up to North Carolina because you work for the feds too?

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A Sometimes I do.
Q Okay. You made a comment there about the value of a drug and I didn't get that. You said once the border got shut down the street level of the drug went up?
A That's correct.
Q Okay. What drug were you talking about?
A Most of them. All of them went up, but mostly methamphetamine went up.
Q And why did the border get shut down? Are you talking about the coronavirus or are you talking about an issue with immigration enforcement?
A Well, they shut down before the coronavirus. I guess it was completely shut down for a while.
Q What do you mean? What border? Mexican or Canadian border?
A I guess they shut them all down. Most of our methamphetamine comes from across the Mexican border.
Q All right.
A Supply and demand.
Q I understand. So I just want to confirm this because you mentioned this. Is the Mexican border with the United States shut down to all traffic?
A It's not shut down to all traffic.

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Q Okay. But you said it was a shut down a couple minutes ago, right?
A Yes, sir.
Q But it's not really, right?
A What I'm saying, if you take a ton more presence --
Q A ton more of what, I'm sorry?
A Presence of the National Guard, more people down there. So if I got a business and my business is selling methamphetamine, right, supply and demand, I got an opportunity to say, hey, we can't get drugs through. Instead of 10,000 kilos, I need 30 kilos because I can't get it. So the price just went up.
Q All right.
A I can't -- I don't know. I'm just telling you what I've heard as far as the price going up and down.
Q That's fine.

Now, would you -- in your experience, would you say this is a -- the street value of drugs is an overly technical issue?

A Say what, sir?
Q Overly technical issue, like DNA testimony?
A I don't think you can say technical.

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Q Yeah.
A I wouldn't think so.
Q Like what a doctor would testify or what a forensic pathologist would testify to?
A It depends. It fluctuates all the time, so you need to know what's going on. You know what I mean? It's not like I say, hey, this happened. You would have to be in constant contact every day to know what was going on.
Q So, it fluctuates every day. So there's not really a -- I hate to be flippant with this, but I'm just going to ask this question. You don't -- like, you couldn't get some kind of advance certification or some kind of degree or any kind of training in the value of drugs, right? You couldn't go to a class or some kind of seminar for that, right?
A I feel like I could. The DEA, Drug Enforcement Administration would pretty much tell you. And that's what their constant job is, to say this is the street value we've seen. We get all the information all over the United States, we put them together, and this is basically what drugs are going for right now.
Q Okay. Let's get into that. The Drug Enforcement Agency offers these classes, right?

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A I suppose they do. We have a sheet from them that tells you what it is.
Q So let's assume for a second that DEA does offer these drug valuation classes at regular intervals throughout the course of the year, right?
A That's correct.
Q Okay. Have you taken any of these classes?
A We're short staffed. It's very hard to get training, sir.
Q Okay. So no?
A That's correct.
Q Thank you.

MR. SCHULTZ: Beg the Court's patience.

THE COURT: Yes, sir.

BY MR. SCHULTZ:
Q The valuation of drugs on the street, is that a science?
A I wouldn't think it was science.
Q Sir?
A You said, is it a science?
Q Yeah, it's a science. Is it a science?
A Street science, or what, I don't know.
Q Street science?
A I don't know. I'm confused by your question.

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Q All right. Well, let's --
A I'm trying to answer.
Q Let me clarify this a little bit. A scientist observes known quantities of an item and then analyzes it and makes a hypothesis on knowable observations and then presents findings, published, peer-reviewed findings. Would you say that is basically a definition of what a scientist does?
A I guess that's what a scientist does.
Q All right. Do you do those things in your work, in your line of work?
A I'm not a scientists. I don't know.
Q That's what I'm asking. Okay.
You were here yesterday, right?
A Yes, sir.
Q You heard two people come from SLED, McCormack and Lyles. Do you remember that?
A Yes, sir.
Q They both had advanced technical training, right?
A That's correct.
Q All right. She both had BS's in forensic science -- well, may not be BS's in forensic science, but science in some field. I think it was biology for Lyles, right?

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A I know they had a degree, yes, sir.
Q But you were here, right? Were you listening to the testimony?
A That's correct.
Q Would you say that they would be proper experts before the Court?
A In telling what type of drug, I would.
Q Right, in telling what type of drug.
MR. SCHULTZ: That's all I have, Judge. Thank you.
THE COURT: Anything?

REDIRECT EXAMINATION

BY MR. KENDALL:
Q Are you aware of anywhere that has a course specifically, a college course for the value of narcotics here in Cherokee County?
A No, sir.
Q All right. How are the value of things determined?
A For us, we look at the sheet. But mostly it's our confidential informants that's on the street every day and buy drugs.
Q What people are paying for it?
A That's correct. Paying every day for drugs.
Q And this is something that -- so you are on the

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front end of this, correct? You do these values of drugs and these are compiling stuff, correct?

A That's correct.

Q And you all are in the area -- the relevant area and making purchases and basing the amount of money to give the CI's to buy these things based on that, is that fair to say?

A That is fair to say.

MR. KENDALL: Nothing further, Your Honor.

THE COURT: Okay.

MR. KENDALL: I would just, as far as his testimony, Your Honor, I would draw the Court's attention to State vs. Jamison. It's a 2007 case. 372 S.E. 649.

MR. SCHULTZ: What is the cite on that?

MR. KENDALL: 372 S.C. 649, South Carolina Court of Appeals.

THE COURT: Well, I'm going to read that. But while you're reading, also look at State vs. Mealor, M-e-a-l-o-r, that's at 425 S.C. 625, February of 2019. Stilwell was the trial judge. Konduros was the writer for the Court of Appeals.

We'll take a quick break. I'll go look

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at that case. Mr. Schultz, read that.

MR. SCHULTZ: Yes, sir. I'm reading it now.

THE COURT: Anything further?

You may step down. You can't talk to anybody about your testimony at this point, okay?

THE WITNESS: Yes, sir.

(A break was taken from 10:41 a.m. to 10:54 a.m.)

THE BAILIFF: Remain seated. Come to order.

THE COURT: Be seated. Thank you. Thank you.

Okay. I took the time to go back and review that Jamison case, which is right on point in this matter. Have you seen that, Mr. Schultz?

MR. SCHULTZ: I have, Your Honor.

THE COURT: Okay. And it's my understanding that Judge Goolsby wrote that opinion, and I think it was joined in by Hearn and Stilwell, which would be Sam Stilwell, Judge Rock Stilwell's father when he was on the Court of Appeals.

Under 702, if would aid the jury in understanding some facts in this case, the expert testimony can be offered and heard by them.

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This witness has the experience. He has about 12 and a half years, I think I wrote, of experience in law enforcement, specifically in -- I don't know what I did with my note now. But, specifically, he has that experience in narcotics. He knows it by sight. He knows what the street prices are. He participates in hundreds of buys, he testified, over the course of his career. And in addition to that, he had been -- he's received some training from Homeland Security. I think I understood he had over a hundred hours in some specialized training with narcotics and he continues to educate himself.

So the Court will qualify him as an expert. He can testify to the drug amounts. Whatever amounts, he can testify to the price of the drugs. I believe that's what you were wanting to offer him for.

MR. KENDALL: Yes, sir. I was going to ask just some general questions about what he experienced and what they called these things. And I was going to ask him about generally. We're not doing this down to the dollar. I'm not going to go and say, what's the exact amount. I want the jury to understand what we're talking about is

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a substantial amount of money. I'm not going to use him to create an additional thing for the defendant. It's really that important and it's sitting here.

THE COURT: He will be allowed to testify to that.

MR. KENDALL: Thank you, Your Honor.

THE COURT: And, again, the Jamison case instructive. And then I referred to -- I guess it's Mealor or Mealor, M-e-a-l-o-r, 425 S.C. 625, a February 2019 case as well.

Anything further, Mr. Schultz?

MR. SCHULTZ: Not here, as far as this goes. But, obviously, I'm going to object to it. Obviously, I'm doing that right now and I'm going to do it in the State's case in chief.

But the ruling is that -- the ruling from the Court is that this gentleman is an expert for purposes of drug valuations?

MR. KENDALL: I'm going to qualify him -- if the State moves, I will qualify him as an expert in valuation.

MR. SCHULTZ: Yes.

THE COURT: He can tell these jurors what the price is.

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MR. SCHULTZ: Thank you, Judge.

THE COURT: Yes, sir.

MR. KENDALL: We can go off the record for a second. I'd like to approach the bench for a second.

(Bench conference off the record.)

THE COURT: Okay. We'll have our jury.

(Jury enters the courtroom at 11:01 a.m.)

THE COURT: Thank you, Madame Forelady, Ladies and Gentlemen of the Jury.

You ready, Solicitor?

MR. KENDALL: Thank you, Your Honor.

CONTINUATION OF BRANDON DORSETTE

BY MR. KENDALL:

Q Before the break, I believe we were talking about your time in narcotics. How long have you been a narcotics officer.

A Around 2012.

Q And what sort of things do you do as a narcotics officer?

A I do distribution buys, buying narcotics on the street. We buy small amounts, large amounts. We do, you know, prostitution stings. Anything with distribution.

Q Okay. And as part of those purchases you make,

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what relevance is the price of narcotics?
A Well, we spend our money to buy them, so we have to keep up with what the price is every day.
Q Okay. And when you're making those controlled buys, are you're undercover officers typically wearing cameras?
A They are.
Q And so you're able to see what they purchase the narcotics for; is that correct?
A That's correct.
Q Do you have any other specialized training as a narcotics officer?
A Like I said, I've been dealing with Homeland Security since 2012. They sent us to multiple classes. I took a lot at St. Petersburg College. I did on-line college and a lot of classes. They do have some in-person ones. Maybe another a hundred or so hours of training in different narcotics.
Q Okay. But more important to here, where is the area you typically work?
A Typically, I work in Cherokee County most of the time.
Q Okay. So you're familiarity with the sale and purchase of narcotics, you would say is really

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specialized to Cherokee County, is that fair to say?
A That's correct. Yes, sir.
Q And about how many of these controlled buys have you made over the years?
A I probably participated in hundreds of them. It's a lot.
Q Okay. So it's something that happens fairly often, is that fair to say?
A That's true. Yes, sir.
Q And does it happen with regards to marijuana?
A It does.
Q Is that fairly common?
A That is common. Yes, sir.
Q What about methamphetamine? Is that something we don't see very often here?
A No. We see it a lot here in Cherokee County.
Q So purchasing a quantity of methamphetamine would be something you all would do fairly regularly?
A Yes, sir.
Q All right. What about pills, Percocets and oxycodones?
A Yes, it's pretty deep here in our county.
Q And what about heroin?
MR. SCHULTZ: Your Honor, I'm going to have to object at this point. I understand the

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Court's previous ruling, but I don't think the State has moved in the presence of the jury to qualify him as an expert.

MR. KENDALL: I'm just putting up his qualifications.

THE COURT: Yeah, he's putting up qualifications.

MR. SCHULTZ: Yes, sir.

BY MR. KENDALL:

Q What about heroin?

A Yes, sir. We purchased it.

Q All right. And with regard to heroin and Fentanyl, or both of them, but even more particular with Fentanyl, is this something you're typically seeing in its, kind of, pure, just powdery form?

A No, sir.

Q How do you typically see it?

A We typically see it in -- people make their own pills, and you can -- they'll just press their own pills out and they'll take the Fentanyl and mix it with whatever they want to and then they'll press out pills, different colors.

Q Okay. And are sometimes those made in disguise to look like -- or not disguise, but made to look like pharmaceutical grade pills, similar markings and

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whatnot?
A They are. I've seen them try to make them look just like Xanax and Percocets. They look just like roxies. I've actually seen them look just like Tylenol, which is really dangerous because children wouldn't know. You wouldn't know they weren't a Tylenol. They look like a lot of things.
Q And do you have experience, kind of, purchasing that stuff?
A Yes, we purchase those.
MR. KENDALL: All right. At this time, Your Honor, we offer Lieutenant Dorsette as an expert in drug pricing here in Cherokee County, narcotics pricing.
THE COURT: Mr. Schultz.
MR. SCHULTZ: Your Honor, I would object to the qualifications at this time. If it pleases the Court, it's unfairly prejudicial to Mr. Smith because he's not being judged for other crimes that other people committed that do not involve Mr. Smith. This is built by inference, Your Honor, and I strenuously object to this.
THE COURT: The objection is overruled, and he's now qualified as an expert in the drug

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pricing as to the street drugs that are in question.

MR. KENDALL: Thank you, Your Honor.

THE COURT: Ladies and Gentlemen, you don't have to accept his opinion. You give whatever weight to it you deem advisable.

BY MR. KENDALL:

Q Okay. Detective Dorsette, on the drug report -- you were here for the testimony yesterday, so please correct me if I'm wrong.

A That's correct.

Q But the analyst came back with approximately 2.55 grams of cocaine. Approximately how expensive is cocaine a gram?

A Right now, it typically stays the same. It's around $100 a gram.

Q That's here in Cherokee County?

A That's correct.

Q And, certainly, there's price point fluctuations for quality and quantity and things like that, is that fair to say?

A That is fair to say.

Q The per gram, it's approximately $100?

A Yes. It stayed at $100.

Q 2.55 grams, we're looking at about -- around 200,

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$255?

A That's correct.

Q Next, we have, I believe, Fentanyls that were marked, if I'm not mistaken, as Percocets. Now, I understand Fentanyl in its pure form, is that significantly more valuable than what we're talking about here?

A It is.

Q What about these, sort of, kind of, Percocet pills? And I don't mean -- I'm not using that term as like a brand name Percocet made by a pharmaceutical company, but the pills that are sold on the street as opiate Percocets. How much do those approximately go for?

A They typically -- usually go for $30 a piece. They can go higher than that. But on the low end, it's $30 a piece.

Q So our low ball average for the 84 Percocets he has is about $30 a piece; is that correct?

A That's correct.

Q Okay. Now, what about heroin? About how much does heroin go for per gram?

A It's around 100, $115 a gram. It's about the same.

Q Okay. So he's got 7.78 grams of that; is that

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correct?
A That's correct.
Q So we're looking into around 7 -- between seven to $800, would that be a fair estimate?
A That would be fair.
Q Now, what if that is pressed as oxycodone? How much would oxycodone go for as a tablet? If he's selling them as oxycodones, how much would that go for?
A Those blue pressed pills, they call them roxies. They're oxycodone. Oxycodone is seven to $10 a milligram on the street. So if it's 30 milligram that's $30. If he had 80 milligram oxies, those are $80 on the street. That's on the low end of this.
Q And what's, kind of, the lowest quantity you get? Is there, like, a one-milligram oxycodone that you're aware of?
A I've seen it -- I believe 10 and 30s, but 30s is what we see 90 percent of the time around here.
Q All right. So 10s and 30s and he's got 69 of those.
A The 30-milligram ones, yes, sir.
Q All right. As well as the blue tablets -- and so, likewise, the A-25 oxycodones, that would still be in

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that same analysis when 50 of those were found, same thing. Basically, one dollar per every milligram. Typically 10s, 30s, and sometime 80s, is that fair to say? There's an additional 50?

A That's right. So the blue ones are roxies, 30 milligrams.

Q And what about methamphetamine? How much does methamphetamine typically go for a gram?

A Right now, it's $100 a gram.

Q Okay. So 11 grams of methamphetamine is over $1,000, is that fair to say?

A Yes, sir.

Q All right. What about marijuana? Now, if you're buying -- now, I understand that the value is different if you're buying a little or if you're buying a lot. But if you're purchasing an ounce of marijuana, so 28 grams, approximately how much would, I would say, a low end ounce of marijuana cost?

A A low end, if you get up -- what a lot of people call that -- or the higher grade marijuana, it comes from California or Colorado, it's around $250 an ounce on the low end.

Q What about from stuff that you would just get, sort of, from around here? Is that just a general -- if you were going to say what marijuana typically goes

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for in Cherokee County?
A You might get it for a little over $100 an ounce, maybe, if you know someone.
Q And that would be on the very low end.
A Yes.
Q We're not talking about the good hydroponics stuff growing on a big farm. We're talking about the lowest grade you can get.
A Yes, sir.
Q I'm just trying to establish a bottom value.
So if he's got five ounces -- over five ounces of that, you're looking at between five and $600, is that fair to say?
A That would be about right, yeah.
Q Okay. And there was a substance that was found within there that was no controlled substance, that looked like a crystal rock-like substance. Do you recall that from the testimony yesterday?
A I do.
Q And what significance does that have in drug distribution?
A If I buy an ounce of cocaine, I take it and I'm going to cut it down so I make more money. It just makes sense as a business. That's what you do. So I take one ounce and put whatever kind of

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flex I want with it, and then it makes me two ounces of cocaine to sell versus having one. That's how they make two ounces.

Q So when you "cut," what is cut?

A So you take pure cocaine and you can put Fentanyl in it, they put baby powder, you can put anything you want with it to cut it.

Q Is it fair to say it's something that looks like cocaine?

A Yes, it looks exactly the same. It just weakens it up.

Q Is it fair to characterize this as basically the equivalent as watering down drinks?

A That would be the same equivalent, yes.

Q In Cherokee County, how hard is it to get marijuana? Is this an exotic substance, it's very hard to get a re-up on?

A It's really easy to get.

Q Okay. So it's not something that would take a pre-order weeks in advance or anything like that, is that fair to say?

A That's fair to say.

Q Okay. And are you familiar in your experience with law enforcement with some of the nicknames to use narcotics?

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A Yes, sir.
Q And what do you generally understand beans to be?
A I didn't hear what you said.
Q Beans, what you generally understand beans to be?
A Typically, it's some type of pill.
Q Okay.
A It could be ex-pills, could be regular pills.
Q But something in pill form?
A That's correct.
Q And what about percs?
A It called Percs are Percocets. It's an opiate.
Q Again, we're talking about Percocet. Is that always coming back as pharmaceutical grade made by the company someplace, and shipped off in the tamper proof packaging?
A No, not always.
Q And it's true, sometimes they'll press they're own pills to make, kind of, an equivalent Percocet?
A That's true. They do do that.
Q Please answer any questions Mr. Schultz may have.
THE COURT: Mr. Schultz.

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MR. SCHULTZ: Thank you, Judge.

RECROSS-EXAMINATION

BY MR. SCHULTZ:

Q Officer Dorsette, you've have been with Cherokee County for a while, right?

A Yes, sir.

Q You said 12 years, did I get that right?

A Since 2010.

Q 2010?

A Uh-huh.

Q Okay. The Court just qualified you as an expert in the field of drug valuation in Cherokee County; is that correct?

A I believe so.

Q All right. Explain supply and demand in Cherokee County as it relates to price?

A So a lot -- supply and demand. Let's see, if I sell cocaine, and then, for some reason -- the main supplier in Cherokee County is in Atlanta, Georgia, if he gets knocked off, nobody can get cocaine, but I might held a little back, and then my price went from $100 a gram to $500 a gram because I'm the only one that has it. If I got it, I can sell it.

Q Is that an ingress relationship on a graph or is

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that a direct relationship?
A I didn't understand the question.
Q Oh, okay. Well, I thought you were an expert on drug valuation?
A I just didn't understand your question.
Q Okay. Looking at it as a graph, because there's such a thing as supply and demand, you must be familiar with graphs of supply and demand, right? Or no?
A I know what supply and demand is, yes, sir.
Q Okay. Well, have you ever seen a graph detailing supply and demand as it relates to price?
A Maybe when I was in high school.
Q Oh, high school.
Okay. Do you have any advanced technical knowledge when it comes to drug valuation?
A I didn't understand the question when you called it a valuation.
Q Do you have any technical knowledge as it relates to drug valuation?
A You're talking about what type of drugs they are, or what?
Q Yeah, do you have any special skills or education?
A I'm not forensic scientist in drugs.
Q You're not a scientist, right?

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A That's correct.
Q Okay. You're an officer, right?
A That's correct, sir.
Q Okay. Do you have a bachelor's of science or anything?
A I do not.
Q All right. So you don't have a bachelor's of science like the SLED people that testified yesterday, right?
A I do not.
Q Okay. Do you have a BA? Do you have a bachelor of arts?
A I have no college degree, sir.
Q Okay. Do you have any other certifications or classes in drug valuation?
A I have a couple.
Q A couple?
A Yeah.
Q Okay. Where did you take them?
A St. Petersburg College.
Q Okay. Where's that?
A That's on-line, but then you can go sometimes. I've been to a couple class in-person there.
Q St. Petersburg, is that in Florida?

A It would be, sir.
Q All right. It's not Russia, is it?
A No, sir.
Q All right. So a high school diploma and some on-line classes, right?
A Yes, sir.
Q Okay. Are you a drug recognition expert?
A I am not.
Q Explain to the jury what a drug recognition expert is?
A A DRE is somebody that -- we do DUIs a lot, drinking and driving and all that. A DRE recognition expert, you take a lot of classes. You can tell when somebody is under the influence of either it would be marijuana or cocaine. You can tell the different kind of drugs. You do a test on them, like roadside impairment tests, and tell what they are on.
Q But you're not qualified as a DRE?
A No. I am not Drug Recognition Expert, no.
Q Again, just to clarify, DRE stands for Drug Recognition Expert, right?
A Yes, sir.
Q All right. You said that the prices of various narcotics fluctuate. What is the -- what would you

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say is the level of fluctuation in the county since the coronavirus pandemic that began in March of 2020?

A Some drugs went up in price, some have not.

Q Okay. What about in August -- specifically, August 2019?

A I believe that would be just before the pandemic, correct?

Q Yes. What is the amount of fluctuation? Let's just use, for clarity, Fentanyl. What's the amount of fluctuation between August and now?

A Between August and now?

Q Yeah.

A Depending on when it went up. It's just started to come back down.

Q Sir?

A At the height of the pandemic, it was a little bit higher.

Q Okay. And in August, it was less or August it was more?

A It was less in August, yeah.

Q Okay. And what would you say the -- as time goes on, what does -- what affects price fluctuation in the -- under -- in the black market of narcotic sales? What affects that?

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A If a big supplier gets hit or some of them just know they can't get it, then the price goes up.

Q The price goes up, okay.

All right. Well, let me ask you this: In August of 2019, in your experience and training and the fact that you're an expert in the valuation of narcotics in Cherokee County, was there anything like that in your -- did anything like that happen in the summer of 2019?

A I wouldn't say that. Methamphetamine was a little bit cheaper back then before the pandemic. All other drugs remained the same.

Q Okay. So did you do any studies or did you present any findings to your supervisor or superior officer as to the valuation of drugs in the summer of 2019?

A I didn't. He's the captain. I didn't tell him what the drugs was going for. He typically knows what's going on.

Q But you did not, right? You didn't present any findings or anything?

A To tell him -- I don't understand your question. I apologize.

Q Well, you're an expert on valuation in

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Cherokee County, right?
A Yes, sir.
Q Okay. So did you present any findings to your superior officers as to the valuation in August of 2019? Yes or no?
A No. We buy drugs together. I did not.
Q What was that, Officer?
A We all purchased. We do distribution. They all do the same thing I do.
Q So the answer is, no, you didn't present any findings to your supervisor, right?
A That's correct.
Q Thank you.

Now, Officer, referring to the State's exhibit that you were able to pull from the room there, were you -- did you handle all the evidence collection that day?
A I didn't. I didn't collect evidence.
Q You did not collect the evidence.
A No.
Q Who collected the evidence?
A He said on the video, Captain Anthony and Lieutenant Jake Mullinax.
Q So Captain Anthony collected the evidence, but you observed the evidence, right?

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A Yes, I did.
Q Okay. Let's talk about State's Exhibit 27. You observed this?
A Yes, sir.
Q Okay. But you did not collect this, right? Officer Anthony did that, right?
A Yeah, on the video.
Q On the video. But you observed it?
A Yes, sir.
Q All right. Did you ever think about running this for any kind of fingerprint analysis or anything?
A No, sir, I did not.
Q Okay. Would that have been a good idea to do?
A It depends on the case by case, sir.
Q Okay. Well, you just testified to the fact that there was a fairly large amount of narcotics in this room, right?
A That is correct.
Q And it's a fairly important case, right?
A It is an important case, yes, sir.
Q Okay. And you failed to collect any DNA evidence or anything like that, right, from this?
A Would you like me to answer why?
Q No.
A Okay.

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Q But you just failed to do it, right?
A I did not collect DNA in that case.
Q Okay, thank you.
What about this? Same thing? Did you collect any DNA evidence or anything on it?
A I did not collect any DNA on the clothes.
Q What about hair? Did you examine for hair follicle or anything like that?
A No, I did not.
Q Okay, thank you.
MR. SCHULTZ: Can I approach the witness, Judge?
THE COURT: Yes, sir.
BY MR. SCHULTZ:
Q This is a scale, right?
A That is a scale, yes, sir.
Q All right. And scales are used for other purposes as well, not necessarily legal purposes, right?
A That's correct. Yes, sir.
Q Let me ask you this: I'm not putting my fingerprints on it. Can you collect latent fingerprints on something like this?
A I wouldn't know. I'm not a fingerprint expert.
Q Okay. But you investigated cases involving

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fingerprint analysis, have you not?
A I've asked for them before in the past, yes, sir.
Q Okay. Based upon your skills and experience, do you know if fingerprints were ever collected on this?
A On this case, I know they were not collected in this case.
Q They were not?
A That's correct.
Q Okay. Well, let me ask you this: You were the chief officer investigating my client, right?
A That's correct.
Q So no fingerprints on this thing?
A That is correct.
Q Referring to State's Exhibit 43. No DNA on the book bag.
A That's correct.
Q No DNA on the pants.
A No, sir.
Q Oh, let's talk about the shoes. Have you ever tried to match these shoes up with Mr. Smith?
A I did not.
Q Okay. Did anybody you know of try to match up these shoes to Mr. Smith?

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A I didn't ask --

MR. KENDALL: I've got an objection. We need to approach, Your Honor.

THE COURT: All right.

(Bench conference off the record.)

BY MR. KENDALL:

Q Officer, I'm referring to State's Exhibit 42.

MR. SCHULTZ: Can I approach the witness, Judge?

THE COURT: Okay.

MR. SCHULTZ: Thank you.

BY MR. SCHULTZ:

Q This is a letter that you found in the room there?

A Yes, sir.

Q Okay. Do you have the original copy of that letter?

A I don't know where it's at.

Q Okay.

A As I mentioned, I didn't collect the evidence.

Q All right. The picture itself, is this the only copy that you have, or is this the only -- you didn't take that picture, right?

A I did not.

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Q But you were in the room when the picture was taken, right?
A I could have been. I would have reviewed the thing.
Q Okay. But you were around --
A Yes, sir.
Q -- when the picture was taken?
A Right.
Q But you don't have an original copy of that letter, right?
A I don't know. I can look at the search warrant and see if it's on there.
Q Okay. Is there any date on this letter right here?

MR. SCHULTZ: May I approach the witness, Judge?

THE COURT: Yes.

THE WITNESS: No, sir. I don't see a date on there.

BY MR. SCHULTZ:
Q So this letter itself, at least, you know, the evidence that you collected here, this letter could have been in that room for years, right?
A It's a possibility.
Q A possibility, okay. It could have been there for

a day, it could have been there for a months, right?
A That's correct, sir.
Q Okay. I'm referring to State's Exhibit 37, 36, and 38.
MR. SCHULTZ: May I approach?
THE COURT: Yes, sir.
MR. SCHULTZ: Thank you.
BY MR. SCHULTZ:
Q What does this say right here?
A You want me to read the whole thing?
Q Yes, sir.
A It says, South Carolina Department of Probation & Parole Services.
Q What is the name on there, sir?
A Bryson J. Smith.
Q In that photograph right there, do you see any dates or anything like that?
A I didn't see one on there.
Q This is a zoomed out photograph of that same letter there -- or whatever it is. Do you see any dates on that, sir?
A I did not see one on there.
Q Okay. So same thing with State's Exhibit 42, you don't see any of these letters, documents, you don't see any dates on there, right?

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A No, I didn't see any dates on there.
Q Do you remember where the officers found this letter with Bryson Smith on there?
A I believe I said earlier, I think it was in that drawer. When they opened that drawer in the bedroom, it was right there.
Q Okay. So in a drawer underneath a bunch of things?
A No. I think when we opened the drawer, you could see the letter laying there on the left side. It was just right there.
Q Okay. But, again, you don't know when the letter was placed there and you have no date of this letter, right?
A I don't know when it was placed there.
Q Okay. What about this State's Exhibit 36, 38, and 37, where did you find that?
A It was under the bedspread when I pulled it back.
Q Under the bench?
A The bedspread.
Q The bedspread, I'm sorry. Under the bedspread.
Okay. Did you -- okay, let me ask you this: Did you find any wallets there, or other kind of identification of Bryson Smith?

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A I don't remember seeing a wallet there, no, sir.
Q What about any kind of I.D., or anything like that?
A I don't remember seeing one.
Q Did you find any cell phones?
A There was a cell phone there.
Q Okay. Did you examine that cell phone?
A I didn't.
Q Okay. Did you find any other -- other than the letters, did you find any other material linking Bryson Smith to this room?
A There was another mailbox that said B. Smith at [redacted] Maplewood Drive.
Q All right. Did you collect that into evidence?
A I believe the box is. I'm not sure. I didn't collect the evidence. I know we took pictures of it.
Q Okay.
A Not that one, sir. I apologize. It's a brown cardboard box. There's a picture of it.
Q Okay.
A I believe it's like the letter. We have a picture of the address on it. We looked at it earlier.

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Q Oh, so it's a -- it's not a -- I thought you said it was box. I'm sorry.
A Yeah, it's a picture of the box.
Q A picture of the box.
A Just like the letter you have right there.
Q Yes, I'm sorry. Okay.
A There you go.
Q I apologize, Officer. This is State's Exhibit 40 and 41.
A That's correct. Yes, sir.
MR. SCHULTZ: Can I approach?
THE COURT: Yes, sir.
MR. SCHULTZ: Thanks.
BY MR. SCHULTZ:
Q Again, do you have that, the original of that here today?
A I don't know if we have the box here or not. I took a picture of it that showed who I believe the owner is.
Q There's some pictures there, do you see any dates on those?
A No dates on those.
Q Okay, no dates on those.
So all the letters, everything with Bryson Smith, you don't see any dates or anything like

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that, right?
A That's correct.
Q Okay. So you don't know how long these, for lack of a better word, documents, mailings, were in that room at that time, right?
A No, I could not say how long they'd been there.
Q They could have been there for years, right?
A One day to a year. I do not know, sir.
Q Okay.

MR. SCHULTZ: Beg the Court's patience.

THE COURT: Yes, sir.

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

THE COURT: Solicitor, anything?

MR. KENDALL: Yes, sir.

REDIRECT EXAMINATION

BY MR. KENDALL:
Q Lieutenant Dorsette, who basically gets DRE certified?
A Most of the time traffic divisions get DRE certified.
Q All right. And what's the purpose of a DRE certification?
A The purpose is, if you pull over at the scene

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-- you pull them over, he been drinking alcohol, could he could be took too many pills, marijuana, ingest too much heroin or whatever, it causes automobile accidents as well. If you're a DRE expert, you're able to charge somebody -- if they hurt somebody, or kill somebody, you're able to charge them for that, being under the influence of drugs and not just alcohol.

Q It doesn't have anything to do with, like, physically looking at drugs and deciding what they are, is that fair to say?

A That's correct. All it has to do with, a DRE can tell what -- be able to give a real educated guess what type of drug you ingested. They can't tell, so they have you tested. They do field sobriety testing.

It's like, if you been drinking, I can't tell exactly how much you had to drink until you take the actual breathalyzer test.

Q Okay. So it deals with the effects of drugs or alcohol, not like being able to look at them and see what they are, is that fair to say?

A That's correct, yeah.

Q And, in your line of duty as a narcotics officer, are DUIs something you regularly -- are DUI arrests

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something you regularly make?
A I do not recall how often I do that.
Q And that's because that's a specialization, is that fair to say?
A That's correct.
Q All right. And you testified a moment ago that -- Mr. Schultz asked you a couple questions ago about the value of these narcotics. You said meth was little bit cheaper back -- most of them were the same. Meth was a little bit cheaper back then?
A It was a little bit. Yes, sir.
Q All right. And what would say, back then, the range for meth would be? When you say a little bit cheaper, we're not talking about like, you know, a dollar an ounce or anything?
A No, sir. We're not.
Q What would like -- what would a gram of methamphetamine run?
A Seventy-five dollars.
Q Seventy-five. So back then we're looking at about $75 a grams. He had about 11 grams, is that fair to say?
A That's correct.
Q Now, Mr. Schultz, a moment ago, I asked you why you didn't do a DNA on the backpack where the drugs

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were found, or a fingerprint or anything on the scales. Why is that?

A In this case, I feel like when we went in and did a search warrant, his mom said that's his room back there on the right. That's where he stays at. She told me he stays there. On top of that, I found the mail that said Bryson Smith. Not just one piece, but several pieces. His probation paperwork was in there. I feel like that Bryson's room. His mom said they were the only two people that lived there. She said they were the only two that lived there.

I feel I didn't need to do the fingerprints when the owner of the house says, that's my son. He lives in that room. That's his room back there on the right. On top of that, I found all the stuff in there that coincides with Bryson Smith. That's why I didn't ask for the fingerprints.

Q Okay. So the identity of whose room that was wasn't really an issue when you guys came in through the door, is that fair to say?

A That's fair to say. If I had any questions, I would try to ask for DNA or get fingerprints or be more involved in the -- you don't want to charge the wrong person with any kind of crime.

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MR. KENDALL: I have nothing further, Your Honor.

THE COURT: Anything?

MR. SCHULTZ: No, sir.

THE COURT: Thank you. Officer, you may step down. Please be careful.

MR. KENDALL: The State would call Billy Anthony, Your Honor.

THE COURT: Okay.

THE CLERK: Raise your right hand. Do you solemnly swear or affirm the testimony you give to this Court will be the truth, the whole truth, and nothing but the truth so help you God?

THE WITNESS: I do.

THE COURT: Sir, tell us who you are and spell your last name for my court reporter, please.

THE WITNESS: Yes, sir. Billy Anthony, A-n-t-h-o-n-y.

THE COURT: Thank you.

Solicitor.

WHEREUPON:

BILLY ANTHONY,

after having been sworn, testified as follows:

DIRECT EXAMINATION

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BY MR. KENDALL:
Q Sir, what is your rank with the Cherokee County Sheriff's Office?
A I am the captain with the uniform patrol division.
Q And how long have you been with the uniform patrol division?
A I've been captain there for about eight months, nine months now. Previously -- I've been employed at the sheriff's office a total of 20 years.
Q Okay. And what are your responsibilities as an evidence custodian? How does this work?
A During the time of this accident, I was an evidence custodian at the sheriff's office where I currently still am. We take in evidence, package it. We'll take it to anywhere it needs to be taken to, such as the South Carolina Law Enforcement Division for any testing. We bring it to court. Anything that relates to the evidence, we would handle it.
Q Okay. And what are your procedures for that? Walk me through how the procedure works for maintaining evidence at the sheriff's office?
A We have an evidence vault in the sheriff's

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office. Inside -- it's behind a locked door. As officers bring evidence in that we don't collect ourselves, we have a mail slot, kind of like you would on a door that's in the wall that officers can place evidence into. It drops into a box that only one of the evidence custodians can retrieve. It drops into evidence vault.

For items larger than that, we have a set of evidence lockers. The officers will place evidence into it. It's secured. The key is dropped into the evidence vault. That way only one of the evidence custodians would have access to it.

Q Okay. And, in this case, did you execute a search warrant on August 12, 2019 in the area of -- or at the address of [redacted] Maplewood Drive?

A Yes, sir, I did.

Q And what was your role in executing that search warrant?

A I executed the search warrant. At the time, I was also in crime scene. We typically will photograph items. I was assisting Lieutenant Mullinax. We photographed the items, and I actually went in the residence, searched a minimum amount, and then I did complete the evidence return, the search warrant return,

basically logging all the evidence that was found, and then took it back to the evidence -- to the sheriff's office to be packaged.

Q Okay. And so you were the one that was ultimately the collection point for the evidence, is that fair to say?

A Yes, sir. That's correct.

Q Okay. And you were in the room sometimes and sometimes in the kitchen just always collecting evidence, is that fair to say?

A Yes, sir. If anyone else collected evidence, it would have been brought to me and I maintained the custody of it from the residence all the way through court today.

Q Okay. And where, after you collected the evidence, was it stored?

A It was stored in the evidence vault.

Q Okay. Now, in this case, how did you secure the evidence? What did you do to actually secure it to make sure it didn't, you know, get tampered with or anything like that?

A What we do with smaller items of drug evidence, we'll typically put it into what we call a best bag, which is a tamper evident container. It has a glue seal on it. The items were too

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large to be placed into that package. So, in this case, we placed it into a cardboard box. We taped it with box tape. Then we put evidence tape, which is a tamper evident tape, we place it on their and initial and date it when it is sealed.

Q Okay. So you actually seal it inside this box. Is there any way for an individual to open the box and take stuff out and put stuff in or move stuff around?

A The only way that the box could be opened, they would have to cut the seal off to gain access. That would break the tape, so you would be able to tell that someone had opened that container.

Q Okay. Now, I'm going to show you -- well, let me just do this first. I'm going to show you State's Exhibits 3, 8, 7, 5, 9, 1, 4, 6, 2. And also, which has not been admitted yet, State's Exhibit 44.

(STATE EXH. 44, Box holding narcotics, was marked for identification.)

THE WITNESS: Yes, sir.

BY MR. SCHULTZ:

Q Okay. And what are those?

A Those are the items that I placed into the box when we left the residence and secured it

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until it was taken to SLED.
Q All right. And did you take those items ultimately to SLED?
A Yes, sir, I did.
Q And dropped them off. How did you drop it off up there?
A What we do, the procedure at SLED now is, we transport the evidence to their facility. They have a secure room that has lockers. When we go in, we time stamp our documents, our paperwork. We initial what locker it's being placed into with our initials. We place that evidence with the paperwork in that locker and lock it behind us, and then only their technicians have access to it.
Q Okay. So to be clear, this evidence was secured in a box with evidence tape in the local -- in you-all's vault prior to being taken to SLED where it was turned over to them; is that correct?
A Yes, sir. That's correct.
Q And how did you guys get this back? How did this come back you?
A It was returned in the same box. When I retrieve it back from SLED, I sign a form stating that -- the chain of custody stating that I'm

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getting the evidence back. And then on that box, it is inspected by them and myself that their seal is intact before I receive the evidence.

(STATE EXH. 45, Box, was marked for identification.)

BY MR. KENDALL:

Q I'm going to show you, State's Exhibit 45, do you recognize this?

A Yes, sir.

Q Okay. What was that?

A This is the box that I packaged all of the items into when we were removing them from the residence. It has our bar code with our case number on it, which is the way we track our evidence to know where it is located, whether it was on the shelf or at the SLED lab. And it has my evidence tape that I initialed and dated the date that we took it, top and bottom, and that was sealed until I received it back, but SLED had to cut that seal to get the evidence out and test it.

MR. KENDALL: Your Honor, we would offer State's Exhibit 45 into evidence.

THE COURT: Any objection?

MR. SCHULTZ: No objection.

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THE COURT: Without objection State's 45 is admitted.

(STATE EXH. 45, Box, was entered into evidence.)

BY MR. KENDALL:

Q Now, when those narcotics came back, I'm going to show you what is marked 13, 14, 15, and 16. If you could take a look at these, and what are those of?

A This is photographs of the box, the container I just had and the items that were inside of the box when I opened it.

Q All right. And is it fair to say that those -- I'm going to show you State's Exhibit 46.

MR. KENDALL: Your Honor, we would offer those exhibits. It was, I think, 13 through 16 into evidence at this time.

MR. SCHULTZ: Are those the pictures?

MR. KENDALL: Yes.

MR. SCHULTZ: No objection.

THE COURT: 13, 14, 15, and 16 are in.

(STATE EXH. 13, Photo, was marked for identification and entered into evidence.)

(STATE EXH. 14, Photo, was marked for identification and entered into evidence.)

(STATE EXH. 15, Photo, was marked for

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identification and entered into evidence.)

(STATE EXH. 16, Photo, was marked for identification and entered into evidence.)

BY MR. KENDALL:

Q I'm also going to show you State's Exhibit 44.

A Yes, sir.

Q And what is that?

A That is the box that I repackaged the evidence into yesterday morning.

Q Okay. And why did you --

MR. KENDALL: We would offer State's 44 into evidence as well.

MR. SCHULTZ: No objection.

THE COURT: Without objection.

(STATE EXH. 44, Box, was entered into evidence.)

BY MR. KENDALL:

Q And since they were packaged into that box, would they had been in the custody of the sheriff's office or here as entered as exhibits?

A Yes, sir. It was in our evidence vault until we brought it up for court. And then due to extreme caution because the packaging contained Fentanyl inside, we wanted to place it into a secondary bag to make sure there was no chance of

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any transfer or anyone coming in contact with any small amount of transfer of the substance.

Q Okay. So basically, we added this extra step in the chain just to make sure it was prepared for court. Is that a fair way so say that for the jury?

A Yes, sir.

Q Okay. And so to be clear: All the narcotics we have sitting here, State's Exhibits 2, 3, 4, 5, 6, 7, 8, 9, and Exhibit 1 had been in a secured -- were taken by you and kept securely until you took them to SLED, and, since they were returned, they have been kept in a secure vault?

A Yes, sir. That's correct.

Q And are those the narcotics which were recovered from the search warrant August 12, 2019 at [redacted] Maplewood Drive?

A Yes, sir, they are.

MR. KENDALL: All right. Your Honor, the State would offer State's Exhibits 1 through 8 into evidence at this time.

MR. SCHULTZ: What are they?

MR. KENDALL: All the drugs.

MR. SCHULTZ: All the drugs. Are they in the box right there?

MR. KENDALL: Yes.

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MR. SCHULTZ: Beg the Court's patience.

THE COURT: Yes, sir.

MR. SCHULTZ: No objection.

THE COURT: 1 through 8?

MR. KENDALL: Yes, sir, Your Honor.

THE COURT: 1 through 8 are in without objection.

(STATE EXH. 1, Cannibus evidence, was marked and entered into evidence.)

(STATE EXH. 2, White powder, was marked for identification and entered into evidence.)

(STATE EXH. 3, Cocaine evidence, was marked for identification and entered into evidence.)

(STATE EXH. 4, Fentanyl pills, was marked for identification and entered into evidence.)

(STATE EXH. 5, Heroin/Fentanyl pills, was marked for identification and entered into evidence.)

(STATE EXH. 6, Blue tabs, was marked for identification and entered into evidence.)

(STATE EXH. 7, Empty bag, was marked for identification and entered into evidence.)

(STATE EXH. 8, Pills in shape of Georgia, was marked and entered into evidence.)

MR. KENDALL: One moment, Your Honor.

Please answer any questions Mr. Schultz

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may have.

CROSS-EXAMINATION

BY MR. SCHULTZ:

Q Officer, you've been doing this for a long time, being the evidence custodian?

A Yes, sir.

Q Do you work for Cherokee County?

A Yes, sir, I do.

Q All right. And did you -- I guess for lack of a better word, when you went into this house, was that the last involvement in this case for you, or did you go in the house at all?

A Yes, sir. I went in the house.

Q All right. And when you left, was that your last involvement in this case?

MR. KENDALL: We need to approach.

MR. SCHULTZ: Okay.

(Bench conference off the record.)

BY MR. SCHULTZ:

Q August 12, 2019, you left the house, right?

A Yes, sir. That's correct.

Q Okay, very good. And you delivered this to the evidence locker at the Cherokee County Sheriff's Office?

A Yes, sir. That's correct.

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Q Very good. You're not a forensic scientist, correct?
A No, sir, I am not.
Q You didn't test any of the drugs here for anything, correct?
A No, sir. That's correct.
Q So you performed no field test on these, right?
A No, sir.
Q Okay. So all you did was, you essentially collected the evidence, locked it up, that's it, right?
A Yes, sir. That's correct.
MR. SCHULTZ: That's all I have, Judge. Thank you.
THE COURT: Anything?
MR. KENDALL: No, sir, Your Honor.
THE COURT: Thank you. Officer, you may step down. Please be careful.
MR. KENDALL: Your Honor, can we approach?
THE COURT: Yes.
(Bench conference off the record.)
THE COURT: Ladies and Gentlemen, we're at the lunch hour here. And they're just wanting to talk about how the afternoon is going to run

here, so there's no reason for you to hang around for that. We'll talk about some nut and bolts about who the witness may or may not be next, then we're going to eat ourselves. But I'm going to ask you to be back at 1:30. That's hour and a half. 1:30. If you would please be back assembled so we can get started then.

Again, we're going to talk nuts and bolts. We're not going to have any witnesses or anything, but we're going to talk some housekeeping stuff outside of your presence, so we'll be ready to go at 1:30.

Don't talk about the case. Don't try to learn anything about it. It's not over, but we're working on it.

Thank you, Madame Forelady.

(Jury exits the courtroom at 12:00 p.m.)

THE COURT: Do you all just want to talk? Do you need me?

MR. KENDALL: If we could just, kind of, talk among ourselves, maybe be back about 1:00-ish, 1:15. We need to, kind of, talk about something.

THE COURT: How about if we're back around 1:15. Will that give you plenty of time?

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MR. SCHULTZ: Yes, sir.

THE COURT: 1:15.

(A recess was taken from 12:00 p.m. to 1:37 p.m.)

THE COURT: We will go on the record. While the jury is out, if you want to rest, rest outside the presence of the jury. I'm going to recognize everybody for motions. We'll take that up. And then when the jury comes back in, you can rest in front of the jury. That way we don't have to -- is your client -- he's not going to testify.

MR. SCHULTZ: He is not, Your Honor.

THE COURT: Okay. I'll have that colloquy with him while the jury is out, too.

MR. SCHULTZ: Would the Court do that right now? Oh, I see.

THE COURT: Well, he's not rested.

MR. SCHULTZ: Okay.

THE COURT: So any matter's from the State?

MR. KENDALL: No, sir, Your Honor.

THE COURT: Matters from the defense?

MR. SCHULTZ: I would just like to renew my motion to object to the testimony of the -- the expert testimony of the officer.

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THE COURT: All right. Anything from the State?

MR. KENDALL: Just for the same reason we found it appropriate before. As somebody that regularly purchased narcotics, I think it appropriate, the price of something, some people are paying for it. He's a law enforcement officer. He's tasked with making narcotics purchases through confidential informants. They have to know what these are, and the amounts that are necessary. I think that's appropriate in light of this to -- as expert testimony.

THE COURT: All right. Well, for the same reasons here before, I'll enunciate even further, the officer is qualified under Rule 702 as an expert witness, in that our case law allows him to testify to the monetary value, and his information was probably not within the realm of the common knowledge of a juror, so it's helpful them. It was not confusing or nor was it misleading to the jury.

MR. SCHULTZ: And again, Your Honor, I don't mean to belabor the point, I'm trying to protect my client's rights for the record. It's fairly prejudicial. We're trying him for crimes

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that he wasn't involved in. And I believe any expert testimony as to the evaluation is not relevant to the crime charged. Thank you.

THE COURT: Thank you.

MR. SCHULTZ: I understand the Court's ruling, Your Honor.

THE COURT: All right. Anything further, Mr. Schultz?

MR. SCHULTZ: Not at this time.

THE COURT: Okay. Mr. Smith, if you'll stand please and be sworn.

MR. KENDALL: Your Honor, can I just add one more thing to that last point we made? I do think it's also relevant to whether or not it's possession with intent to distribute versus a self-possession. A large value of the money would also be relevant.

THE COURT: Okay.

THE CLERK: Please raise your right hand. Do you solemnly swear information you give to this Court will be the truth, the whole truth, and nothing but the truth so help you God?

MR. SMITH: Yes, ma'am.

THE COURT: Sir, if you don't mind, take your hand out of your pocket. That's a safety

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issue.

MR. SMITH: Yes, sir.

THE COURT: Sir, at this time, I'm going to explain certain rights that you have, and if you do not understand something that I say, I want you to stop me and I will withdraw and allow you to talk to Mr. Schultz, okay?

We have reached the stage of this trial where you may present your defense. You have the right to claim protections given to you by the Fifth Amendment to the constitution of our United States which in part: "No person shall be compelled in any criminal case to be a witness against themselves."

Additionally, you have the right to claim protections given to you by Article I, Section 12 of South Carolina constitution which states in part: "No person shall be compelled in any criminal case to be a witness against themselves."

This means you cannot be required to testify in this trial. You have the right to testify on your behalf, but no one can make you do so. This is a personal right and no one except you can waive that right.

If you decide to testify, you will

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subject to the same rules that govern other witnesses and you may be examined and cross-examined on relevant issues in this case.

Additionally, if you have convictions involving dishonesty or a false statement or for crimes punishable by imprisonment for more than one year, and this Court determines the probative value of admitting the evidence outweighs its prejudicial effect, the solicitor will be able to introduce your record to attack your credibility.

If you decide to testify, the decision of your part must be freely, intelligently, and voluntarily made with full knowledge of the protection given to you by the constitutions of our United States and of this State and the consequences of your decision. If you decide not to testify, I will instruct the jurors that they cannot give the fact that you did not testify any consideration and there is to be absolutely no prejudice to you because you did not testify. The decision is entirely up to you as to whether or not you will testify.

Sir, have you talked with your lawyer about whether or not you want to testify?

MR. SMITH: I have. I don't want to.

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THE COURT: You do not want to.

MR. SMITH: No, sir.

THE COURT: Do you have any questions about your decision?

MR. SMITH: No, sir.

THE COURT: Do you wish to talk to Mr. Schultz any more about your decision?

MR. SMITH: No, sir.

THE COURT: Are you under the influence of any drug or alcohol or any substance that alters your thinking ability?

MR. SMITH: No, sir.

THE COURT: You know fully what you're doing today?

MR. SMITH: Yes, sir.

THE COURT: Okay. All right, sir. Thank you. You may be seated.

MR. SCHULTZ: Thank you, Judge.

THE COURT: Thank you.

Okay. Anything further from the State?

MR. KENDALL: No, sir, Your Honor.

THE COURT: From the defense?

MR. SCHULTZ: No, sir.

THE COURT: What we'll do is, we'll bring them in, you have rested, and you don't have to

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renew any motions, okay?

MR. SCHULTZ: That's fine, okay.

THE COURT: You'll rest because we've done that outside the presence of the jury.

MR. SCHULTZ: Yes, sir.

THE COURT: So I don't bring them in and send them right back out.

MR. SCHULTZ: Yes, sir.

THE COURT: Ready to go, Mr. Schultz?

MR. SCHULTZ: I am.

THE COURT: We'll have the jury.

(Jury enters the courtroom at 1:43 p.m.)

THE COURT: Everybody ready?

FOREPERSON: Yes.

THE COURT: Solicitor.

MR. KENDALL: Thank you, Your Honor. The State would rest at this time.

THE COURT: The State rests at this time.

Madame Forelady and Ladies and Gentlemen, the State has now rested its case. That means the State does not intend to put up any other witness or introduce any other exhibit in this trial.

Mr. Schultz.

MR. SCHULTZ: Thank you, Your Honor. I renew my previous objections and move for anything

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outside the presence of the jury.

THE COURT: Yes, sir. You're protected.

MR. SCHULTZ: Yes, sir.

THE COURT: You ready?

MR. SCHULTZ: I am, Your Honor.

THE COURT: Okay.

MR. SCHULTZ: Thank you, Your Honor.

At this time, Your Honor, the defense would call Traci Smith to the stand.

THE COURT: Traci Smith.

THE CLERK: Please raise your right hand. Place your left hand on the Bible. Do you solemnly swear or affirm the testimony you give to this Court will be the truth, the whole truth, and nothing but the truth so help you God?

THE WITNESS: I do.

THE COURT: Ma'am, if you will, lower your mask. But tell me who you are and spell your last name for my court reporter, please.

THE WITNESS: Do I look at you?

THE COURT: Talk into that microphone for me, please.

THE WITNESS: Traci Smith.

THE COURT: Last name, spelled?

THE WITNESS: S-m-i-t-h.

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THE COURT: Thank you, Mr. Schultz.

MR. SCHULTZ: Thank you, Your Honor.

WHEREUPON:

TRACI SMITH,

after having been sworn, testified as follows:

DIRECT EXAMINATION

BY MR. SCHULTZ:

Q Miss Smith, could you please state your full name any for the record?

A Traci Monique Smith.

Q And how old are you? How old are you?

A I'm 50.

Q All right. And how are you related to Bryson Smith?

A I'm his mother.

Q All right. And you were here. You did not attend all these -- the trial, but you know Bryson Smith, obviously?

A Yes, sir, I do.

Q Okay. And let me take you back to August of 2019. Where were you staying at the time?

A [redacted] Community Circle.

Q [redacted] Community Circle?

A Yes, sir.

Q All right. And where is that?

A It's located in Gaffney, South Carolina.
Q Okay. What area of Gaffney is that?
A It's on East Beaufort Street in Gaffney.
Q All right. Now, do you recognize the address of [redacted] Maplewood Drive?
A Yes, sir. It's a residence that I bought 20 years ago.
Q And you bought that 20 years ago.
A Yes, sir.
Q Were you there on at Maplewood Drive in August of 2019?
A Is it a specific date that you're asking me?
Q August 12, 2019.
A Yes, sir, I was.
Q Why were you there?
A Because that Sunday night, me and my boyfriend had got into a verbal altercation and we needed to cool things off, so I went to [redacted] to cool off because we had got into an argument and I went to my permanent address.
Q So that was your permanent address?
A Well, [redacted] is where I bought the house at. But where I lived at with my boyfriend is at his house at [redacted] Community Circle. So I left his residence to come to [redacted].

Q So your testimony here today is that you had lived at [redacted] Community Circle but went to [redacted] Maplewood to cool off, you said.

A Yes, sir.

Q Do you remember the day, afternoon that the police came to [redacted] Maplewood?

A Yes, sir. It was during the morning time. It was probably around 9:00, 9:30, 10:00.

Q All right. And do you remember talking to them?

A Well, Yes, sir. Yes, sir. They came to the door and it was a woman. She said that they wanted to talk to Bryson and see was Bryson there, and I told them that they could come in and check.

Q And did they come in and check?

A Yes, sir, they did. They came in.

Q At the time, was there another individual there at [redacted] Maplewood?

A Yes, sir. It was my boyfriend.

Q Your boyfriend?

A Yes, sir.

Q Okay. What is his name?

A Jeffrey Good.

Q Jeffrey Gould?

A Good, G-o-o-d.

Q Good.

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A Yes, sir.
Q I'm sorry.
And to your recollection, I know this is a long time ago, perhaps 16 months ago, but how long did you talk to the police for?
A Well, actually sit and physically talk to them, they just asked me a couple questions. But to sit and actually talk to them, it was never that. I was just asking questions when they -- when they was asking me questions, I answered the questions for them.
Q All right. Do you remember that the police had a body cam on at the time, or did they tell you that?
A No, sir, they didn't.
Q Okay. Now, what happened here is when -- do you remember the police doing a search of the house?
A Yes, sir. Because they asked me could they search the house for Bryson, and I told them yes.
Q And you said yes?
A Yes, sir.
Q All right. And was Bryson there at the house that day?
A No, sir, he wasn't.
Q Do you know where he was that day?

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A No, sir, I didn't.
Q Okay. And Bryson is obviously a grown man so you don't know where he is all the time, right?
A No, sir, I don't.
Q Okay, thank you. When this -- when the police were doing a search of your residence -- is it fair to call it your residence?
A Yes, sir, because I do own it.
Q Were you able to walk around with the officers when they were doing the search?
A No, sir. I was seated in the living room on the couch.
Q All right. When were you seated in the living room -- or sitting on the couch in the living room --
A Yes, sir.
Q -- were any other officers questioning you?
A Yes, sir. It was one that questioning me. Yes, sir.
Q Do you remember those conversations?
A Well, yes. Yeah, probably. Yeah.
Q Do you remember the police carrying out a box of any sort?
A A box? No, not a box. No, sir. It wasn't a box. When I was sitting in the living room, I seen an officer come with a yellow platter or

something, and he gave it to the officer in front of me and said that they had found this in the bedroom. That's all I seen. It was a platter that they bought out of the bedroom.

Q A what?

A A platter.

Q A platter.

A Like a yellow tray. Like a yellow tray.

Q That you would put food on?

A Something like that.

Q Like for a party?

A You know like one of those school trays when you get your lunch at school. It was yellow. It was sort of made, kind of, like that.

Q Did you find out later that there were drugs in that room?

A Well, yes. They came out, they said they said they was going to need a search warrant because they found some drugs in the room.

Q Okay. And you had indicated, at least previously, that that was a junk room?

A Yeah, it was. I had somebody to rent my house. And they was, like, two, three months behind on rent, so I changed the locks on the door. I told her when she gave me my rent money

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that I would give her her stuff. It was like two bedrooms that I had their stuff in. I put their stuff in a bedroom.

Q So you were renting that house out, is what you're saying?

A Yes, sir.

Q Who were you renting it out to?

A Tamia Smith and her boyfriend. His name was Chad. I don't know his last name. I only met him one time.

Q All right. Did they pay you rent?

A Yes, sir, they did.

Q Were they receiving their mail there?

A Yeah, they did. Yeah, she was.

Q Where is Tamia Smith right now.

A She's was my cousin from D.C. She's in D.C.

Q Okay. Did you at least acknowledge that nobody was living in that room for a while?

A That question never came up. The only question that the police was asking me was, did Bryson -- was Bryson living there and he was the occupant of that room. I said Bryson hadn't lived there in a year.

Q All right. There was some paperwork with Bryson's name on it found in that room. Do you have any idea

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how that got there?
A No, sir. I got five kids and everybody receive their mail there, like they still continue to receive my mail. My mail is there, because it was my mail, my kids' mail, so everybody mail was in there. I can't just physically say it was one person's mail in there, but it was everybody that lived there mail came there. After my kids move, their mail still come there.
Q Why did Tamia Smith -- with was Tamia Smith not living there anymore?
A Because she was behind on her rent. She didn't pay rent for three months. I told her if she didn't give me my rent money, she wasn't getting her stuff until I get my rent money, which I thought was fair.
Q Let me ask you this: Did Bryson have a key to the house?
A No, he didn't.
Q Okay. Did he -- to your knowledge, did he have any kind of access to the house?
A No, sir. The only body that had a key to the new lock was me. Like I said, I had changed locks. Because the former tenants that I had living there, they still had the keys to the

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house. So I changed the locks, so the only person who had a key to house was me.

Q Let me ask you this: This was last August, who lives at [redacted] Maplewood drive now?

A Nobody.

Q Nobody?

A Nobody.

Q So the house is vacant?

A Yeah.

Q And you live right now at [redacted] Community Circle?

A Yes, sir.

Q Do you have any other houses?

A No, sir, I don't.

Q All right.

MR. SCHULTZ: That's all I have at this time, Your Honor.

THE COURT: Thank you.

Solicitor.

CROSS-EXAMINATION

BY MS. LESKANIC:

Q Good afternoon, Miss Smith?

A Good afternoon.

Q So you do remember August 12th of 2019 when officers came to your home?

A Yes, I do.

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Q And you were at your house that day?
A Yes, I was there.
Q Did officers tell you why they were there?
A Well, when -- it was a woman that knocked on my door, and she was just saying that --
Q Were they looking for Bryson? I'm just -- were they looking for Bryson?
A They wasn't looking for him. They just said was he at my home. I told them he wasn't there.
Q And then they asked if they could come in and look?
A Yes, ma'am.
Q And you allowed them to come into the home?
A Yes, ma'am, I did.
Q Now, who were at the house with that day?
A With Jeffrey.
Q Okay. Jeffrey Good?
A Yes, ma'am.
Q Isn't it true that you and Jeffrey had actually broken up and you were at the home that day with Pierre?
A No, ma'am.
Q That's not right.
A Pierre had came to house because he was getting to ready to get deployed. He was a friend

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of mine.
Q So it was Pierre at the house not Jeffrey?
A Both of them was at the house.
Q Both of them.
A Both of them was at the house.
Q When the police was there, both of them were at the house?
A No, no. Just -- Pierre was there then.
Q You just Mr. Schultz under oath that it was -- let me get the name right. You and Jeffrey Good, your boyfriend, were at our home?
A No, I said me and Jeffrey had got into it and I was at home. He asked me did I know if he was at home.
Q Right. And you said Jeffrey was at the Maplewood address with you when police arrived. That's what you just told the jury.
A No. I said he was there. Jeffrey was there. Jeffrey had left. Pierre was there when the police actually got there.
Q So now Pierre was there when the police arrived?
A Pierre was there, too.
Q And, in fact, you had been seeing Pierre for a couple of months.
A No, ma'am. Pierre was my friend.

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Q Okay. So you didn't tell police that his name was Pierre and that you all had started talking a couple months back and that he was from Cowpens?
A No, I didn't.
MR. SCHULTZ: Objection; relevancy.
MR. KENDALL: It goes to the truthfulness of the witness, Your Honor.
THE COURT: Overruled. Go ahead.
THE WITNESS: No, I never said that Pierre was my boyfriend, because Pierre wasn't my boyfriend. Pierre was a friend.
BY MS. LESKANIC:
Q Yes, ma'am. But Pierre was the man -- I just want to get clear, you started with your testimony --
A Okay.
Q -- that you were at the house with your boyfriend Jeffrey. You testified that you and Jeffrey had gotten into an argument the night before --
A Yes, ma'am.
Q -- and that he had come to the home that morning --
A Right.
Q -- and the two of you were there when police arrived.
A I never that me and him both was there. I

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said that he was there. We had got into it that night. I said that he was there. I never said that he was there when the officers was there. I said he was there because we had talked about it. That's what I said, ma'am.

Q You talked about what?

A The altercation that we had gotten into that night.

Q I thought Pierre stayed the night.

A No, I never said that.

Q You didn't tell the police that Pierre had stayed the night?

A No, ma'am, because he hadn't. He hadn't. No.

Q You remember talking to officers while you sat on the couch in her living room, correct?

A Yes, ma'am. I was sitting on the couch, yes, ma'am.

Q You were on the couch, yes, ma'am. And officers were standing in there and they had one body cameras, so they recorded every conversation -- every statement that you made to them.

A Well, I never knew that they had on body cams. I never knew that. They never told me that they had a body cam on. I never knew that.

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Q Okay. Well, does it change your testimony now that you know what you told police back in August was actually recorded?

A No. No, ma'am.

MS. LESKANIC: Your Honor, at this time, I'd like to mark Ronnie Painter's body cam video that contains the conversation with this witness as State's Exhibit 46.

THE COURT: State's 46.

(STATE EXH. 46, Painter's body cam video, was marked for identification.)

MS. LESKANIC: And I would ask to publish.

THE COURT: Do you have any objection, Mr. Schultz?

MR. SCHULTZ: No objection.

THE COURT: Okay.

BY MS. LESKANIC:

Q That's going to take a moment to load, so I'll go ahead and ask a few other questions, and go back to the first questions.

Did you tell Captain Painter and the other officers in the room that the first room on the right when you walk down your hallway was a room that you would just throw junk in?

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A No, ma'am. I never said the first bedroom on the right. That never came up. That question never came up.
Q Okay.
A They never asked me that question.
Q All right. And did you tell officers that -- referring to the last bedroom on the right where the drugs were found, did you tell them that you couldn't tell them what's in that room because you never go in there?
A Well, I never knew what drugs came out of the room, because, like I said, I was sitting on the couch. So I never knew what room that the drugs came out of. I never knew that.
Q Did you tell officers that you never go in that room?
A Well, yeah, I told them -- they asked me do I go in that room. No, I never physically go in the room, but I did sometimes go in there because I had went in there Friday because my grandbaby had spent the night with me. And I told him -- he had his football cleats on, and I told him to put his football cleats in the back bedroom. So that Monday morning, I did go in that room to get his cleats because I took him to football practice at

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eight o'clock that Monday morning. So I went in the room to get his cleats.

Q Okay. So if you told police that you never went into that room, then you lied to police?

A No, because -- no, because I couldn't say. The way that I actually just go in the room, no. And look around, no. But I did go in that room that day to get those football cleats. I did do that. I told Mr. Kendall that, and you.

Q You told Mr. Painter that?

A No, I told Mr. Kendall.

Q Okay. But back on August 12, 2019, did you, in fact, tell officers that never let the grandchildren go in that room?

A No, ma'am. I never told them that, no. They little kids. They can't just go in that room. They small kids. They can't even -- they wasn't walking then, so they can't just go in that room But I did let my grandson go in there to throw his shoes in that room because his feet were stinking.

Q Okay. So you didn't tell police, I don't let him go in that room, referring to your grandkids. You didn't say that either.

A Unh-uh.

Q Did you tell officers that the last bedroom on the

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right where the narcotics were found -- and not that you said where the narcotics were found -- but the last bedroom on the right that that was Bryson's room?

A No, ma'am. I never told them that was Bryson's room.

Q Okay. But that's the room that he goes in?

A They never asked me. They asked me did Bryson go in that room. I said, yeah, he had been in there before because his kids' stuff was in that room. Like, I had the baby bed in there. I had clothes. I had --

Q And his clothes.

A No, his clothes wasn't in there. No. Because he hadn't stayed there in a year, ma'am. So his clothes weren't in there. The clothes that was in there was the occupants' that I had staying there. It was their clothes in the first bedroom and the second bedroom. The third bedroom across the hallway is the room I had fixed up for myself.

Q And that's the room Pierre went into to get your cell phone so you could make a phone call, went into your bedroom where you hadn't been staying to get your phone.

A I made a phone call. I don't remember making a phone call. Because who would I call? I mean, I don't remember that, ma'am. I can't be a hundred percent sure and I'm not going to sit here and lie. I don't know if Pierre went in a bedroom to get a phone. I don't know that. They wouldn't let us get up. I was in the living room and Pierre was outside. I didn't get up one time, so I don't even remember talking Pierre to ask him to get a cell phone.

Q The officers, you had a very nice conversation with the officers that were in there. I think it was a pleasant conversation with everyone.

A They was nice to me. They was nice.

Q And you were very nice to them. But you did tell them, I can't tell you what's in that room, and you were questioning why Bryson was in there sleeping like a savage because he didn't even put the bed together. Did you say that?

A No. When I said savage, I said I wouldn't have my son living like a savage because the mattress was on the floor. It was stuff -- the clothes basket, there was stuff all over the room. If Bryson lived there, I surely wouldn't had him living like that.

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Q How old is Bryson?
A Thirty-three.
Q Thirty-three, okay.
A Yes, ma'am.
Q Just to be clear, you never identified this room to officers as being Bryson's room?
A No. They might have asked me, did he go in that room, but I identified that as Bryson's room because Bryson didn't live there.
Q Okay. And you never told officers that you don't even go into that room?
A I mean, when you say physically go into that room -- it was my house, of course I'm going to go into bedrooms room, ma'am. I can't say I ain't never been into that room, but I have been into the room. I had to go in that room to put the stuff of the occupants that lived there before into that room. So I'm not going to sit here and lie and say I ain't never been into that room. I have. It was my house, of course I go into every bedroom in my house.
Q Okay. I'm going play a portion of your conversation with the officer.
A Yes, ma'am.

(Video played at 2:05 p.m.)

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BY MS. LESKANIC:
Q So, now do you remember telling the officers that that's the room he goes in when he comes there?
A Right. He goes into my house. But to physically say it's his room, no. But you cut it off when asked me -- when he asked how long have Bryson been -- how long has it been since Bryson's been there, I said a year. You cut it off right there.
Q I'll go to that portion if you'll give me just a moment.
A Yes, ma'am.
Q And you say that he did not have a key to the house; is that correct?
A Uh-huh.
(Video continued.)
BY MS. LESKANIC:
Q So you just told the officer that he did have a key to house?
A I didn't hear that part. I didn't hear that. Can you replay that, because I didn't hear that?
Q Sure. I'm getting ready to play it.
A Yes, ma'am.
(Video continued.)
THE WITNESS: I never heard me say, yeah.

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I didn't hear that.
BY MS. LESKANIC:
Q If you need to step down, I think you can see your head nod in the affirmative when you say, "Yeah."
A I can see. I never heard the statement, yes, ma'am. I never.
Q Okay.
A You was going to play the video where the officer asked me the last time that Bryson had lived there, and I said he hadn't been in my house in a year. And the officer also asked me when was the last time I seen him. And I said I'd seen him the day before on Cherokee Avenue.
Q Yes, ma'am. And you said the last time you had physically seen him was on Thursday.
A No, I said Cherokee Avenue. I never said Thursday.
Q Cherokee Avenue was when you saw him in a vehicle and Thursday was when you actually saw him face to face.
A I never said I seen him on Thursday.
Q Okay. We'll go through that portion.
A If I said I seen him on Thursday, he was definitely not at the house. Because I work two jobs, so I know I wouldn't have seen him

Thursday.

Q Do you still work the two jobs --

A Yes, ma'am, I do.

Q -- as you did at the time?

A Yes, ma'am.

Q How many hours a day do you work approximately?

A I work 16 hours a day.

Q So you're gone from home a lot?

A Yeah. I leave in the morning at 4:30. I don't go to that home. I go to [redacted] Community Circle. I get off usually at eleven o'clock and I come -- and I go to [redacted] Community Circle.

Q So that's what I'm saying. You're at work. You work a lot.

A Yes, ma'am.

Q You're not at that home or any home. So you're at work so you don't know who's coming or going?

A I work 16 hours a day. I'm not physically at [redacted], but I know my house is secure because I locks it up.

Q Yes, ma'am.

(Video played.)

BY MS. LESKANIC:

Q So you -- actually you said, I didn't see him there at the house on Saturday, correct?

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A On Saturday?
Q Yes, ma'am. Because the balloons in the back, you all were having a going away party for Pierre because he's in the military and your son did no show up for that on Saturday when you were at this house.
A Right.
Q Right. So you were in this house --
A Saturday we had a going away party for Pierre, yeah.
Q And so the last time you saw your son was Thursday, is what you told police?
A Well, if I seen him on Thursday, I don't remember because I work two jobs. I work --
Q I'm just asking: Is that what you told police?
A Well, that's what it said I said, Thursday. But I couldn't have seen his Thursday because I work two jobs. I couldn't have seen him Thursday. And if I say that, I did. There ain't no way I could have seen him Thursday, because, ma'am, I work two days. I might have did say I seen him Thursday, but I don't remember seeing him Thursday because I work two jobs.
Q All right. And you say that you were still with Mr. Good?
A Uh-huh. Because Jeff and Pierre was friends,

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ma'am, if you didn't know that.

(Video played.)

BY MS. LESKANIC:

Q So I believe you just said that when you all broke up you moved back into this house?

A No. When we broke up? We wasn't broke up. We wasn't broke up. We had broke up that night. We got into that night. We had got into it that night and I came back to my house.

Q I understand. You told the officer you moved back into that house.

A I said, when the occupants -- when the occupants left, I took control back over my house, ma'am. I never physically moved back into the house.

Q Okay.

(Video played.)

THE WITNESS: I moved back home, yeah. I moved back into my house after the occupants left. Yeah. But I physically didn't stay there. I took back ownership of it because they weren't staying there. They weren't staying there no longer, ma'am.

BY MS. LESKANIC:

Q You're talking about you and your boyfriend having

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problems and then moved back home.
A We was having problems? That night, we did. We did have a problem that night. We did. That's why I was there. We did. But it was my house, ma'am. So, therefore, I could come and go to that house when I please. And I go to my boyfriend's house. I mean, is that a crime?
Q So you weren't talking to Pierre during this time, dating Pierre?
A Sleeping with Pierre?
Q No, ma'am. I'm not insinuating whether you were sleeping with him. I said dating.
A I said him and Jeffrey was friends. We all was friends.
(Video played.)
BY MS. LESKANIC:
Q You just started talking to him a couple months back?
A I started talking to him, yes, because we started communicating. Yes, ma'am.
Q All right. Did you tell officers that you throw junk into the first bedroom on right, and explained that you couldn't tell them what's in the last bedroom and how Bryson sleeps like a savage?
A Ma'am?

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Q You're saying you didn't say that?
A Ma'am, when I -- the junk that was in the room, it was our cousin's junk. I put it in the first bedroom and I put it in the second bedroom.
You're asking me to testify to something that I -- you know, you're making feel like I'm on trial, putting my personal life up and everything. But we here because of something with Bryson that you all want me to say, but I can't say. I can't physically say it, ma'am. I'm sorry.
Q No, ma'am. I'm just asking you questions based on what you told law enforcement.
A You asking me about my personal life.
THE COURT: Ma'am, excuse me. You just answer the questions.
THE WITNESS: Okay. Yes, sir.
THE COURT: Solicitor.
MS. LESKANIC: Thank you, Your Honor.
(Video played.)
BY MS. LESKANIC:
Q Is that when you said, I don't know you're in here sleeping like a savage?
A I wouldn't have him sleeping like a savage, yes, ma'am.
Q I'm sorry?

A I wouldn't have him in there sleeping like a savage. Yes, ma'am.
Q But you said -- that you say, why are you in here sleeping like a savage.
A I said, I would not have him in here sleeping like a savage.
Q Okay. If the jury wants to hear that again, they'll have an opportunity.

Now, when Captain Anthony arrived with the search warrant and asked where his room was, Bryson's room was, isn't it true you told them last room on the right-hand side?
A I don't remember that, no, ma'am.
Q Is that Pierre?
A It is it okay if I get down?
Q Yes, ma'am. Please watch your step.
A Yes, ma'am, that's him.
Q That's not Mr. Good?
A No, ma'am.

(Video played.)

Q So Captain Anthony asked, where is his room, and you said, last one on the right-hand side; is that correct?
A I heard me saying the last room. I never heard him say was that Bryson's room.

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Q He said, where is his room?
A Could you replay it again? I didn't hear that, ma'am.

(Video played.)

THE WITNESS: It seems like I had said -- they asked me about the -- the officer said something about a room, and I said on the left-hand side. I might have did. But I don't remember him asking me is that Bryson's room. I never heard that part.

BY MS. LESKANIC:

Q Okay. But the room on the left-hand side was your room. The room on the right-hand side was Bryson's room?
A Well, I couldn't say that because nobody stayed there like that. You asked me, was it one room on the left-hand side that was fixed up, yes, ma'am, it was.
Q You told the jury that you had moved out of this house and that you had an argument with your boyfriend, Mr. Good, the night before officers came to the home, correct?
A No, I never said -- I'm sorry. Go ahead.
Q Did you testify that you had an argument with Mr. Good and so you came back to this residence on

Maplewood the night before officers arrived?
A Yes, ma'am, I did say that.
Q And then I asked you about the balloons --
A Right.
Q -- and all of a sudden, we're back at the house on Saturday having a party for Pierre; is that correct?
A Yes, ma'am.
Q And Mr. Good and Pierre are supposedly friends.
A Yes, ma'am.
Q But we're going to have the party at the home where no one lives?
A We had that down at my house. We didn't have it at -- we had it at my house, yes, ma'am, that Saturday.
Q The party was at your house?
A At [redacted], yes, ma'am.
Q Yes, ma'am. And you originally told this jury that you were at the home with Mr. Good. That's what you testified to when Mr. Schultz asked you who was at the house, and that's not true. You were at the house with Pierre.
A Ma'am?
Q Is that correct?
A At that time, Pierre was there. Yes, ma'am, he was. But Mr. Good was there. He was.

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Q You told the officers that you're son had a key to the house, correct?
A I don't remember that.
Q We played that portion.
A I don't remember hearing that. I said he physically had a key to my house.
Q You don't remember hearing that when we just played it for the jury?
A No, I didn't. Unh-uh.
Q I know Bryson is your son, correct?
A Yes, ma'am.
Q And I'm sure you care about him very much.
A I care about all my kids, very, very much.
Q Have you talked to him about this case?
A About -- we had -- on the phone, yeah, we have.
Q Okay.
A Because I'm the only one that he can tell when it first happened, yes, ma'am.
Q Okay. And have you spoken with his lawyer about this case?
A No. I mean, I did hire his lawyer. But have I talked to him about it, I don't know nothing about it myself.
Q You never spoke with Mr. Schultz about this case

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before?
A Oh, yeah, when I was -- not about -- the drugs?
Q About this case.
A What you mean talk to him? I had to if I hired him.
Q Okay. Is that the only time you've spoken with him about the case?
A I spoke to him plenty of times about the case because I am Bryson's only -- I had to hire a lawyer for Bryson.
Q Now, did you tell -- you testified to the jury that you had a cousin who was renting the house?
A Tamia, yes, ma'am.
Q And do you know how to get in touch with Tamia?
A No, ma'am. I hadn't no contact with her every since I didn't get no rent from her.
Q And you said that you had to kick her out of the home?
A Yeah, I put her out. Yes, ma'am.
Q Is it true that you told police that you had rented the house out for five years, but you moved back home when their lease was up?
A Right. I came back to the house. I got physical custody of it, yes, ma'am.

Q When the lease was up. Not when somebody failed to pay rent and you had to kick them out.
A Well, lease, kick them out, all the same, ma'am.
Q Well, if you evict someone, you can get your property. If I wait for their lease to be up, then you wait for their lease to be up. I'm just saying it sounds like you told the jury one thing and officers another.
A Well, evict -- I couldn't evict them. When I kicked her out, I told her, if you don't give me my rent, you get out. When she had left, I came and changed my locks to my doors and I haven't had no more --
Q Why couldn't you evict her?
A Because I ain't never came to, like, the courthouse to try to get a --
Q So you could have evicted her. You just didn't take the necessary steps to do it.
A I just didn't -- like, I didn't go to court to try to get in there. I just told her she can come live at the house if she paid me rent. And I never came to the courthouse to try to get her evicted, because I did it myself. I just told her to get out.

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Q Did you go in in the middle of the night and just grab her and throw her out?
A No, ma'am.
Q Okay.
A She left and went back to D.C.
Q So she left, kind of, on her own terms. You told her she needed to leave, but then she left?
A No. The last conversation I had with her, I told her, I said, if you don't give me my rent, I'm kicking you out. She kept saying, I'm going to give you -- she's going to give me the money for the rent. She went back home to DC to visit her mom. When she came back, I had already changed the locks on the doors. I already changed all the locks.
Q And you don't have a phone number, an address, or anything for this family member of yours?
A Not no more. I hadn't talked to her for probably about two months before I had kicked her out. And had I talked to her since all this happen, no, ma'am, I haven't.
Q Did you tell police, "I don't condone what he does. I tried to raise him the best I could," referring to Bryson?
A I don't condone no drugs in my house.

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Because if I'm ever there and his kids are there with me that means they putting me in jail. I don't condone no drugs. If I knew drugs was in my house, I would have -- I would have got them. I would have got rid of them. I don't do that. I don't do that. No. I don't believe in that.

Q So that's true, you did tell police that you don't condone what he does, you tried to raise him the best you could.

A A lot of things that he do, I don't --

THE COURT: Ma'am, I'm going to ask you again. Answer the question yes or no, and then you can explain. She's asking you a straight question.

THE WITNESS: Go ahead, ma'am. I'm sorry.

BY MS. LESKANIC:

Q Did you tell officers, "I don't condone what he does. I tried to raise him the best I could?"

A Yeah, I don't condone what he does.

Q So is that a yes, that that's what you said? Or I can go back to the video. I'm just asking if that's what you said.

A Do I condone some of the things?

Q No, ma'am. Just did you tell that to police?

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A Yeah. Yes, ma'am, I did.
Q Thank you.
A I don't condone some of the things he do. Some things he do good, some things he do wrong.
Q And you don't allow smoking in your house, right, or do you?
A I don't allow smoking around me.
Q Okay.
A I can't say around in the house because I don't condone smoking around me because I have chronic asthma. I don't condone smoking around me, no, ma'am.
Q And you said that as far as that back room, you don't let your grandkids go in that back room, the back room on the right; is that correct?
A The one on the right -- ma'am, my grandkids are little grandkids. They can't even walk. They weren't even walking a year ago. The only grandson that went in that bedroom that night, that Friday, was my oldest grandson. And he played football, and he went and took his shoes in that room. To play in that room, no, because it was a junk room.
Q I'm not talking about the junk room, the first one on the right. I'm talking about Bryson's bedroom, the

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last bedroom on the right.
A There was two rooms -- there was two rooms in there that was junk rooms. The first one and the second one.
Q Right. The first room you referred to with officers, the first bedroom is where you throw the junk. And then for the second bedroom where the drugs were found and Bryson's mail, I can't tell you what's in that room, and then that's when you referred to him sleeping like a savage because the bed wasn't on a bed frame.

And you did tell officers that you had moved back into this home.
A Ma'am, when you say move back into the home, do you mean physically move back into it, I'm staying there every might, or I took back ownership of the home because I had moved her out?
Q I'm using your words that you told officers you moved back into the home because you and your boyfriend had a falling out, and you had been talking to Pierre for about two months.
A Ma'am -- okay. When I say move back into the home that means, I was taking ownership back of my hour because I had moved her out. Maybe your version and my version is two different things.

Q Just in the kitchen, I see pots and pans, clearly cooking and using the home. Very neat and clean. You keep a very nice home.

A Yeah, because it was our home. I mean, I had all that stuff there when she stayed there. I never got rid of none of my furniture. The only thing she brought in there was her bedroom suite. My furniture stayed there. I still had the light bill in my name. Everything was still in my name.

Q You said that you went into Bryson's room on the Friday -- on Friday?

A No, I went into there that Monday. I went in there Monday.

Q Did you see when you went in on Monday the yellow tray with the marijuana residue and the scale on the floor?

A No, ma'am.

Q And the cigarettes. There's a photograph.

MR. SMITH: I'll have this marked State's Exhibit 47.

(STATE EXH. 47, Photo, was marked for identification.)

BY MS. LESKANIC:

Q So let me just make sure, on Saturday, you had a

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party at the house?
A Right.
Q Okay. And then on Monday, you went in to get cleats or put -- to get cleats on Monday?
A Yes, ma'am. Monday morning.
Q And on Monday morning, did you see a yellow tray with a bag of marijuana, a set of scales on the floor -- did you see that on the bed?
A No, ma'am, I didn't.
Q Okay. And how about smoke -- some sort of cigarettes in that bedroom as well?
A No, ma'am.
Q I'll show you just, so you can look at it and be sure, State's Exhibit 17.
A This is the tray they brought out. I didn't -- I don't know when they got it, but he said it was in that room. I didn't see that when I went in there to get the cleats.
Q So on Monday that wasn't there?
A I didn't see it. When I went into the room, I just got the cleats off the floor and came back out.
Q And how about the cigarettes there on the table, because you don't allow smoking when you're there?
A I didn't see them when I was there. I

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physically go in the room. I opened the door and I got the cleats out. That's it.

Q So now you didn't go into the room?

A I went in there -- I opened the door. I had to go -- because he had them right there in front of -- right there. I had to physically -- I didn't just reach in there and get the cleats, ma'am. I did go right there. You know, to look around in the room, I didn't do that. That looks like that's against the wall somewhere.

Q Yes, ma'am. But it's in that room.

A Oh, okay.

Q And when you went in there on Monday, you didn't see any of this?

A I didn't, no.

Q Now, was this Monday the same day the officers came?

A It was Monday morning, yes, ma'am, because my grandbaby had a football practice.

Q So the Monday morning before -- who stayed with you Sunday night?

A Nobody stayed with me Sunday night.

Q Well, how did your grandbaby --

A He called me on the phone. He called me and said he had -- his cleats was over there. He came

there that Friday. He came there that Friday. I had seen him that Friday because I had picked him up from football practice and he wanted to come and spend the night with me. When he came, he kicked his shoes in the room. I told him to take his shoes in the room, he did. We left and went up to Jeff's house that Friday and spent the night over there. I took him home.

That Monday he called me and told me could I bring him his cleats, and I took them to him at his mama's house and we went to football practice.

Q So let me make sure I got your testimony right now. On Friday, you're at this house that you don't live at.

A Right, because we was having a party that Saturday.

Q So Friday your grandson comes over --

A I picked him up. I picked him up from home and we came down to the house.

Q Okay. So came down to your house.

A Uh-huh.

Q All right. And then you all left and went to spend the night with --

A Jeff.

Q Jeff.

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A Uh-huh.
Q Even though you told officers you were on the outs with Jeff and had moved back home?
A He said we fell out that Saturday -- that Sunday night, ma'am. That's what I said. I said we got into it that Sunday night. I came home that Sunday. I said we got into it that Sunday.
Q Okay. So Friday, he drops the cleats off.
A No. We came back to my house Friday. We had planned to have party that Saturday for Pierre. My grandbaby came home. He came to my house. I told him to put his cleats in that bedroom because they had an odor. He put them in there.

Monday morning he called me, asked me could I bring his cleats, and I went in the room and got the cleats and took them to him.

Q You told officers you never let your grandchildren go into that room and that you never go into that room. That's what you told the officers.
A Ma'am, he went in -- I told him to take his cleats and put them in the room. Is throwing them in the room -- is throwing shoes in a room the same thing as physically going in a room and sitting down and looking at TV?

I said he went in -- I told him to take his

cleats in that room because his cleats was having an odor and I told him to put the cleats in the room. I never said he went in there to watch TV and lay down there. I told him to take the shoes and put them in that room.

Q Okay. And that was Friday?

A That was Friday.

Q And then Saturday we have a party.

A Yes, ma'am.

Q At this house?

A Uh-huh.

Q For Pierre.

A Yes, ma'am.

Q Okay. And then on Sunday, I don't know. On Monday morning, you go into Bryson's room to get the cleats and you do not see or smell the marijuana, the cigarettes, you don't see digital scales on the floor, none of that is in the room Monday morning.

A No, ma'am.

Q Is that your testimony to this jury?

A Ma'am, I never seen any of that in that room. When I went in there to get the cleats, I got the cleats and went back out of the room. I never seen that in there. No, ma'am, I didn't.

Q Who rented the house?

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A My cousin Tamia Smith.
Q And who else?
A Her boyfriend, Chad.
Q What's his last name?
A I don't even know his last name. I only met him once, and she brought him down from D.C.
Q Did they have a baby or anything with them, or just the two of them?
A No. No, it was just those two. The baby stuff was stuff that we had bought for my grandbaby because Bryson has two -- well, he's one-year-old now. He has two kids. So the stuff that was -- the baby stuff was in the room that I put in there.
Q So the baby stuff that was in the room was for Bryson's baby. Bryson's baby stuff was in Bryson's room.
A The stuff that was in the room of the baby's was stuff that I bought.
Q I'm just asking if the stuff for the baby was for Bryson's baby?
A Was it for Bryson's baby? Yeah, it was Bryson's baby because I kept the kids, my grandkids.
Q Thank you very much.

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A Thank you.

MR. SCHULTZ: Just a couple questions, Judge. Can I take off my face mask?

THE COURT: Yes.

REDIRECT EXAMINATION

BY MR. SCHULTZ:

Q On August 12th, you allowed the police to come into your house.

A Yes, sir, I did.

Q Okay. And you own that house?

A Yes, sir, I do.

Q Okay. [redacted] Maplewood Drive, right?

A Yes, sir.

Q And you correct me if I'm wrong. [redacted] Maplewood Drive you own, right?

A Yes, sir, I own it.

Q Okay. You also own a house at [redacted] Community Circle?

A I live there, yes, sir. I live there with my boyfriend.

Q Okay.

A [redacted].

Q [redacted].

A Uh-huh.

Q Do you rent that or do you own that?

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A He own that.
Q Okay.
A He own that house.
Q Thank you.
Let's go back to August 12th when you were talking to the police, I'm not even going to attempt to play that again. But I will say, when you were talking to the police, were you nervous when you were talking to the police?
A I had no reason to lie to them. I mean --
Q I'm not asking you that. I'm just saying, there were three, four police there -- let me finish.
A Okay.
Q Were you nervous talking to the police?
A Of course. When you see six or seven polices come into your house and -- of course, anybody get nervous. And then when they said there was drugs in my house, of course. I mean, anybody would get nervous because they said they found drugs in my house. I mean, yeah, of course, anybody that ever seen police, of course, they going to be nervous.
Q Now, you were never charged with anything, right?
A No, sir.

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Q But you didn't know that at that point, did you?
A Did I know what now?
Q You didn't know if you were in trouble at that point, did you?
A No, sir, I didn't.
Q So you had, your testimony, four, five, six police peppering you with questions from every directions, right?
A Yes, sir.
Q Okay.
A They asked me questions.
Q And again, I know this has been asked and answered, but that caused you, I believe --
MS. LESKANIC: Objection; leading.
THE COURT: Rephrase the question.
BY MR. SCHULTZ:
Q Did it cause you a lot of stress to be questioned by the police?
A Of course it would. Of course it did.
Q Especially a lot of police. Yes or no?
A Yes.
Q Thank you.
You did say, and I just want to clarify this, "I don't even go in that room," on that tape, right?
A Yeah. When she played it, it said that I

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said I don't go in that room.
Q I will say this as well, this was a long time ago, correct?
A Yes, sir. It was in 2019.
Q 2019. And last summer so much has happened in the meantime, right?
MS. LESKANIC: Objection; leading.
THE COURT: You can't lead. You're on redirect.
BY MR. SCHULTZ:
Q This was 16 months ago, right?
A Yes, sir.
Q It's a fair amount of time, wouldn't you say?
A Yes, sir.
Q All right. So your memory of that time?
MS. LESKANIC: Objection.
THE COURT: Same objection. Sustained.
BY MR. SCHULTZ:
Q Is your memory as clear then as it is now?
A No, because a lot of things I don't remember.
Q Thank you.
When the officer said to you, do you have -- does Bryson have a key to the house, did you clearly hear them what they said.

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A No, sir, I didn't.
Q Because he doesn't have the key to the house, right?
A No, he didn't.
Q Another clarification question: Who was the man sitting next to you on the couch?
A It's Pierre.
Q Pierre, okay. Pierre was there when the police were conducting the search, correct?
A Yes, sir, he was.
Q Okay. Was there another person there?
A Jeff had been there. Yes, sir, he had.
Q Had been there.
A Yeah.
Q But, frankly, I'm confused, and I want to ask this question.
A Okay.
Q Was Pierre and you there when the police conducted the search?
A Yes, we both was there. Yes, sir. Pierre and me.
Q Was Good there as well, or did he leave?
A He had came there and he left.
Q He left.
A Yes.

Q So by the time the police had done the search, it was just you and Pierre, correct?
A Yes, sir.
Q And Pierre was sitting next to you on the couch?
A Yes, sir.
Q Okay. And in August of 2019, how would you describe the relationship to the jury between you and Pierre?
A We friends. Just we friends.
Q Okay. What about the relationship with you and Mr. Good?
A We are boyfriend and girlfriend.
Q Okay. All right.

Who were you referring to "sleeping like a savage?"

A I was referring to -- because that's the way that room was looking, like a savage. It was looking like -- look how everything was.
Q So you weren't referring to Bryson or anybody else?
A No, sir. Because I'm the one that put that stuff in the room. I'm the one that put the stuff in the first bedroom and the second bedroom.
Q OKay. I don't want to put words in your mouth.
A No.

Q Okay. So you're just generally saying, you don't want anybody being in there sleeping like a savage.
A Exactly. Because you could tell by the first bedroom how neat it was. That first bedroom -- the second bedroom on the right-hand side, that's where I had stored the stuff of the people that rent there. That's why the room looked like that. Because if I was physically living there, them two bedrooms, if you see how my house looked, you would knew that I would have physically had that bedroom fixed up and that second bedroom fixed up. But I didn't because it was storage for my cousin's stuff that I had in the first bedroom and the bedroom.

I would have never had my other bedrooms looking like that. I would never.

Q Where was Bryson living at the time?
A He was with his baby-mama. He was living with his baby-mama.
Q Did you know where that was?
A Yes, sir.
Q Where?
A I knew she was living in some apartments, uh-huh.
Q But, clearly, he wasn't living with you --

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A No.
Q Let my finish the question.
A Okay.
Q Was he living with you at the time on August 12, 2019? Yes or no?
A No, he wasn't.
Q Thank you.

MR. SCHULTZ: That's all I have.

THE COURT: Thank you.

Yes, ma'am, briefly.

MS. LESKANIC: Briefly, Your Honor.

RECROSS-EXAMINATION

BY MS. LESKANIC:

Q Now, we have the entire video. Do you believe it's an accurate description that Mr. Schultz gave that you were being peppered with questions from all directions from these officers?
A I'm saying they was asking me questions and I was answering them.
Q And there were, I believe, three officers, Captain Painter, there was the female and there was another male.
A No. In the house, it was two -- a woman, a black police officer, and it was four -- four or five other, like, officers. I don't even know who

Officer Painter is.
Q Captain Painter. He was the main one that you were talking to that we actually played his body cam when you were talking with him.
A I never -- they never -- I never knew him.
Q But it was three of them that were in the room with you while they were waiting for the search warrant; is that correct?
A All I know is, there was some police officers in the living room with me.
Q Okay.
A Do I remember how many was in there, no, ma'am. I do know it was a woman, a black man, and I know there was -- I honestly had to meet the other officer because he was asking me questions. I know some two or three officers down the hallway.
Q Did they ever act like the drugs were yours?
A No, they never act -- no.
Q Did they ever put you in handcuffs?
A No, ma'am, they didn't.
Q Did they ever ask you questions about whether the drugs were yours or where you got them from or anything like that?
A They never asked me whose drugs it was.

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Q But they asked you whose room it was and you told them it was Bryson's room?
A If I said that, I don't remember.
Q Okay.
A I remember them asking --
Q But at no time did they handcuff you or take you down to the station to interrogate you?
A No, ma'am, they didn't.
Q All right. In fact, they apologized that you couldn't go to bed because you weren't going to work that day because they had to wait on a search warrant.
A No, that question never came up.
Q Not a question. But they said they were sorry it was taking so long, but they needed to follow protocol and get a search warrant.
A No, ma'am, they never said that me.
Q Did you say -- did you give them consent to search that room and they said, no, we need to get a search warrant because it's Bryson's room?
A No, ma'am. When they first came into the house -- when they first came into the house, they wanted to see was Bryson there. I told them to come in. When they went in the bedroom and got that yellow tray that's when they said they were getting a search warrant. I remember that. I can

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say that's what they said.
Q And you said that you understood.
A Yeah. I mean, I didn't care about them going and getting a search warrant. I didn't, because I had nothing to hide. I never knew those drugs was in the house.
Q And you had a very pleasant conversation with the officers, actually shook hands when they left.
A No, I never shook hands when they left.
Q Let me just ask you this: Did you have any problems with the officers while they were there?
A No.
Q Did you get along well?
A I mean, they didn't never, like, talk mean to me.
Q Okay. So they weren't peppering you with questions, just one after the other, asking you questions. They were waiting on a search warrant.
A Well, when they went to get -- I mean, the questions was asked when, I think, before got the search warrant or whatever. They brought the thing -- the yellow thing out of there. I mean, they was asking me questions. Yes, ma'am, they was.
Q Okay.

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A I mean, they was asking me questions, and, obviously, I was answering them because it was on the video.
Q Okay. And the reason that you told the officers that Bryson had a key to your home is because you didn't hear the question?
A I don't even remember that question.
Q Right. You told Mr. Schultz that since you said that he had a key, the reason you said that is because you didn't hear the question; is that right?
A I didn't hear the question on there. I didn't.
Q No, not on there. I think he was asking you if you told the officers he had a key because you didn't hear the officers when they said it. I'm just trying to see if that makes sense.
A I didn't hear the officer ask me did he have a key. No, ma'am, I didn't.
Q So you just answered yes and you didn't even know what you had been asked?
A I didn't even remember hearing anything about a key. I'm being honest.
Q But it's on video.
A When you played that, I never heard that. That's what I'm telling you, I never heard the

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word key. When you played it, I didn't hear that.
Q Okay. And you told Mr. Schultz that your memory is not clearer today than it was on August 12th when that video recording was made. That's what you testified to, is that correct, that your memory today is not clearer than it was at that date that this happened?
A Ma'am --
Q Just -- if you'll just -- is that what you told Mr. Schultz?
A Yeah, I haven't even thought about it. I haven't thought about that day a year ago until you all subpoenaed me and asked me about the questions. That's the only thing that was recollected that I even remember about this stuff, when you all asked me about it.
Q I'm just clarifying that your memory on August the 12th when the video was made was clearer than your memory is today?
A No.
Q No? Okay. So what you told Mr. Schultz was not true?
A What I told -- what I told Mr. Schultz is that I recall 16 months ago. I don't even remember half the stuff that I said back then. I

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don't. Some of the questions that you asked me did I say, I don't remember. I don't.

Q But you would have known them at the time. It's harder to recall -- I understand it's harder to recall now. But on that day, it was that day. So it was fresh in your mind as to what you told officers, is that a fair statement?

A Some things is and some things are not.

Q Okay.

A That's all I can say, ma'am.

Q Thank you.

THE COURT: Thank you. Ma'am, you may step down. Please be careful.

Madame Forelady, Ladies and Gentlemen, we've actually gone past about 15 minutes. In fact, we've been in the courtroom since 1:15, so that's two hours for us. We're going to take our afternoon break, 15-minute break. I think someone needed to smoke earlier. If you need to do that, we'll have to escort you out the back of the courthouse. It's not allowed in a government buildings.

Don't talk about the case. It's not at an end. This is the afternoon break. If you need some water or snack, or whatever they've got back

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there. If you need something, let us know.

Mr. Bailiff, if you'll take them back.

(Jury exits the courtroom at 3:15 p.m.)

THE COURT: Take about 15 minutes.

(A break was taken from 3:15 to 3:35 p.m.)

THE COURT: Ready for the jury?

MR. SCHULTZ: Yes, sir.

THE COURT: We'll have the jury.

Everybody Good, Madame Forelady?

FOREPERSON: Yes, sir.

THE COURT: Mr. Schultz.

MR. SCHULTZ: May it please the Court?

THE COURT: Yes, sir.

MR. SCHULTZ: The defense calls Tameka Shippy.

THE CLERK: Raise your right hand. Place your left on the Bible. Do you solemnly swear or affirm the testimony you give this Court will be the truth, the whole truth, and nothing but the truth so help you God?

THE WITNESS: I do.

THE COURT: Ma'am, if you will tell us who you are and spell your last name, please.

THE WITNESS: My name Tameka Shippy, S-h-i-p-p-y.

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THE COURT: Thank you, ma'am.

Mr. Schultz.

WHEREUPON:

TAMEKA SHIPPY,

after having been sworn, testified as follows:

DIRECT EXAMINATION

BY MR. SCHULTZ:

Q Miss Shippy, how old are you?

A Thirty.

Q Thirty. And do you know my client, Bryson Smith?

A Yes, sir, I do.

Q How do you know him?

A He is the father my children.

Q All right. And are you currently still -- are you boyfriend and girlfriend?

A Yes.

Q Back in August of 2019, did you know him?

A Yes.

Q All right. And how did you know him? When did you get to know Bryson?

A I met Bryson in 2014.

Q And have you been with him ever since?

A Yes.

Q Okay. And where were you living in 2019?

A [redacted] West Beaufort Street.
Q [redacted] West Beaufort Street?
A Yes.
Q All right. And that's in Gaffney, correct?
A Yes, it is.
Q All right. How long have you lived there for?
A We had just moved there. We were there for four months. But before we lived there, we lived together in another location.
Q All right. When you say "we," whom do you mean?
A Me and Bryson.
Q All right. And how long did Bryson live with you at [redacted] West Beaufort Street?
A It was four months there.
Q Okay. And -- could you describe what [redacted] West Beaufort Street is? Is it a house, is it a double-wide, is it an apartment?
A It's apartment complex. It was brand new when we moved there.
Q Okay.

MR. SCHULTZ: Beg the Court's patience.

THE COURT: Yes, sir.

BY MR. SCHULTZ:

Q And you're sure -- you're positive in August 2019 that Bryson Smith was living with you in your

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apartment?
A Yes, I'm positive.
Q Thank you.
MR. SCHULTZ: That's all I have. Please answer any questions Miss Leskanic has.

CROSS-EXAMINATION

BY MS. LESKANIC:
Q Good afternoon, Miss Shippy.
A Good afternoon.
Q Were you with Bryson at all times?
A What do you mean by that?
Q I mean, did you all go everywhere together 24 hours a day? Were you always with him?
A Around this time period, I was pregnant. I had a very high risk pregnancy. Bryson was with me almost all the time. He was at our home all of the time.
Q All the time? He never left your house?
A If he left, we probably left together.
Q So, on August 10th, you all would have been together all day?
A I can't recollect that time, but we were together every day.
Q Okay. August 11th, you would have been together all day?

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A Probably most of the day.
Q Most of the day?
A Yes.
Q And on the 12th, when they drugs were found, you all were together all day?
A On the 12th, I don't think I was with him that morning. No.
Q Okay. So there were times that you weren't with him?
A It was very unlikely.
Q Okay. Who rented the apartment? Whose name was the lease in?
A That lease, both of our names were on that lease.
Q Okay. And who actually paid the rent?
A I paid the rent.
Q Okay. Was Bryson working at the time?
A No, he wasn't.
Q Okay.

All right. And you all had been living there for four months.

A Yes, they had just opened for four months.
Q Where did you all live together prior to that?
A In Grace & Vine.
Q Okay. Now, were you working?

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A I was out on disability because of my high risk pregnancy.
Q All right. Did you and Bryson both have a vehicle? Did you share a vehicle?
A I had a vehicle.
Q Okay. And did he have a vehicle?
A No, he didn't. Not one that was running.
Q What about the Mustang?
A That was not his vehicle. That was his mother's vehicle.
Q But he had access to it?
A I'm not sure.
Q Okay. But you know that vehicle?
A I know it as his mother's vehicle.
Q Okay. So you know his mom?
A Yes, I know his mother. That's my kids' grandmother.
Q Okay. So it's your kids' items that are in the bedroom in the house on Maplewood Drive?
A Yes, she bought my kids items.
Q Okay. Well, are you aware that Bryson would drive the Mustang?
A She probably let him borrow it sometimes, yeah.
Q Okay. And those times, you weren't with him?

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A Yes, I've been with him when he's borrowed her car. He's actually taken me to doctor's appointments in her car.
Q Okay. I guess I'm asking, was there ever a time that you went somewhere without Bryson or Bryson went somewhere without you?
A Around this time period, ma'am, it this very unlikely, because, like I said, my pregnancy was very high risk. I had pre-eclampsia. I needed someone with me almost all the time, and he was with me. He stayed at our home every day.
Q Okay. So, all day. On August the 10th, he would have been home all day?
A I can't go back to that day. That was over a year ago.
Q I understand. But I'm just saying, if you say "around this time," that's -- I just want to confirm that you can say that. If we're going to make a general statement that he's with you all the time, then I'm going to specify and say, okay, on August 10th, was he with you all day at your home?
A Well, he was there every day. I can't tell you he was there the whole day because I do not remember that day exactly because it was so long ago.

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Q Okay. How about August the 11th?

MR. SCHULTZ: Objection, Your Honor. Asked and answered.

THE COURT: Go ahead. Overruled. Go ahead.

THE WITNESS: I'm sorry. What are you asking?

BY MS. LESKANIC:

Q If he was home with you all day on August 11th.

A I do not remember August the 11th of 2019, but he was at our home every day.

Q All right. Thank you.

THE COURT: Anything?

MR. SCHULTZ: That's all I have, Judge.

THE COURT: Ma'am, you may step down. Please be careful.

Mr. Schultz.

MR. SCHULTZ: Your Honor, I would seek permission for my witness to be excused at this point.

THE COURT: Any objection?

MR. KENDALL: No, Your Honor.

THE COURT: Ma'am, you are excused from your subpoena. You may stay or you may leave, whichever you choose.

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MR. SCHULTZ: Thank you, Judge.

THE COURT: Mr. Schultz.

MR. SCHULTZ: At this time, the defense rests.

THE COURT: Is there going to be anything from the State?

MR. KENDALL: Nothing from the State, Your Honor.

THE COURT: Okay. Madame Forelady, Ladies and Gentlemen of the Jury, let me tell you what has happened. The defense has now rested its case, meaning the defense is not going to offer another witness, another picture, another exhibit of any sort. They're through. They rested. The State rested earlier. The State would have an opportunity to respond, if they so choose. That's why I asked about that. They are not going put up anybody else either, okay, in rely or response. Which means, you now have before you all of the evidence that's going to be put in this trial. There's nothing that can be put into evidence. This case, as far as the evidence goes, is now closed.

Okay. It takes about 90 minutes to close, the arguments from the lawyers and for me

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to argue you on the law in this case before it comes to you. Most of us judges do not -- it's a rule in a book somewhere, but most of us will not begin that process this late in the afternoon. After about 4:00 p.m., we just won't do that, because you will be 5:30, 5:40 getting the exhibits and documents to begin your deliberations. Okay? So we are going to stop a little early today.

I need you here at 9:00 tomorrow morning ready to work, as you were this morning. I appreciate that. And what will happen in the morning is that the lawyers will make their closing statements to you. First one, then the other, and then back to the State. And then I will stand up and I will charge the law. I will read the law to you as to these indictments. And then you will retire to your jury room to be begin your jury deliberations. It won't be back here. It's the room downstairs.

Isn't it, Brandy?

THE CLERK: Yes, sir.

THE COURT: The big one. That's the jury assembly room downstairs. You're going to use that as a jury deliberation room so you can social

distance and spread out down there. Okay?

So, tomorrow morning at 9:00, the process will begin; the arguments from the lawyers, I will charge you law, after which you will retire, all 14 of will go to that room. And I'll say this again tomorrow, when you leave the room here the lawyers are going to join my court reporter because all of these exhibits belong to you. They have stickers on them. And the lawyers are going to make sure that everything is there, nothing is missing.

And then my bailiff will bring that evidence to you, Madame Forelady.

And when he does so, Ladies, you alternates will leave the room. He'll bring the evidence to the jury room. And when he does, you two will leave, because it will only be proper for the 12 to be together at that point.

All right. Don't try to learn anything about this case. Don't do any research about this case. I don't know if there's any kind of anything in the news about it. But, if so, don't pay any attention to that until after the case ended.

With that, Madame Forelady, if you'll

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take your jury out and be excused for the day. I'll see everyone at nine o'clock in the morning.

(Jury exits the courtroom at 4:06 p.m.)

THE COURT: Okay. The jury is out of the courtroom now. Any matters from the State?

MR. KENDALL: No, sir, Your Honor.

THE COURT: From the defense?

MR. SCHULTZ: Your Honor, the State would move for directed verdict on all counts on the indictments.

THE COURT: The defense moves?

MR. SCHULTZ: The defense. Did I say State?

THE COURT: The defense.

MR. SCHULTZ: It's been a long day, Judge. The defense is moving for directed verdict on all counts.

THE COURT: Anything from the State?

MR. KENDALL: What is the basis for the motion?

MR. SCHULTZ: The basis for the motion is the testimony of the expert that testified yesterday on Wednesday. That was Miss McCormack who acknowledged or at least testified to the fact that the sum of the drugs that she tested were not

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tested completely. She took a sample of, for instance, one pill and then extrapolated out everything, and then she said it tested positive for a controlled substance.

So at the very least, Judge, we would -- if I could see the indictments right quick. Thank you, Judge.

So, Your Honor, I would move, respectfully, for a direct verdict on possession with intent to distribute Fentanyl and trafficking heroin at this time, Your Honor.

So not on all indictments, but at least possession with intent to distribute Fentanyl and trafficking heroin.

Thank you.

THE COURT: Solicitor.

MR. KENDALL: Your Honor, at this time, we look at the facts in the light most favorable to the jury -- the State. Excuse me.

All of these substances were packaged together. She took a sample of the packaged material and tested it. It came back positive for the aforementioned substance. I believe from that the jury can infer when things are packaged together, marked the same way, and contained in the same baggies

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and showing no visible signs of differentiation that they can be -- the jury could and should find that those are all the same pills.

I think the analogy -- this is no different than any other drug case. I don't think there's any sort of distinction that can be drawn. We don't test the entire pile of marijuana. That would consume the entire thing. You take a piece of it and do it. The fact these are in pill form doesn't change that analysis. It's the same as anything else. We have quantity of pills, packaged together, all marked the same way. She tested them and it came back for the aforementioned subject.

Because of that, I believe that we've met our burden of establishing that that's what the substance is. Certainly, Mr. Schultz can argue otherwise if he wants to.

I would also point out that in none of these did she find that it was not -- of the pills she did find in the bag, were cut. She's either the luckiest person on the planet where out of, you know, the 80-something of one, or 100 pills, you just happened to get the ones that had narcotics in them I think is extremely unlikely,

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so much so that I think it certainly established beyond a reasonable doubt.

THE COURT: All right. Well, the Court must view the motion in light most favorable to the non-moving party, which is the State of South Carolina. The Court does not weigh the evidence. The Court sends it to the finder of fact, which is the jury, if there is any evidence to support a jury question, and there is in this case.

So for that, the directed verdict motion as to the Fentanyl and to the heroin, Mr. --

MR. KENDALL: I'm sorry. Can I add one more thing just so the record is complete should it ever come up again, Your Honor?

I would also point out with regard to the PWIDs, there is additional evidence of an intent to distribute including him saying that he basically had them for sale on Facebook records. I think that would also, even without the weight, establish, independently, an intent to distribute.

THE COURT: The Court doesn't weigh the evidence. That evidence is weighed by the finder of fact, the jury.

So as to the two indictments, PWID

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Fentanyl and tracking heroin, those directed verdict motions are denied.

Do you have other motions?

MR. SCHULTZ: No, sir, Your Honor.

THE COURT: Okay. Anything further from either anyone?

MR. KENDALL: No, sir.

THE COURT: All right. Let's do this, we'll get off the record and let's have the lawyers go back here. I got the jury charge printed and let's talk about it just real quick here so that I don't have make any additions or subtractions or anything in the morning, and I'll be ready to go when everybody is ready to go.

So be ready at 9:00 in the morning and we'll kick this off right at 9:00 with clothing arguments. I'll have my charge ready to go, too.

MR. SCHULTZ: Yes, sir.

THE COURT: We are in recess.

(The trial was adjourned for the day at 4:11 p.m.)

CERTIFICATE OF REPORTER

I, SHARON G. HARDOON, Official Circuit Court Reporter, III for the State of South Carolina at Large, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in General Sessions for Cherokee County, Gaffney, South Carolina.

I do further certify that I am neither kin, counsel, nor interest to any party hereto.

May 3, 2021

_____
Sharon G. Hardoon, CSR
Official Circuit Court Reporter, II

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STATE OF SOUTH CAROLINA
IN GENERAL SESSIONS
COUNTY OF CHEROKEE

State of South Carolina,

Plaintiff,

vs.

Transcript of Record
2020-GS-11-01147,
2020-GS-11-01148,
2020-GS-11-01149,
2020-GS-11-01150,
2020-GS-11-01151

Bryson Jamar Smith,

Defendant.

November 6, 2020
Gaffney, South Carolina
Volume IV of IV

B E F O R E:

The HONORABLE R. KEITH KELLY

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

Kim Leskanic, Representing the State of South Carolina
Matt Kendall, Representing the State of South Carolina
Joshua Schultz, Representing the Defendant

SHARON G. HARDOON, CSR
Official Circuit Court Reporter, III

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THE BAILIFF: Remain seated. Come to order.

THE COURT: Thank you. Be seated. Good morning, everyone.

(Off the record.)

THE COURT: Anything for the record before I bring the jury in?

(Off the record.)

THE COURT: Bring the jury in.

(Jury enters the courtroom at 9:34 a.m.)

THE COURT: Good morning, Ladies and Gentlemen.

Madame Forelady, are we ready?

FOREPERSON: Yes, sir.

THE COURT: Are we ready?

MR. KENDALL: Yes, sir. May it please the Court?

THE COURT: Yes.

CLOSING STATEMENT

MR. KENDALL: Ladies and Gentlemen of the Jury, good morning. I thank you for coming here and your careful attention during the course of this trial.

At the beginning of this trial, I asked of you three things; you listen carefully to the

instructions of the Judge, you listen to all the evidence, and you use common sense.

In a few moments, the Judge is going to give you the final instructions on the law that will guide you and set the standards for your deliberations that you will need to apply in this case. I'd like to take a few seconds before going over the facts to discuss with you what State's position on the law is. Now, if I say something that conflicts with what the Judge says, please listen to the Judge. In the same way that you are the ultimate judges of fact, the Judge is the ultimate judge of the law. So, in short, if I say something that conflicts, he's right and I'm wrong.

The defendant in this case is charged with five separate indictments; PWID Fentanyl, possession with intent to distribute Fentanyl, possession with intent to distribute marijuana, possession with intent distribute cocaine, trafficking methamphetamine, and trafficking heroin.

I'd like to take a second about what these charges are and what we're going to -- the standards have been set up for you to guide the

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evidence you're looking at.

First, let's talk about the PWID offenses. Under South Carolina law, it is illegal to manufacture, distribute, dispense, deliver, purchase, aid, abet, attempt, or conspire to manufacture, distribute, deliver, purchase, intent to manufacture, distribute, disperse, deliver, or purchase a controlled substance or a controlled substance analog.

In addition, Ladies and Gentlemen, you are allowed in these cases to make what are called permissive presumptions. The law provides that for marijuana and cocaine, you may, but are not required to, find somebody guilty of PWID as to -- if you find them to be in possession of more than one gram of cocaine or 28 grams of marijuana, absent any other evidence to sell. Though, as we will discuss later in this case, there actually is additional evidence that Mr. Smith was intending to sell.

For narcotics statutes, it's the amount of drugs, rather than the criminal act that distinguishes this from PWID. In other words, this is no longer permissible inference. If the State has over -- if the defendant had over

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10 grams of methamphetamine or four grams of heroin, that's what makes it trafficking, not just something that could be trafficking.

Additionally, Ladies and Gentlemen, it's not necessary for the State to prove that the defendant knew precisely what kind of drug he was trafficking, only that he knew it was a controlled substance. It was an illegal drug.

Now, I'd like to speak generally to you all about the idea of possession, having something in one's possession. Generally, in cases like this, there are broadly two kinds of possession; actual possession and constructive possession.

Actual possession is when you have the substance on you. For example, you have drugs in your pocket.

Constructive possession, by contrast, is whether the defendant has the right to exercise dominion and control over the drugs. This can be established by direct evidence or circumstantial evidence. And when drugs are found on premises under the control of the defendant, this alone can give rise to an inference, which you can accept or reject as you see fit with the evidence, of someone's knowledge and possession.

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It's also important to note that the weight of the controlled substance includes not only what it would be in its purest form, but any compounds or mixtures. So we're not required to prove that each one of these pills had all heroin or had all Fentanyl. It can be any mixture that was within.

Now, with that in mind, Ladies and Gentlemen, I'd like take a few moments to discuss the evidence that was actually produced in this case.

Now, I know we put this case up and we were a bit out of order. We had drug analysts and Facebook people, and, for scheduling purposes, we sort of had to do it. But I'd, kind of, like to go through as it unfolded.

The first witness you heard from was Sergeant Fuller. Sergeant Fuller testified that he went to the address of Mr. Smith to attempt to serve a warrant. When he was met there, when he got there, he was met by a gentleman, and, ultimately, his mother who allowed him to enter the home. They went down the hallway, passing a room. It was basically a junk room. And he continued to enter into Bryson's room.

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After entering the room, he found a small bag of marijuana sitting on the bed. And, at that point, he backed out and executed a search warrant.

Law enforcement was then called to the scene, additional law enforcement officers. And you, Ladies and Gentlemen, were able to see the video of Lieutenant Dorsette as he executed that search of the home.

Now, Ladies and Gentlemen, that video is in evidence. If there's something on there that you would like to see, or you'd like to show it again, you can simply ask and we can play all or parts of that video as you find necessary.

But what we saw as we got inside the room, they conducted a search, took photographs, and found narcotics. In the room, they found a backpack containing narcotics both in a Coca-Cola cup, but also, in pairs of socks, is where he had his bagged marijuana. You also were able to see the other contents of the room; the men's clothing, the shoes, the bed, sheets and comforter that were on the bed. The bed wasn't a stripped down bed left for nothing. It was actually a made-up bed. You saw them locate the drugs, and,

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subsequently, turn these drugs over to Billy Anthony for further analysis.

They also found other things in the room connecting it Mr. Smith. They found mail in the room addressed to Bryson Smith at that address. They found a box addressed B. Smith at that address. They also found personal paperwork on the bed, under the comforter in that room of Mr. Smith's.

But in addition to the narcotics, Ladies and Gentlemen, they also found additional things consistent with these sales of narcotics. They found packaging materials. They found a package with the label ripped off, the last letter ending in H, as in Smith, and the last letter of the address ending in D, as would be -- or excuse me -- the last letter H as it Smith.

They found large quantities of drugs in pill form; beans, Percs. What they found there ultimately were pills and what were labeled as Percocets, the very drug that over Facebook he was discussing selling or distributing.

They also found large quantities of marijuana, scales out in plain view, clothing, men's clothing, and what is known as flex.

Now, flex, Ladies and Gentlemen, is important in this case because it helps separate a mere possession with an actual distribution. As the Lieutenant Dorsette testified, flex is what you use to basically water down your drugs so you can basically stretch them. Something that looks like the substance and stretches it on.

You also heard his testimony, Ladies and Gentlemen, of the value of these drugs. These drugs were worth thousands of dollars. This will become important later.

You also heard, once he collected these drugs, he subsequently turned them over to Billy Anthony, our evidence custodian who consolidated them and sent them to SLED for testing.

You also heard, Ladies and Gentlemen, from Josh Mata. Mr. Mata was a friend of Bryson's. He had picked him up at the house. He was able to identify the house from the picture. He also testified, Ladies and Gentlemen, that he was familiar with the account of Buddy Dawkins.

Buddy Dawkins, Ladies and Gentlemen, is actually Bryson Smith. He knew that because, when they had conversations, the person reacting on the

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other end to pick him up or whatever was Bryson Smith. When they had face chats, the person he was face chatting with. Buddy Dawkins, Ladies and Gentlemen, was just a fake name that Bryson Smith made up.

And why did he do that? Well, Ladies and Gentlemen, you also heard from Brandon Gardner, the person who had gotten these Facebook messages. You saw that the Facebook account in this case was actually tied to a Bryson Smith email address.

In the messages contained, which you will have in the jury room, Ladies and Gentlemen, he was offering, on August 9th, to get Percs or Percocet-type drugs and beans, which Officer Gardner later testified is Percocet and pills.

About a day after that, in those same things, he indicated -- or a day or two after that, he indicated that he had the Percs. And though he did not have any weed, he had people asking to about it, trying to get weed, a substance that Brandon Dorsette later indicated was pretty easy to get. People were asking for it. Suddenly it's found in his room.

He also used a fake name in this case,

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Ladies and Gentlemen, to conceal his identity.

After that, Ladies and Gentlemen, you heard some jail calls. Calls that were made by Mr. Smith. Now, I know they were very hard and that machine is somewhat difficult to work with, but if you need to hear those again, we can play those.

Now, let's talk about what he says. On one jail call he indicates that they went to his house and charged him with, expletive, he wasn't even there for. Not someone else's house, not the rental property, not mama's house I never go to, they went to his house. He's admitting, Ladies and Gentlemen, that it's his house, and he wasn't there when they came.

You also heard in those conversations, Ladies and Gentlemen, that he, basically, admits to being involved in narcotics, selling drugs. He just says he doesn't do them in front of his kids, which is certainly a good thing. It will be very important later when we talk about the testimony of his children's mother.

You also heard him admit that this was his Facebook page. Not only that, Ladies and Gentlemen, but he admitted that it was a fake

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name. How did they even know it was me. It's not my name.

Later, Ladies and Gentlemen, we heard from SLED analysts. I want to talk -- this was kind of confusing. We had two SLED analysts for the marijuana. We had, first, Alexis Fowler. Miss Fowler's job wasn't to do the ultimate marijuana test, as she testified. She was the technician. Her job was to open the packaging, do the initial test to see if this was something that was potentially marijuana and pass it off the Ashley Lyles, who took off -- or a small piece was taken off for testing. And then they subsequently did confirmatory testing to determine it was marijuana. Not just cannabis, well beyond the standard of what was required for simply cannabis but actual marijuana greatly exceeding the threshold standard.

They also weighed this substance, Ladies and Gentlemen, and found it to be 149 grams of marijuana.

You also heard with regard to the non-marijuana drugs that were found from Maribeth McCormack. She detailed the testings of the various types of drugs. You heard her explain

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not only what was in that packaging, but how it was labeled and -- how it was labeled, basically to look like other pills. What did she find after she did this testing and weighing, over two and a half grams of cocaine, well over 100 Fentanyl tablets, 7.78 grams of heroin, and 11.15 grams of methamphetamine.

More interesting though, Ladies and Gentlemen, is how these were marked. With some of the Fentanyl tablets, they appeared to be marked as one would mark Percocet if it was coming from a pharmacy. She was very clear that this had not been made by a pharmacy. This was not consistent with pharmaceutical preparation. But the tablets were marked with markings similar to Percocet, the very substance Bryson indicated he had.

We also had markings of other pills, Oxycodone. Another pill form consistent with beans, the slang term for these pills.

So in short, Ladies and Gentlemen, we have pills, they're marked as Percocets. We have pills marked as oxycodones. On his Facebook messages, he indicates he's got Percocets and he's getting beans.

You also heard from Traci Smith, Ladies and Gentlemen, a defense witness. Now, her story

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has changed a bit since that day, but on the day she spoke to law enforcement, what's freshest in her mind as it was unfolding, what did she say? As you saw on the video -- and again, Ladies and Gentlemen, that video is in evidence. You can come and see that at your request.

She indicated that she had moved back in the home after renting for five years when the former residents' lease was up. She had moved back in. She didn't say anything about evictions at that time to the police. Just the lease was up and she moved back in. She also said that Bryson comes now and then -- comes now and then. Acknowledges that the room where the drugs were found were his room and that she doesn't go in that room. She also acknowledges on that video, Ladies and Gentlemen, that he still had a key to the house.

She says the first bedroom of the house was the junk room. And you all were able to see, I think it was from the body camera video of what it looked like in there.

The second room where the drugs were found is where she notes, I can't tell you what's in that room and says, he's in there sleeping like

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a savage. He didn't even put the bed together. He's sleeping like a savage.

This isn't the stranger room. This isn't the junk room. This is Bryson's room where he's sleeping like a savage, as she puts it, because he hadn't put the bed together.

When Billy Anthony comes in, the evidence technician that's getting a hold of all these drugs, what does she tell him, the last one down the hall on the right.

Everything she says to law enforcement, Ladies and Gentlemen, points to this being Bryson's room. Not somebody else's room. This is where he is. This is where he's sleeping. This is where he hasn't put the bed together, and that's where his drugs were found.

That's what she told the police that day on video, Ladies and Gentlemen. And you were able to watch that video. That wasn't a hot light interrogation. They weren't peppering her with questions. You were able to see it was a cordial conversation. She was sitting on the couch. They were talking to her. The police come in, they didn't twist her arm to ask where the room was. It's down the hall on the right.

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This was a recording, Ladies and Gentlemen, where you actually get to see and got to see the recorded evidence. Ladies and Gentlemen, that's important because recording doesn't have an agenda. It's just a recording. It's something that they create at the time that you were able to see. You're able to see what her reaction was and what her behavior was on that day while it was unfolding. We didn't see any of this other stuff. We didn't see any of this very complex thing of boyfriends coming in and switching, and cleats being in there, and her looking in the room, but not looking in the room, just getting the cleats without looking and not knowing what's in there. What she said on the video is what she said on the video. You all got to see that. That's what happened that day.

Now, yesterday in court, her story changed a little bit. Maybe this is because time has passed since this happened. Maybe this is because of conversations she's had with her son. But her story yesterday, the folks she leased it to, she put them out and changed the locks. She no longer lived at the house but stayed there. The night before she had a fight with her

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boyfriend who was different than the gentleman that was over there but the boyfriend had also been over there that morning. And somewhere along in this there was a grandson that had cleats and they stunk and so she put them in the room, but she didn't really look in the room. She just reached in there and grabbed the cleats without looking in the room. And somehow, despite saying multiple times on video that it was Bryson's room, suddenly, now, not Bryson's room. Once more, he no longer has a key.

But what she did say that was consistent, Ladies and Gentlemen, she acknowledged yesterday that she did not condone his actions. She acknowledged that she didn't go in that room. She didn't let the kids go in that room. A room in her own house that she doesn't go in and doesn't let the kids go in.

She also acknowledged that she wasn't there a lot. She wasn't in that home an awful lot. She was staying with her boyfriend sometimes. She also worked long hours, two jobs.

Now, Ladies and Gentlemen, you are the ultimate finders of fact, and the State would argue that her story does not make sense as it was

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told yesterday. Why have a bedroom nobody goes in? Why have it made up? Why have a bed with sheets and comforters on there? How did nobody see a bag of marijuana, scales on the floor? How did nobody smell it? If someone else is living in there, how is Bryson's stuff in there. I mean, he's got a box, he's got paperwork, he's got letters. I mean, you don't leave stuff in your house when the renters come.

And let's not forget the thousands of dollars of narcotics that were found in that room. Thousands of dollars of narcotics are also found sitting in that room. It's not something you're just going to leave laying around, Ladies and Gentlemen. It's not an umbrella that you just leave in a stand someplace.

Next you heard, Ladies and Gentlemen, from the mother of Bryson's children who said that at this time she was primarily living with him. And though she couldn't say -- and spending a lot of time with her. But on the days leading up to this, she couldn't say where he was exactly or how long she'd been with him, or whether he was with her that day. This is consistent with the State's case, Ladies and Gentlemen.

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As Mr. Smith said in his jail phone calls, he doesn't like to do business in front of his kids. He does his business elsewhere. And what better place to do that, Ladies and Gentleman, than mama's house. Nobody is ever around. They are the only two that live there, and she's either working or at her boyfriend's house. He has a room that nobody ever goes in and messes with. A room that he can keep his drugs, his packaging materials, his scales, a virtual Kinko's for a drug dealing all within that room and nobody is going to mess with it.

This is important. We're dealing with thousands of dollars of drugs, Ladies and Gentlemen. This isn't something you're just going to abandon someplace, just leave in some stranger's house. Your options are someplace where it's going to be safe, it's going to be secure, and it's not going to be messed with. Where is that for him? Well, it's either at his house where he's living, which he doesn't want to do, fair enough, or it's at mom's where nobody checks, people aren't usually around, and he has a room that nobody is going to go in and mess with.

Now, Ladies and Gentlemen, at the

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beginning of this case, I asked you to use common sense. And with that in mind, I would just point out that there were drugs found in plain view in this bedroom. Thousand of dollars worth of drugs were subsequently found in a backpack in that bedroom. There were scales in that bedroom. There were packaging materials in that bedroom.

On scene, his mother admits multiple times that is his room.

There are Facebook messages going back and forth talking about the distribution of the very drugs that were found in that room from an account that Mr. Smith admits is his, other people know is his, and established that he has got these Percs for sale.

He also admits, Ladies and Gentlemen, to selling these drugs, the State would contend, just not around his kids at a house that Josh Mata has picked him up, and what he acknowledges in that jail call was his house.

Ladies and Gentlemen, based on this, common sense would dictate that these narcotics found in Bryson Smith's room, near Bryson's mail, near Bryson Smith's paperwork, the room that his mother said was his are his, Ladies and Gentlemen.

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We would ask you to return a verdict of guilty. Thank you.

CLOSING STATEMENT

MR. SCHULTZ: Thank you, Judge. May it please the Court? Counsel?

I apologize, Ladies and Gentlemen, I have a lot of evidence to go through here. I'll put some here.

Well, good morning, everyone, again. I just want to thank you again for your attention, your time, your effort in this case. This took, perhaps, longer than any of us anticipated. I think we started on Tuesday. We're now into Friday. Right now, and I think Mr. Kendall told you this, but what we're doing right now is we are arguing. We're doing concluding and closing statements. And what Mr. Kendall just argued was his position. I'm arguing for Mr. Smith's position, the defense. The defendant's argument to the jury.

Now, in the last couple days, we've heard testimony. We've heard the evidence in the case. I presented some evidence. I presented two witnesses yesterday. The State presented their case on Tuesday and Wednesday, a little bit of

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Thursday. I watched each and every one of you during this time. You paid attention. You did what you had to do. You paid attention to not only what was going on as far as witnesses, but also looking at the evidence.

Now, the thing with this is that there's a lot of evidence in this case. Not only this pile down here, some of you may not be able to see that, but there's also going to be audio and videotape evidence that you can go back and look at.

So what I want to do here today is, I want to give a brief introduction of what I'm going to be saying, and then I'm going to go step by step through all the witnesses in the case.

On Tuesday I think it was, I last spoke to you like this. And what I'm doing here is -- I hope you don't mind that I'm not wearing my face mask here. I'm six feet a part from everybody. I want to follow all the social distancing guidelines and everything. I've been doing trial work for a long time. This is the first time I've sat down like this so I can maintain social distancing. Usually, I'm all over the place. I'm gesturing and walking around. That's usually the

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way I like to do things, but I want to keep everybody safe until this all over with. So I wanted to let you know that first.

On Tuesday, I spoke to you about what burden of proof means. What's the burden of proof? Well, here's what it means. It means that the State has to prove their case beyond a reasonable doubt. I talked to you about that a couple days, too. What does reasonable doubt mean? Well, it means -- a reasonable doubt means that it is doubt that causes a reasonable person some hesitation to act. Okay?

If you have one reasonable doubt as to the guilt of the defendant, you got to find him not guilty. Okay? It can't be -- there's no number on it. Well, there is a number on it. It's one. You got to find one reasonable doubt as to the guilt of the defendant. It can't two, three, four, five. The judge is not going to instruct you on that, that you got to find five reasonable doubts or something like that. It only has to be one. That's the burden that these folks over here have. Not me. I have no burden. The State has the burden. That's why they go first. That's why they present all their testimony.

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That's why they present their witnesses. That's why they go first. I don't have to prove anything, or should have to prove anything.

So, we all understand that. I hope you all understand. The judge is going to instruct you again on what reasonable doubt and burden of proof means.

Another thing before I get into the witnesses. Judge Kelly in a couple of minutes -- I think Mr. Kendall said a couple months. I hope it's not a couple of months. But, in a couple minutes, he's going to tell you what your standard is and reasonable doubt. I hate to keep saying that word, but it's very important. You have to be firmly convinced. You have to be firmly convinced of the defendant's guilt. If you're not, you got to find him not guilty. If you are, then the State has met their burden of proof. Okay?

I believe, and I hope that each and every one of you will shares this, that you can't find him guilty. I think, and I'm going to ask in a couple minutes -- I'm going to ask right now, actually, for a verdict of not guilty on all counts.

Now, first -- well, the first witnesses

that we've heard from were some officers in the case. We've heard from Officer Gardener Fuller. We also heard from a lay witness.

Now, what I mean by lay witnesses is someone that was not necessarily there but is not an expert but has in some knowledge of the case. Josh Mata, he had a record. He had two convictions for property crimes back in 2012. He had some legal trouble up in North Carolina. To me, he's not believable. So, he's -- that's what I believe. He said he was talking to Bryson. But again, that's over Facebook. Okay? That's over Instant Messenger. But, again, I want you to consider this fact that people use fictitious names all the time on Facebook. You have to understand that. But yet, at the same time, he wasn't sure, he wasn't positive, one hundred percent sure that he was talking to Bryson. Okay? He could be talking to somebody else. We don't know. Again, to me, that's reasonable doubt.

Now, it's interesting, at least I thought it was interesting, we heard from some chemists and some forensic technicians from SLED. Now, I keep using the acronym SLED. I think we all -- maybe we all know what SLED means. SLED stands

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for South Carolina Law Enforcement Division. SLED, S-L-E-D. It's an acronym.

And they testified and I remember -- I think it was Miss McCormack. And she weighed all the controlled substances. Sometimes she found controlled substances, sometimes she did not. It's interesting to me, she said that -- this under direct examination with Miss Leskanic here. I remember this specifically. She only tested one pill. One little thing. And I made a big deal out of that because I think it's very important. I think it's very important, because then she tested one little pill out of a bag, and I believe it was -- well, she had different items, but I think -- State's Exhibit 4, if I can just get this. I beg the Court's and the jury's patience there.

I'm going to do -- this is State's Exhibit 4. I asked her, I said, did you test every pill? Did you test every pill? Do you know what she said, oh, I tested one. Tested one pill. That's fine. But what about the other ones? There's a possibility that these can -- these will not be controlled substances. What she did is, she did a sample. They're going to say -- I know

what they're going to say. Well, that just begs believability. Okay?

Well, shouldn't you test all of the pills. Shouldn't you test all the evidence in the case. I think you should. Just one sample, she's essentially doing what polsters do. We've heard a lot of poles this year. Hopefully that's going to be over soon.

But essentially what she said did is, she tested this as a sample and just assumed that, oh, it's all illegal. It's all controlled substance. All right, moving on. Let's test this one, too. You probably remember this. These are the pills. And this is State's Exhibit 8. State's Exhibit 8, 73 multi-colored tablets in the state of Georgia, did the same thing. You can take a look at these. Please do it with the gloves, but take a look at this. These are in the state of Georgia. You probably can't see that, but they look pretty similar to the shape of the state of Georgia for some reason.

But she tested one of these pills and said, oh, well, all the rest of them got to be illegal, too. All the rest of them got to be controlled substances. Come on.

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Is that -- I mean, this, to me, just testing these and just doing, well, just one. Okay? Or just one here. And then she just assumes all the rest of them are illegal. Okay, moving on. There was one bag that she tested that -- I believe it's State's Exhibit 2. Yup, State's Exhibit 2 here. No controlled substance found.

Okay. Well, I will present to you, can there be at least the possibility of no controlled substance found when she tested more of these, more of these pills in the shape of the State of Georgia, or -- referring to these pills. Okay? My whole point in saying this is that the criminal justice system must do a better job in weighing testing and ultimately looking at evidence and presenting it to you all other than, well, we tested one pill, go find him guilty. That's not good enough.

To me, if I was one of you, that does not leave me at least firmly convinced.

They take a sample size. Well, they take a sample size, and then they use that fancy lawyer word, extrapolate. What they do -- extrapolate is a fancy word for saying assume. We just assumed

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that all that stuff is controlled substance. All that stuff is bad stuff.

Well, to me, assumptions, extrapolations don't add up to convictions.

Now, we've had a lot of photographs introduced. There was audio introduced. There was video introduced. So what we got is, we got -- you know, I can't put you back in that room, but we can go close with some of these pictures. We got a very disorganized room.

All right. Let's refer to State's Exhibit 18. Okay? We got we got some pants. We got at least one shoe on here. I think we have the shoes there. And a backpack. I asked the officer, did you test it, test it forensically? Oh, no, we don't do that. All right. Did you test it for DNA? Did you test it for fingerprints? Oh, no, we don't do that.

So what are we doing here? Okay? They could have easily wrapped up this case to say, okay, well, Bryson Smith's hair fiber was found on one of his shoes, or a hair fiber was found on one of the pants there. And, you know, they could test for fingerprints. They could test for a lot of things. You know what, they didn't.

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They essentially did the same thing that the chemist did. Well, we only do this. One pill is good. One pill in the shape of Georgia is good. All the rest, done. Okay? We don't need to go any further.

Well, in criminal cases, you do need to go further. You need to have good evidence. I would present to you that they don't have good evidence.

Here's another thing. Got some letters, some documents. This is State's 36, 37, 38. I got some letters here addressed to -- or at least with Bryson Smith's name on it. Okay? I asked the officer, I think it was yesterday morning, I believe. I kind of lose track of time, but I think we all lost track of time this year. But you look at this, where's the dates? Okay? Does it say 2019? No. Does it say 2018? No. 2017? Does it say anything? Where's the dates? Okay?

We know, at least, that Bryson was probably in the house at some point, but where's the dates on this. Where's the dates? It says Bryson Smith. Okay? There. No dates. Letters here. No dates. No dates.

And then -- that's the thing. This is

what -- it's not so much of what they have. Right? It's what they're missing. It's what they're missing.

I asked the officer. I said, all right, you took a picture of this, right? Yeah, I did. Well, where's the actual physical copy of it? Do you have it? Oh, no. Where is it? I don't have it. Okay?

The whole point -- let me go back to this burden of proof. They should show something more than pictures of letters with no dates. You know, show me -- and this is what I want you to think in this, and this is what I'm hoping everybody is thinking here -- show me the letter. If they don't have the letter, how can you convict?

Let me go back to the -- there's another letter in here. Okay, B. Smith, State's Exhibit 41. Where's the date? That room was a wreck. Who knows how long that's been in there. They pretend -- the police think, oh, it was just there that day, or it was just there that week. We don't know. And that's my whole point that we're getting to, is that we don't know. If we did know, this case may not go to trial. But we don't know. We don't know. That should not leave you firmly convinced. Should not leave you firmly

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convinced.

All right. Let's talk about this letter, referring to State's Exhibit 42. Again, you can take a look at this. Can you see that back there?

Okay. Bryson Smith [redacted] Maplewood Drive, Gaffney, South Carolina. Okay? I don't see any date on there. You won't when you go back and take a look at it. All right? We don't have that letter. The actual letter. If I were you, I would want to see that. Test it. Just a couple letters with no dates on them, you can't find him guilty. We don't have enough. You don't have enough. Each and every one of you do not have enough to be firmly convinced of the defendant's guilt.

Now, Judge Kelly in a couple minutes is going to talk to you about the difference between actual and constructive possession. Actual and constructive possession. You may have heard those before.

Here's what actual possession means -- actual possession, the Judge is going to tell you about this in a couple minutes. I walk down the street, the police decide he's up to no good. I have marijuana on me. The police arrest me. They

find it in my pockets. Okay, well, actually, they find it in my pocket and then they arrest me. That's actual possession. I actually had it on me.

Constructive possession, well, what that means is that at some point you may have been around it. All right? Well, you heard yesterday, there was a lot of people in that house. She was renting it out. Where are those people? They're up in D.C. We don't know. It could have been those folks. We don't know.

There is no direct evidence, direct evidence of Bryson Smith having possession of these drugs. That's the simple fact of the matter. There is no direct evidence, to me, that would leave me firmly convinced, firmly convinced. Let me say it again, firmly convinced.

They didn't catch him inside the bedroom. They didn't catch him inside of the living room. They didn't catch him going out of the house. They didn't catch him in the lawn. They didn't catch him on the porch. They didn't catch him anywhere -- anywhere at that time.

So what are we left with? I just want to summarize this. Some pills that are -- that they

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tested -- they tested one of these, and then they assumed that everything else was bad, was controlled. Okay? Same thing for the other ones that are probably buried here.

This scale. Okay? You got a scale that's referenced in one of the photographs that you're going to see. We got this. All right? Did they lift any fingerprints on it? No, they didn't do that. They just made assumptions. The whole case is based upon the assumptions that they made.

Well, they've already made up their minds. It's Bryson Smith's room. That's fine. We don't need anything else. Okay?

And then when they get down, the chemist gets done, well, we just assumed that the rest of these pills are illegal. Okay?

To me, in this country, you sitting here on a jury, we don't get the benefit of assumptions. We have to be firmly convinced. To me, and this is wrapping this whole thing up, assumptions are guesses. Assumptions are, yeah, maybe. Okay?

When you go back there, you got to -- the State's going to be asking you, probably again, to

convict him. They want you to find him guilty beyond -- it has to go beyond, right? Over the threshold. Over the reasonable doubt threshold. They can't. They can't do it.

Some of you may have seen the little pin that I have here. It's a poppy for Veteran's Day next week. It's very important to me. Patriotism, men and women that fought for this country. They did their service to this country. I spoke to you a couple of days ago about what service means. Some of us voted on Tuesday, some of us voted before, some of us voted absentee ballot. Hopefully, we all did our duty.

Today, in the last couple days, we all, as jurors, did your duty to uphold the law, look at the evidence. And the judge is going to instruct you upon what you have to do to decide this case. I want to go back into that about you have to be firmly convinced. In order to find him guilty, you have to find him guilty beyond a reasonable doubt.

I just presented all kinds of reasonable doubts. I presented assumptions that the State made. I presented assumptions that the police made. Well, assumptions and guesses and what we

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think happened does not add up to convictions.

Thank you very much.

CLOSING STATEMENT

MR. KENDALL: Thank you very much, Ladies and Gentlemen. I'd just like to take a second to go over a couple of the points that Mr. Schultz brought up about this case and respond.

First, with regards to Josh Mata, it's true Mr. Mata wasn't sitting there next to him when he was texting back and forth with him. But in his testimony, what you heard was, that, when he Facetimed him, the other person on the other end of that Facetime, Bryson Smith. When they were texting back and forth to do something, like switch cars or pick someone up, the person that got picked up, Bryson Smith. There wasn't ever this other person in there. There was a call to do something, the person doing it, Josh Mata, Bryson Smith.

Let's not forget, he also admits to it. He actually says it on a jail phone call. This isn't something we depend on Bryson Smith for.

Now, you also heard objections about how this was tested, how the forensic scientists tested this evidence. That some of this came back

as no controlled substance. So assume some of this other stuff can come back as no controlled substance. And, Ladies and Gentlemen, that confuses two very different ideas. The idea of flex and the idea of a representative sample.

You heard testimony yesterday, Ladies and Gentlemen, about what flex was. This is something that's intentionally fake. This is something people get, drug dealer's get to do the equivalent of water down their drinks. Right? But flex when its in its flex form is like the water in a separate pitcher. It hasn't been added yet. It's a separate substance that's going to be mixed later. The pills, by contrast, are in pill form. They've been pressed. They are in that form now.

And what did the SLED analyst testify to? That the pills in these individual bags all appear to be the same, had these same markings that were placed upon them. These were the same pills, Ladies and Gentlemen, and they were packaged altogether. And they were in large quantities. I mean, was she just the luckiest person in the world that in bags and dozens of pills she just happened to pick out the one that was it?

Mr. Schultz brought up the idea that this

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is the similar thing to what polling people do. They just pick a representative sample. It's not at all. There's an enormous difference, Ladies and Gentlemen. When you're talking about polling, you're talking about people. We're all different. Different ideas. Different backgrounds. Different experiences.

When you're talking about pills, they're all in the same container, they all look the same, they're all marked the same. Ladies and Gentlemen, they are the same packaged together sitting together.

And this is something, when I ask for common sense, I hope you'll consider. If you go to the store and get a can of Pringles, you know the ones in the tube, they all look exactly the same. Open that can of Pringles up, pour them out, all look the same, take a Pringle, take a bite of it, it tastes like a potato chip, do you think the rest are potato chips? It's just common sense, Ladies and Gentlemen.

He had the same pills together to sell marked the same in the same containers. They're all the same. It's just a representative sample.

It's the same when they take a piece of

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the marijuana and test it. A representative sample. They can't test the entire thing. We'd have an empty bag.

They're also not required, Ladies and Gentlemen, to show you a pure mixture. Any mixture constitutes that crime. It doesn't have to be pure heroin. It doesn't have to be pure Fentanyl. It can be a mixed of that and other stuff. They can add a whole bunch of cut to it, as law enforcement testified to, later.

Now, Mr. Schultz also put a lot of emphasis, Ladies and Gentlemen, on the fact of why we didn't do more DNA testing, taking samples on scene and things like that. Ladies and Gentlemen, they were on scene. They knew whose room that was. Why did they know that? Because his mother told them that. It wasn't some stranger. Mom told them that was his room. His mother. And what did they find in there consistent with that; paperwork, personal belongings.

Now, I know Mr. Schultz has pointed out that at some point in time there was a renter in there, but I have two thoughts on that. Number 1, would the renter sleep in that room with his paperwork under the covers. That just doesn't

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make sense, Ladies and Gentlemen.

And, Number 2, we're not talking about some tiny dime bag slipped under the rug. We're talking about thousands of dollars in narcotics sitting there. Thousands of dollars. Does this seem to be the thing you would leave behind. The thing that just gets abandoned. Oh, what did we forget? Oh, the thousands of dollars of narcotics. Oh, drats. Ladies and Gentlemen, this doesn't make sense.

More over, they just happened to be the exact same narcotics that he's on the Facebook page talking about. What a coincidence. How could he be so unlucky. The one pill they pick out of that bag just happens to be heroin and Fentanyl. The drugs that he's got just happen to be the same ones that are found in the room with the mail, his packaged his mom says is his.

Ladies and Gentlemen, this simply doesn't make sense. They didn't need to do the identification of the room then because his mother told him them that's what it was. And everything they found after that was consistent with that. When you rent a house, you don't leave your stuff in the house. That's common sense.

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Ladies and Gentlemen, in this case, you can consider all of the evidence, which shows that narcotics were found in a room that his mother said was Bryson Smith's room, in a house that Bryson Smith said was Bryson Smith's house. He's on Facebook selling some of the same narcotics found in that room. There is his paperwork in there. There's some packaging in there. There are scales in there. There are baggies in there.

And then he admits he is involved in drug dealing on that jail phone call, that he does his business elsewhere. Elsewhere being his mother's house. A safe, secure place where nobody goes into, where he can have his drugs, he can have his packaging materials, and he can have his scales without being disturbed. A place where mom won't even go into. The kids aren't allowed to go into.

Ladies and Gentlemen, we look at all of the evidence. It points to one person having these narcotics, Bryson Smith. We would ask to you return a verdict of guilty.

Thank you.

JURY CHARGE

THE COURT: Thank you, gentlemen.

Madame Forelady and Ladies and Gentlemen

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of the Jury, you have seen and heard the evidence presented, as well as the arguments of the lawyers. It is now my duty and my obligation to instruct you on the law in this case. It will then be your solemn duty and your obligation to begin your deliberations. Through this process, you will decide the facts, apply the law as I instruct it, and render a fair and impartial decision. It is your exclusive duty to determine what the facts are in this case, and you do that based on your common sense, examination, and evaluation of the testimony and the evidence received during the trial of this case.

You 12 alone will decide what effect, value, and weight is to be given to any particular testimony or evidence received. Quite simply, your goal is to find the facts in this case, and when doing so -- and when you do so, you will have fulfilled your obligations.

The first indictment in this case charges this defendant with possession with intent to distribute marijuana. Specifically, that Bryson Jamar Smith did in Cherokee County, South Carolina on or about August 12 of last year manufactured, distribute, dispense, deliver,

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purchase, or aid, abet, attempt, or conspire to manufacturer, distribute, dispense, deliver, or purchase, or possess with the intent to manufacture, distribute, dispense, deliver, or purchase a quantity of marijuana which is defined as a Schedule I controlled substance by our State law and in violation of State law.

The second indictment in this case charges this defendant with possession of intent to distribute cocaine. Specifically, that he did in Cherokee County, South Carolina on or about August 12 of last year manufacture, distribute, dispense, deliver, purchase, or aid, abet, attempt or conspire to do so with regard to a quantity of cocaine, a Schedule II controlled substance as defined by our State law and in violation thereof.

The third indictment charges him with trafficking methamphetamine. Specifically, that he did in Cherokee County, South Carolina on or about August 12 of last year knowingly sell, manufacture, deliver, purchase, or bring into this state, or provide financial assistance, or otherwise aided, abetted, attempted, or conspired to sell, manufacture, deliver, purchase, or bring into this state, or knowingly actually or

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constructively possess or attempt to do so 10 grams or more, but less than 28 grams of methamphetamine which is defined as a Schedule II substance and in violation of law.

The fourth indictment charges him and alleges that he -- with the distribution of Fentanyl and alleges that he did in Cherokee County, South Carolina on or about August 12 of last year, distribute, dispense, deliver, purchase, deliver, dispense, or possess with the intent to distribute, dispense, deliver, or purchase a controlled substance, that being Fentanyl, which is a Schedule II controlled substance as defined by State law and in violation of the law.

The fifth indictment charges and alleges that he did in Cherokee County, South Carolina on or about August 12 of 2019 knowingly sell, manufacture, deliver, or purchase, or bring into this state, or provide financial assistance, or did otherwise aid, abet, or conspire to do so with regard to -- or did with regard to heroin that being four grams or more but less than 14 grams, which is a Schedule I controlled substance in violation of the law.

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Ladies and Gentlemen, I previously told her and I now remind you that the fact that this defendant was arrested, charged, and indicted is not evidence and cannot be used as evidence of his guilt, nor does it create a presumption or an inference of guilt. The documents themselves are the formal written documents -- the formal written instruments which bring him before the court. He has entered a plea of not guilty and he is presumed innocent of the allegations contained in each and every indictment.

He has plead not guilty, that puts the burden on the State to prove his guilt beyond a reasonable doubt. A person charged with committing a criminal offense in South Carolina is never required to prove himself innocent. I charge you and tell you it is a cardinal, important, and vital rule of law that no matter what the seriousness of the charge might be for which he stands charged, this defendant is presumed to be innocent of each and every crime for which the indictments were issued unless guilt has been proven by evidence satisfying you 12 of that guilt beyond a reasonable doubt.

The presumption of innocence does not end

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when you begin your deliberations. It accompanies him throughout the trial until you reach a verdict of guilt based on evidence satisfying you of his guilt beyond a reasonable doubt.

The presumption of innocence has been described, Ladies and Gentlemen, to be like a robe of innocence placed about his shoulders which remain with him from the moment of his arrest and it continues with him until it is stripped from his shoulders by you 12 by evidence satisfying you of guilt beyond a reasonable doubt.

The presumption of innocence is not a legal theory, nor is it a legal phrase. It is a substantial right to which every defendant is entitled unless you 12 are satisfied from the evidence of his guilt beyond a reasonable doubt.

I remind you that during this trial you and I have certain duties to perform. As the trial judge, it is my responsibility to preside over this trial and also to rule on the admissibility of evidence. You are to consider only the competent evidence before you. If there were any testimony stricken from the record in this case, you are to disregard it. You are to consider only the testimony which has been

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presented from this witness stand and any exhibits which have been made a part of the record and any stipulations by the lawyers.

Additionally, I have the duty to charge you the law in this case. As presiding Judge, I am the sole judge of the law and it is your duty to accept it and apply it as I now state it to you.

Ladies and Gentlemen, if you have any idea as to what the law is or what the law should be and it does not agree with what I now tell you the law is, you must disregard your thought and follow it as I now tell it to you.

In every case tried in this court before a jury, you 12 become the sole and exclusive judge of the facts in this case. A trial judge in South Carolina cannot make a statement or a comment about a fact in a case to a jury because you 12 are the sole judge of the facts. And you are not to infer from anything that I might have said during the progress of this trial in ruling on admissibility of evidence that I have an opinion about a fact in this case. Once again, our State law does not allow me or any other trial judge to have an opinion about a fact in a case.

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The State has the burden of proving this defendant guilty beyond a reasonable doubt. Now proof beyond a reasonable doubt is proof that leaves you firmly convinced of this defendant's guilty. 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.

A reasonable doubt has also been described as the kind of doubt that will cause a reasonable person to hesitate to act.

If you have a doubt as to the guilt of this defendant, he is entitled to a verdict of not guilty. Reasonable doubt may arise from evidence in the case or from the absence or lack of evidence in the case.

Based on your consideration of the evidence, if you are firmly convinced this defendant is guilty of the crimes charged, you must find him guilty.

But, on the other hand, you think there is a real possibility he is not guilty, you must give him the benefit of the doubt and find him not guilty.

You alone must make the determination as

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to whether or not reasonable doubt exists as to the guilt of this defendant.

There are two types of evidence, and the lawyers have talked about this. There is direct evidence and circumstantial evidence. Direct evidence is testimony of a person who claims to have actual knowledge, such as an eyewitness. Circumstantial evidence is proof of a chain of facts and circumstances which indicate the existence of a fact. It is evidence which immediately establishes collateral facts from which the main fact can be inferred.

I tell you and charge you, the law makes absolutely no distinction between the weight or value to be given either to direct or circumstantial evidence, nor is it a greater degree of certainty required.

After weighing all the evidence, if you not convinced of his guilt beyond a reasonable doubt say so in finding him not guilty.

Under the constitution of this state, you are the finder of facts, and, necessarily, you must determine the credibility of witnesses who have testified. Ladies and Gentlemen, credibility simply means believability. It is your duty as

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jurors to analyze and evaluate the evidence and determine which evidence convinces you of its truth -- which of the evidence convinces you of the facts.

In determining believability of witnesses who have testified, you may believe one over several or several over one. You may believe part of a witness's testimony, you may disbelieve the remainder of that testimony. You may disbelieve the entire testimony of a particular witness. Whatever your good judgment and common sense tells you is most believable is the testimony you should accept and reject all of the other testimony.

Now, the rules of evidence ordinarily do not permit witnesses to testify to opinions or conclusions. An exception exists for witnesses we call expert witnesses. A witness who by their education and experience has become an expert in art, science, or profession, or some other calling may give an opinion as to relevant and material matter in which a witness claims to be an expert. You should consider the expert's opinion received in evidence in this case like all the other evidence and give it the weight you believe it deserves. If you decide the opinion of an expert

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is not based on sufficient education or experience, or, if you conclude that the reasons given in support of the opinion are not sound, or that the opinion is outweighed by other evidence, you may disregard it in its entirety. An expert's testimony is not to be given any greater weight than other witnesses simply because they were qualified as an expert.

I instruct you and I emphasize the fact that this defendant did not testify is not a factor to be considered in any way in your deliberations. Madame Forelady, it should not be discussed in the jury room. Every defendant has a constitutional right to remain silent, and the assertion of the right cannot be considered in the jury room. You are to draw no conclusion whatsoever from the fact that he did not testify.

As I told you, no defendant is required to prove his or her innocence. The burden always remains on the State to prove the defendant guilty beyond a reasonable doubt.

Now, criminal intent is a necessary element of each crime that must be proven beyond a reasonable doubt. Criminal intent is a matter that must be determined by you 12 and there is no

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way to prove to a mathematical certainty what someone had in mind. Medical science cannot dissect a person's brain and determine what that person meant to do. So our law says that criminal intent may be inferred from circumstances shown to have existed. It is a state of mind which operates jointly with an act and becomes the commission of a crime. It is a mental state. It is a conscience wrongdoing, so it is up to you 12 to determine what this defendant intended to do based on the evidence presented before you.

I tell you that the State must prove criminal intent beyond a reasonable doubt, just as it must prove every element beyond a reasonable doubt.

It is not necessary to establish intent by direct and positive evidence because it may be established by inference in the same way as any other fact taken into consideration with the acts of the parties and the facts and circumstances in this case.

Now, the State is not required to prove motive, but they must prove intent.

This defendant is charged with possession with intent to distribute marijuana. The State

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must prove beyond a reasonable doubt that he possessed marijuana with the intent to distribute.

To prove possession, the State must prove beyond a reasonable doubt that he had both the power and the intent to control the disposition or use of the marijuana. Possession may be either actual or constructive possession.

Actual possession means it was actually in his physical custody.

Constructive possession means that the defendant had dominion and control or the right to exercise dominion and control over either the marijuana or the property on which the marijuana was found. The defendant's knowledge and possession may be inferred when a substance is found on property under his control. However, this inference is simply an evidentiary fact to be taken into consideration along with other evidence and to be given what weight you decide it should have.

The State must also prove beyond a reasonable doubt that this defendant intended to distribute that marijuana. Distribution means to deliver either by administering or dispensing a drug. Intent may be shown by acts and conduct of

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the defendant and under the circumstances from which you may naturally and reasonably infer intent. You must find the defendant did not intend to have the marijuana solely for his own use. Possession of more than 28 grams or one ounce of marijuana creates an inference that this defendant possessed the marijuana with the intent to distribute. This inference does not relieve the State from proving beyond a reasonable doubt the defendant had the intent to distribute the marijuana. It simply is an evidentiary fact to be taken into consideration.

Now, possession with intent to distribute cocaine, the defendant is charged, and the State must prove beyond a reasonable doubt that this defendant possessed cocaine with the intent to distribute. To prove possession, the State must prove beyond a reasonable doubt that he had both the power and the intent to control the disposition or use of the cocaine. And it may be either actual or constructive possession, and I have instructed you what actual and constructive possession means.

The State must also prove beyond a reasonable doubt that this defendant intended to

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distribute the cocaine. Again, distribution means to deliver either by administering or dispensing. And the intent may be shown by the acts and the conduct of this defendant. You must find that this defendant did not intend to have the cocaine solely for his use. Ladies and Gentlemen, possession of more than one gram of cocaine creates an inference that the defendant possessed the cocaine with the intent to distribute. This inference does not relieve the State from proving beyond a reasonable doubt that he had the intent to distribute. Again, it is an evidentiary fact.

The defendant is charged with trafficking methamphetamine. The State must prove beyond a reasonable doubt that he knowingly sold, manufactured, cultivated, delivered, purchased, brought into this state, provided financial assistance, or otherwise aided, abetted, attempted, or conspired to sell, manufacture, cultivate, deliver, purchase, or bring into this state, or was knowingly in actual or constructive possession, or knowingly attempting to become in actual or constructive possession of the methamphetamine. The State must also prove beyond a reasonable doubt that the amount of the

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methamphetamine or any mixture containing methamphetamine was 10 grams or more, but less than 29 grams pursuant to our State code.

If you determine that the State has not met its burden for trafficking, you may consider the crime of possession with intent to distribute. Possession with the intent to distribute methamphetamine, the defendant would be charged with the distribution of the meth, and the State must prove beyond a reasonable doubt that the defendant possessed methamphetamine with the intent to distribute.

To prove possession, again, the State would have to prove beyond a reasonable doubt that he had both the power and the intent to control its disposition or use, and it either may be actual or constructively. Once again, I have told you the definition of active and constructive possession.

The State also must prove beyond a reasonable doubt that he intended to distribute it, and I have defined what distribution means. You must find that the defendant did not intend to have the methamphetamine solely for his use.

This defendant is charged with possession

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to distribute Fentanyl. The State must prove beyond a reasonable doubt that the intent that he possessed the Fentanyl and with the intent to distribute. To prove possession, the State must prove beyond a reasonable doubt he had the power and the intent to control the disposition or the use of that Fentanyl. Possession again, may be actual or constructive, and I have defined those terms along with distribution. You must find that this defendant did not intend to have the Fentanyl solely for his own use.

The defendant is charged with trafficking in heroin. The State must prove beyond a reasonable doubt that this defendant knowingly sold, manufactured, cultivated, delivered, purchased, brought into this state, or provided financial assistance, or otherwise aided, abetted, or attempted, or conspired to sell, manufacture, cultivate, deliver, purchase, or bring into this state, and was either in actual or constructive possession of heroin. The State must prove beyond a reasonable doubt that the amount of the heroin or any mixture containing the heroin was at least four grams or more, but less than 14 grams pursuant to our state law.

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If you determine the State has not met its burden of trafficking, you may consider the charge of possession with intent to distribute. The State would then prove that he possessed the Fentanyl -- no. That he possessed the heroin with the intent to distribute. To prove possession, the State would prove beyond a reasonable doubt that he had the power and the intent to control the disposition or use of that drug as I previously defined, and distributed that or intended to do so. You must find that he did not intend to have the heroin solely for his use.

Ladies and Gentlemen, you have been selected as fair and impartial jurors, sworn to impartially try and determine the facts of this case. You are to decide this case according to the testimony that you have heard from the witnesses sworn and the exhibits presented during this trial.

During the deliberations, you may only discuss this case in the jury room with your fellow jurors because they have seen and heard the same evidence you have seen and heard. However, you must not discuss this case with anyone else until you have returned a verdict and the case has

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ended.

Now, when a member of jury requires a break for smoking, restroom or otherwise, please discontinue your deliberations until that juror returns, Madame Forelady.

Ladies and Gentlemen, your verdict must be a unanimous verdict. Madame Forelady, when the jury agrees on a verdict, you will indicate the verdict on a jury form that I have here and my law clerk has created. Sign your name as the foreperson attesting to the fact that it is the verdict of the jury. Knock on the door and alert the bailiff, or the officer who might be there, that the jury has made its determination and we will return you to the courtroom to accept your verdict.

Now, I want to emphasize that each one of these indictments has a separate verdict, Madame Forelady. The jury may find this defendant guilty of all indictments. You may find him not guilty of all indictments. You may find him guilty of one or more. Each indictment is entitled to its own verdict, its own deliberation. Okay? And for that reason, you will have separate and distinct forms for each charge made against

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him. I emphasize that you must consider each indictment on its own without regard to any other indictment. Okay?

This is the verdict form of which I speak, Madame Forelady. It is a form. It is a piece of paper. The caption on here and the number matches the indictment itself. Okay? And it says: The State of South Carolina vs. Bryson Jamar Smith, and it has a number. That merely puts this particular verdict form with that particular indictment, and it has a question: "We the jury unanimously find the defendant, Bryson Jamar Smith on the charge of possession with intent to distribute marijuana...," it has not guilt and then guilty. I tell you there is no significance as to which one comes first on this piece of paper. It necessarily flows that I have to put one above the other. Whichever verdict it is of this 12 unanimous verdict, ma'am, if you would check it, put an X mark, put an initial, mark it in any way that you deem appropriate. I just simply ask that you make it unambiguous, that there be no doubt as to what this jury decides on one box or the other.

Then it says: "I certify this decision

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was a unanimous decision of this jury." It has a place here for you to sign your name and to put the date the jury decided the verdict. Okay?

The next one would be the same, and then you have two that are slightly different.

On this one it says: "We, the jury, unanimously find the defendant, Bryson Jamar Smith, on the charge of trafficking in methamphetamine 10 to 28 grams...," not guilty or guilty. And then it says: "If your verdict for question one is guilty, stop here, sign below. If your verdict is not guilty, proceed to question two." We have what is known as lesser included offenses. So if the jury finds him guilty here, again, you would sign your name, signify that is the verdict of the jury. That's the end of it. But if the jury finds him not guilty of question one, please proceed and answer question two.

And then the signature page is on the second page.

And, again, there are two of those and three of the others.

Madame Forelady, I'm getting ready to excuse the jury. I want you to take your morning break. All 14 of you take your morning break at

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this time because we're, kind of, past our time, and I don't ever -- try not to ever break up closings and charges. Take your morning break.

While you are on break, the lawyers are going to come up with Madame Court Reporter. She -- I know from my own record keeping -- but she has a record of each of those exhibits over there on the table. I've practiced law 25 years before I came up on this bench and a lot of in this courtroom, it is so very easy to be making a closing statement, pick up an exhibit, talk to the jury about it, have it in your hand, walk back over to counsel table and lay it down, face down, and don't mean to do that, and now an exhibit is missing. All of that belongs to you and its all coming to you.

So during your break, the lawyers are going to get with Madame Court Reporter. They're going to go through all of those exhibits and ensure that they are all there. And once they are there, after about a 20-minute break, the bailiff is going to bring those exhibits to you. The bailiff is also going to bring these verdict forms and give them straight to you, Madame Forelady.

You two alternates, Ladies, if you would be

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kind enough, when the Forelady receives this and the jury receives this evidence, please return to my courtroom with the bailiff because it would not be proper for you two to be with the 12. Come back to my courtroom.

All right. Madame Forelady, if you would take your jury out.

(Jury exits the courtroom at 10:58 a.m.)

THE COURT: Anything from the State?

MR. KENDALL: Not on the closings. Just this logistical matter, Your Honor. Where are they going to be? Are they going to be up here or downstairs.

THE BAILIFF: They're deliberating downstairs.

MR. KENDALL: I just want to make sure. We have got some disks that we had -- that Your Honor redacted, which we played portions of it. I want to make sure there's -- there used to be a computer in that room, in the jury assembly room.

THE BAILIFF: No, it's out.

MR. KENDALL: It's out?

THE BAILIFF: Yes.

MR. KENDALL: Okay.

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THE COURT: Anything that is done will be done on the record in here. If they want to listen to anything, if they want to see anything, I'll bring them back.

MR. KENDALL: And that was what my concern was, as soon as they get down there and somehow get on that computer.

THE COURT: And I've inspected the jury room with Officer Henderson.

Anything from defense?

MR. SCHULTZ: The only other concern I would have would be if the jury wants to see the Traci Smith video, because there's some -- we have to be careful with playing certain portions of that video.

THE COURT: Nobody is going to see anything outside of this courtroom.

MR. SCHULTZ: All right. That's fine.

THE COURT: If they want to see the video, if they want to hear a video, or audio, they are going to do it in this courtroom.

MR. SCHULTZ: That's fine.

THE COURT: There's no computer downstairs. It's been removed. And I don't do that anyway. In seven and a half years, I haven't

done that.

MR. SCHULTZ: Yes, sir. I'm just making that clear for the record.

THE COURT: Anything further about the charge?

MR. SCHULTZ: No, sir.

THE COURT: Okay. No exceptions.

All right. We'll be off the record then for the morning, too.

(Off the record pending verdict.)

THE COURT: I understand we have a verdict.

THE CLERK: Ready for the jury, Judge?

THE COURT: Yes.

(Jury enters the courtroom at 12:32 p.m.)

THE COURT: Okay. We are back on the record.

Madame Forelady, has the jury reached its verdict?

FORELADY: Yes, sir.

THE COURT: If you would hand those to the bailiff, please -- or Madame Clerk. Madame Clerk, if you would publish.

THE CLERK: 2020-GS-11-1148, The State of South Carolina vs. Bryson Jamar Smith. We, the

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jury, unanimously find the defendant, Bryson Jamar Smith on the charge of possession with intent to distribute cocaine guilty. Signed by Forelady, Tiara Phillips.

2020-GS-11-1150, State of South Carolina vs. Bryson Jamar Smith, we, the jury, unanimously find the defendant, Bryson Jamar Smith on the charge of possession with intent to distribute Fentanyl guilty. Signed by Foreperson, Tiara Phillips.

2020-GS-1147, the State of South Carolina vs. Bryson Jamar Smith, we, the jury, unanimously find the defendant Bryson Jamar Smith on the charged of possession with intent to distribute marijuana guilty. Signed by Foreperson, Tiara Phillips.

202-GS-11-1151, The State of South Carolina vs. Bryson Jamar Smith, we, the jury, unanimously find the defendant Bryson Jamar Smith on the charge of trafficking in heroin 4 to 14 grams guilty. Signed by Foreperson, Tiara Phillips.

202-GS-11-1149, The State of South Carolina vs. Bryson Jamar Smith, we, the jury, unanimously find the defendant Bryson Jamar Smith

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on the charge of trafficking in methamphetamine 10 to 28 grams guilty. Signed by Foreperson, Tiara Phillips.

Ladies and Gentlemen of the Jury, if this the verdict of you all, please indicate by raising your right hand.

JURY PANEL: (All members of the jury raise their right hand.)

THE CLERK: Thank you.

THE COURT: Anything from the State?

MR. KENDALL: No, sir, Your Honor.

THE COURT: From the defense:

MR. SCHULTZ: Not at this time, Your Honor.

THE COURT: Okay. Madame Forelady, you have sign the indictments. Recognize Madame Clerk that she is going to -- we can use that little --

THE CLERK: Yes, sir. Madame Forelady and Ladies and Gentlemen, this concludes your jury service this week. We are doing some work this afternoon. You're welcome, now that you're going to be released from the jury to stay with us, but you're certainly not going to be required to.

But I want to thank you for your service. I do thank you for your service with us this week. We could not do what we do without you.

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With that, I'm getting ready to release you to go back down to your jury assemble room. You didn't know this, but the two sisters on the jury that have been released, went down and picked up their pay vouchers worth $100,000 a piece. Now Cherokee County didn't pay you that much, but they do have something for you.

Madame Clerk wants to ask you a few things, I think, about the COVID system that we have in place here and any feedback you can give us, we'd appreciate. I know we got the shields and some other things, but any feedback we can get, she wants to ask a few questions about that.

You are now free to talk about the case or not about talk about the case, whichever is your pleasure. You don't have to talk to anyone about it, but you now free to do so if you choose to do so.

Again, thank you so very much for your service. And, Madame, thank for serving as our Forelady this week. Next week, I'll have a foreman. I try to go back on that.

Okay. With that, I'll release you. Go back downstairs and get your pay vouchers, and have a good afternoon and a good weekend.

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(Jury is released the 12:40 p.m.)

THE COURT: Matters from the State?

MR. KENDALL: No, sir, your Honor.

THE COURT: Matters from the defense?

MR. SCHULTZ: Yes, Your Honor. The defense at this time would move for a new trial based upon any objections that were overruled.

THE COURT: Solicitor.

MR. KENDALL: Well, I believe the rulings on those were appropriate based on what was determined at the time, Your Honor.

THE COURT: The previous objections that you are re-raising, Mr. Schultz, they are denied once again, and your motion for a new trial is denied. The evidence was there for the jury to decide. There was sufficient evidence for the jury to decided. The Court doesn't weight the evidence, and the jury weighed and convicted this defendant. But you are protected on the record, sir.

Anything further?

MR. SCHULTZ: No, sir.

THE COURT: All right. Do you have the sentencing sheets?

MR. SCHULTZ: I do, Your Honor. May I

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approach?

THE COURT: Yes, sir.

MR. SCHULTZ: I assume you want my client up here.

THE COURT: That would be good.

Solicitor, you would like to be heard on sentencing?

MR. KENDALL: Your Honor, Mr. Smith is a third offender on all of these charges, has a criminal history. It included a distribution of cocaine base, et cetera, from 2012. It appears to be -- if I could just a moment, Your Honor.

A 2012 conviction for possession of more than an ounce of marijuana. Assault and battery in the 2nd degree from 2012. Possession of a I to IV substance from 2000 -- excuse me. Strike that.

A 2015 possession with intent to distribute marijuana, as well as a manufacture, distribution, et cetera of cocaine, manufacture, distribution, et cetera of methamphetamine, manufacture, distribution, et cetera of cocaine base, unlawful possession of a firearm, unlawful possession by certain persons, 2016. A violation of probation as well from 2016.

THE COURT: Anything further, Solicitor?

MR. KENDALL: No, sir, Your Honor.

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THE COURT: Okay. Mr. Schultz.

MR. SCHULTZ: Thank you, Your Honor. May it please the Court?

THE COURT: Yes, sir.

MR. SCHULTZ: As the Court is well aware, I represent Mr. Smith on, not only this charge, but also other charges as well.

Obviously, we're disappointed with the outcome today. Bryson has been an ideal client in every respect during this time. I've spoken to him over the phone at the jail during this pandemic. I've spoken to him over Webex as well. We went over videos on Webex. I've also spoken to him prior to the pandemic as well in person. He's always been in some sort of custody, either in the Department of Corrections or in Cherokee County, so unfortunately he was never in my office, but I do have a good relationship with him nevertheless.

Your Honor, I would ask for any kind of lienency in sentencing that the Court can give.

As the Court is well aware, his mother lives here. His girlfriend lives here as well. They both testified yesterday. He does have family out here in Cherokee. I believe he's been in Cherokee County all his life.

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Is that correct?

MR. SMITH: Yes.

MR. SCHULTZ: And he has been very pleasant with me and my staff going over the videos and all of the technical difficulties that come with over videos in this day and age.

So, Your Honor, I ask for any lienency that the Court could give Mr. Smith. I know these are quite serious charges. He does have a record. And we are, again, requesting lienency.

Thank you.

THE COURT: Mr. Smith, I'm happen to hear from you, sir, if you would like to speak.

MR. SMITH: I ask for lienency too on these on charges, Your Honor. I apologize for wasting the Court's time today.

THE COURT: You're not wasting my time, sir.

Mr. Smith, I'm sure that I don't understand why you did what you did. It's not a first-time thing. You got a very serious record and you're a very young man. I truly don't understand.

That child was -- I don't understand. But I know one thing I do understand, and everybody here understands, is that Fentanyl is an

especially dangerous drug. They all are dangerous, but this is especially dangerous. I learn something new everyday in this job. And one thing I learned in this trial is that this stuff is being put in there. These fake tablets, and a user and addict, to end-user out there doesn't know what they're getting, and it's Fentanyl.

It's wide over Spartanburg County. I know of at least two young men. I'm talking about 18 years old, 19 years old, good people, good families, come home and find their child dead.

2020-1151, that's trafficking in heroin, 25 years, which is the mandatory sentence, 25 years and $100,000. It is consecutive to indictment 2020-1150, credit for time. 2020-1150, distribution of Fentanyl, 15 years consecutive to the other indictment ending in 1151 and credit for time.

2020-1149, 25 years and $50,000 concurrent, credit for time.

2020-1148, that's your cocaine, 25 years and $50,000 concurrent, credit for time.

2020-1147, 20 years. That's your marijuana. concurrent, credit for time.

Very best of luck to you, sir.

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MR. KENDALL: Your Honor, would the Court have an objection to me printing off a copy of his record and submitting it as part of the record.

THE COURT: I don't an objection. Do you have any objection, Mr. Schultz?

MR. SCHULTZ: This is the NCIC, I want to make it part of the record and make I got all of it.

MR. SCHULTZ: They probably should be certified copies.

MR. KENDALL: Your Honor, I just want the NCIC.

MR. SCHULTZ: I would object to the NCIC. I think they should be certified.

THE COURT: Do you want to get a certified copy and put it in?

MR. KENDALL: I can, Your Honor.

THE COURT: All right.

(The trial was concluded.)

THE BAILIFF: Come to order.

THE COURT: Thank you. Please be seated.

I think we need to go back on the record on Mr. Smith.

MR. KENDALL: Yes, sir, Your Honor. I thank you. I apologize for this. I went and got

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the certified copies of Mr. Smith convictions. I'd like to just enter it in the record as State's Exhibit 47. I don't believe any ranges or anything have changed, but there was one that I read it as cocaine. I believe it was based on NCIC. It was actually something different.

So his criminal convictions are from 2012, manufacture, distribution of cocaine base, 2012, possession of more than one ounce of marijuana. From 2012, assault and battery in the 2nd degree, a 2013, conviction date on that. From 2016, possession of marijuana, first offense. From 2016, possession of MDEA. From 2016, manufacture, distribution of methamphetamine. And non-violent is marked, and serious is not marked, so I assume that was not a manufacture. Manufacture, distribution, et cetera of cocaine base, also from 2016. Unlawful carrying of pistol from 2016. And sale for the delivery of pistols, possessions by certain persons, unlawful or a stolen pistol, also from 2016.

I'd like to just enter this into the record. Like I said, I don't believe this affects any sentencing ranges, or anything like that. But the substance I had was incorrect. It was not

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cocaine that he plead guilty to. It was MDEA. I don't believe it's a substantial difference, but I wanted to make the Court and the defendant aware, if that's affects anything.

We would also ask the defendant be advised of his appellate rights, just for the record, Your Honor.

THE COURT: Is that a joint exhibit, or a State's Exhibit?

MR. KENDALL: It can be a State's Exhibit, Your Honor. We would just offer it for sentencing.

THE COURT: Okay.

MR. KENDALL: So it's on the record and the Court can look at it.

THE COURT: Mr. Schultz.

MR. SCHULTZ: First off, as a matter of housekeeping, I have no objection to the entry of that. Mr. Kendall is correct. Previously, he read Mr. Smith's record out as having a conviction for a cocaine charge. That is incorrect. I believe it is MDMA. I think it was possession of MDMA.

MR. KENDALL: I think it was actually MDEA on the sentencing sheet. It was my mistake.

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It's what is written on there.

MR. SCHULTZ: But I believe, unless Mr. Kendall can correct me, that it's the same schedule narcotics. So I do not believe that it affects the sentencing range. I would ask the Court accept the current sentence in light of that new thing.

But I know the Court or I will advise Mr. Smith of his appellate rights. We plan on an appeal, or he plans on appealing. I'm going to file the notice of appeal per my retainer agreement.

And that's all I have. Thank you.

THE COURT: Okay. There is no objection. Mr. Smith for the record is in the courtroom with us with his lawyer, so he's present for all proceedings. Mr. Schultz and Mr. Kendall are in agreement now. It's on the record. It's now made a part of the Court's exhibits.

(STATE EXH. 47, Criminal record, was marked entered into evidence.)

THE COURT: And the Court understands that defense counsel has discussed his, being Mr. Smith's, appellate rights with him. And, per your retainer agreement, you will be filing a

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notice of appeal on his behalf so that he can be properly protected.

MR. SCHULTZ: Yes, sir.

THE COURT: Mr. Smith, you're in the courtroom so you heard all that.

Anything further?

MR. KENDALL: No, sir.

MR. SCHULTZ: No, sir.

THE COURT: All right, Very good. That will conclude this matter.

Congratulations, Gentlemen. And thank you both for trying a good case.

MR. KENDALL: Thank you, Judge.

MR. SCHULTZ: Thank you, Judge.

THE COURT: Let me do this, too, while he's still present in the courtroom.

Mr. Schultz made a motion here, a verbal motion to reconsider the sentence and that motion is denied.

MR. SCHULTZ: Thank you, Judge.

MR. KENDALL: Thank you, Judge.

THE COURT: Thank you.

(The trial was concluded at 2:07 p.m.)

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CERTIFICATE OF REPORTER

I, SHARON G. HARDOON, Official Circuit Court Reporter, III for the State of South Carolina at Large, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in General Sessions for Cherokee County, Gaffney, South Carolina.

I do further certify that I am neither kin, counsel, nor interest to any party hereto.

May 3, 2021



_____
Sharon G. Hardoon, CSR
Official Circuit Court Reporter, II

Author Buddy Dawkins (100001847280303)
Sent 2019-08-07 18:13:26 UTC
Body Ahhh

Author Sadi Littlejohn (100011723017920)
Sent 2019-08-08 06:32:18 UTC
Body Hey wassup

Thread (2926544927417055)
Current 2019-08-12 07:06:29 UTC
Participants Adonis P Willis (100037201642581)
Buddy Dawkins (100001847280303)

Author Adonis P Willis (100037201642581)
Sent 2019-08-06 20:34:09 UTC
Body Wuzz up buzz

Author Buddy Dawkins (100001847280303)
Sent 2019-08-06 20:34:34 UTC
Body Sup

Author Adonis P Willis (100037201642581)
Sent 2019-08-06 20:34:47 UTC
Body Got sime loud

Author Buddy Dawkins (100001847280303)
Sent 2019-08-06 20:34:55 UTC
Body Waiting

Author Adonis P Willis (100037201642581)
Sent 2019-08-06 20:35:10 UTC
Body Ok hml big homie

Author Adonis P Willis (100037201642581)
Sent 2019-08-09 16:52:30 UTC
Body Cuzz you got some beans

Author Buddy Dawkins (100001847280303)
Sent 2019-08-09 16:53:43 UTC
Body I can go get them

Author Adonis P Willis (100037201642581)
Sent 2019-08-09 16:54:41 UTC
Body He'll I did want that many you don't have to go out your way Buzz

Author Buddy Dawkins (100001847280303)
Sent 2019-08-09 16:55:03 UTC
Body Bet I can get percs too



Author Adonis P Willis (100037201642581)
Sent 2019-08-09 16:55:37 UTC
Body Oh I don't do them

Author Adonis P Willis (100037201642581)
Sent 2019-08-10 14:48:02 UTC

Author Buddy Dawkins (100001847280303)
Sent 2019-08-06 02:59:35 UTC
Body Hit me for 5 bands kuz

Author Q Longway Horton (100002837574346)
Sent 2019-08-06 03:00:17 UTC
Body Shid

Author Buddy Dawkins (100001847280303)
Sent 2019-08-06 03:10:55 UTC
Body Hell yea

Author Q Longway Horton (100002837574346)
Sent 2019-08-06 03:12:03 UTC
Body Cnt trust these niggas fam tgey be hating on the low

Author Buddy Dawkins (100001847280303)
Sent 2019-08-06 03:16:42 UTC
Body Fr fam

Author Q Longway Horton (100002837574346)
Sent 2019-08-06 03:17:19 UTC
Body I got u wen i see him tho on my gma

Author Q Longway Horton (100002837574346)
Sent 2019-08-10 06:44:15 UTC
Body Wassup cuh im fuck up give me three run we go eat on my geandma gloria fwm i aint never shited u

Author Buddy Dawkins (100001847280303)
Sent 2019-08-10 14:04:05 UTC
Body What you tryna get fam

Author Q Longway Horton (100002837574346)
Sent 2019-08-10 14:39:09 UTC
Body Weed

Author Buddy Dawkins (100001847280303)
Sent 2019-08-10 15:23:51 UTC
Body Only got percs right now

Author Q Longway Horton (100002837574346)
Sent 2019-08-11 00:38:53 UTC
Body Word word

Thread (1038671742824193)
Current 2019-08-12 06:39:20 UTC
Participants Alexis Byars (100000441326223)
Buddy Dawkins (100001847280303)

Author Alexis Byars (100000441326223)
Sent 2019-08-10 15:59:58 UTC
Body Otw. Lol

Author Buddy Dawkins (100001847280303)

Body
Buzz you good I see your post ..... Hit me up if you need me I'm coming ....

Author Buddy Dawkins (100001847280303)
Sent 2019-08-10 15:20:45 UTC
Body Bet

Author Adonis P Willis (100037201642581)
Sent 2019-08-10 15:22:04 UTC
Body 8646199337

Thread (919641988107369)
Current 2019-08-12 07:06:29 UTC
Participants Thomas Petty (100006094961419)
Buddy Dawkins (100001847280303)

Author Thomas Petty (100006094961419)
Sent 2019-08-07 10:48:06 UTC
Body Yoo

Author Buddy Dawkins (100001847280303)
Sent 2019-08-07 12:48:18 UTC
Body Sup bro

Author Thomas Petty (100006094961419)
Sent 2019-08-07 12:52:15 UTC
Body Shit bored,you in the hood

Author Thomas Petty (100006094961419)
Sent 2019-08-09 02:33:40 UTC
Body The video chat ended.

Author Thomas Petty (100006094961419)
Sent 2019-08-09 12:17:32 UTC
Body You up

Author Buddy Dawkins (100001847280303)
Sent 2019-08-09 13:24:48 UTC
Body Just got up

Thread (1020767547994812)
Current 2019-08-12 07:06:29 UTC
Participants Joshua Lindsay (100003001663454)
Buddy Dawkins (100001847280303)

Author Buddy Dawkins (100001847280303)
Sent 2019-08-08 18:10:30 UTC
Body You sent a photo.
Attachments image-472724480216145 (472724480216145)
Type image/jpeg
Size 65400
URL https://attachment.fbsbx.com/messaging_attach

Body
Josh called you.

Author Buddy Dawkins (100001847280303)
Sent 2019-08-09 01:52:05 UTC
Body Yo

Author Josh Mata (100015466029465)
Sent 2019-08-09 01:52:30 UTC
Body Whats poppin

Author Buddy Dawkins (100001847280303)
Sent 2019-08-09 02:05:07 UTC
Body You in for tha night

Author Josh Mata (100015466029465)
Sent 2019-08-09 02:18:23 UTC
Body Yea bro

Author Buddy Dawkins (100001847280303)
Sent 2019-08-09 23:14:16 UTC
Body Wya

Author Josh Mata (100015466029465)
Sent 2019-08-09 23:17:46 UTC
Body Home

Author Buddy Dawkins (100001847280303)
Sent 2019-08-10 21:05:20 UTC
Body I'll give you a gram to use your car

Author Josh Mata (100015466029465)
Sent 2019-08-10 21:14:01 UTC
Body You missed a call from Josh.

Author Josh Mata (100015466029465)
Sent 2019-08-10 21:14:10 UTC
Body Come get it

Author Josh Mata (100015466029465)
Sent 2019-08-10 21:16:08 UTC
Body You missed a call from Josh.

Author Buddy Dawkins (100001847280303)
Sent 2019-08-10 21:20:01 UTC
Body You called Josh.

Author Buddy Dawkins (100001847280303)
Sent 2019-08-12 00:04:22 UTC
Body Yo

Author Josh Mata (100015466029465)
Sent 2019-08-12 00:04:49 UTC
Body Yo

Author Buddy Dawkins (100001847280303)
Sent 2019-08-12 00:05:00 UTC
Body Wya



Author Josh Mata (100015466029465)
Sent 2019-08-12 00:05:18 UTC
Body Grandma house

Author Buddy Dawkins (100001847280303)
Sent 2019-08-12 00:06:30 UTC
Body Come out I got you

Author Josh Mata (100015466029465)
Sent 2019-08-12 00:07:03 UTC
Body Ok

Author Josh Mata (100015466029465)
Sent 2019-08-12 00:24:24 UTC
Body Omw

Thread (921937597877808)
Current 2019-08-12 06:39:18 UTC
Participants Keiayrria Dawkins (100004791252013)
Buddy Dawkins (100001847280303)

Author Keiayrria Dawkins (100004791252013)
Sent 2019-08-05 00:49:39 UTC
Body 864-300-9949 call my phone

Author Buddy Dawkins (100001847280303)
Sent 2019-08-05 00:50:35 UTC
Body I did

Author Keiayrria Dawkins (100004791252013)
Sent 2019-08-12 00:48:36 UTC
Body That boy bagged in sitting outside Felicia house

Thread (2957440164327531)
Current 2019-08-12 06:39:18 UTC
Participants Pistal Pee (100039410709080)
Buddy Dawkins (100001847280303)

Author Pistal Pee (100039410709080)
Sent 2019-08-07 22:37:38 UTC
Body The video chat ended.

Author Pistal Pee (100039410709080)
Sent 2019-08-09 01:51:50 UTC
Body The video chat ended.

Author Buddy Dawkins (100001847280303)
Sent 2019-08-09 02:05:35 UTC
Body The video chat ended.

Author Buddy Dawkins (100001847280303)
Sent 2019-08-10 02:13:41 UTC

Author Buddy Dawkins (100001847280303)
Sent 2019-08-10 14:05:38 UTC
Body A lil bit of everything

Author Marlo Parker (100003696398111)
Sent 2019-08-10 14:09:34 UTC
Body Marlo called you.

Author Marlo Parker (100003696398111)
Sent 2019-08-12 01:49:06 UTC
Body I love you fool [redacted]

Thread (10207414827028959)
Current 2019-08-12 06:39:18 UTC
Participants Darryl Bobo (1235754241)
Buddy Dawkins (100001847280303)

Author Darryl Bobo (1235754241)
Sent 2019-08-11 21:37:59 UTC
Body Yo

Thread (2194343250637230)
Current 2019-08-12 06:39:18 UTC
Participants Josh Mata (100015466029465)
Buddy Dawkins (100001847280303)

Author Josh Mata (100015466029465)
Sent 2019-08-01 03:32:48 UTC
Body Josh sent an attachment.
Share **Date Created** 2019-08-01 03:32:48 UTC
Text
Title Status Update
Url https://www.facebook.com/BMneSuperTeam/posts/1917827508363821

Author Josh Mata (100015466029465)
Sent 2019-08-01 19:56:32 UTC
Body Come to 1000 got u 85 right now

Author Josh Mata (100015466029465)
Sent 2019-08-01 22:15:04 UTC
Body The video chat ended.

Author Buddy Dawkins (100001847280303)
Sent 2019-08-05 23:20:44 UTC
Body Josh missed your video chat.

Author Buddy Dawkins (100001847280303)
Sent 2019-08-05 23:39:13 UTC
Body Ah was up

Author Josh Mata (100015466029465)
Sent 2019-08-05 23:39:37 UTC
Body Shit

Author Buddy Dawkins (100001847280303)
Sent 2019-08-05 23:39:41 UTC
Body Wya

Author Josh Mata (100015466029465)
Sent 2019-08-05 23:40:50 UTC
Body [redacted]

Author Buddy Dawkins (100001847280303)
Sent 2019-08-05 23:41:10 UTC
Body Nobody where Preston when you coming back out

Author Josh Mata (100015466029465)
Sent 2019-08-05 23:41:56 UTC
Body Hell idk be out there in a Lil bit

Author Buddy Dawkins (100001847280303)
Sent 2019-08-05 23:42:16 UTC
Body Bet come check this out for me

Author Josh Mata (100015466029465)
Sent 2019-08-05 23:43:13 UTC
Body Ok u in 1000

Author Buddy Dawkins (100001847280303)
Sent 2019-08-05 23:43:18 UTC
Body Yea

Author Josh Mata (100015466029465)
Sent 2019-08-05 23:43:44 UTC
Body Bet

Author Josh Mata (100015466029465)
Sent 2019-08-05 23:53:26 UTC
Body Omw

Author Buddy Dawkins (100001847280303)
Sent 2019-08-05 23:53:57 UTC
Body Ride through trailer park and see if Mook out there

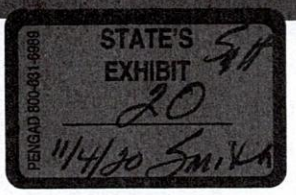
Author Josh Mata (100015466029465)
Sent 2019-08-05 23:54:37 UTC
Body Ok

Author Buddy Dawkins (100001847280303)
Sent 2019-08-06 18:00:59 UTC
Body Can you find someone to get me a rental car

Author Josh Mata (100015466029465)
Sent 2019-08-06 18:02:33 UTC
Body I'ma look

Author Josh Mata (100015466029465)
Sent 2019-08-07 21:01:26 UTC

Facebook Business Record



Service Facebook
Target 100001847280303
Account Identifier https://www.facebook.com/bryson.smith.587
Account Type User
Generated 2019-09-17 00:09:02 UTC
Date Range 2019-08-01 00:00:00 UTC to 2019-08-12 23:59:59 UTC

Ncmec Reports Definition NCMEC Cybertips: NCMEC cybertip reports associated to the account of the sender.
CyberTip ID: Unique identifier associated with the cybertip.
Time: Date and time the NCMEC cybertip was sent.
Responsible Id: Identification number of the sender's Facebook account associated with the NCMEC cybertip report.
Media uploaded in this cybertip: Media associated with the cybertip.
Id: Unique identifier associated with the media.
Upload Time: Date and time account holder uploaded the content.
Ncmec File Id: NCMEC Identifier associated with the cybertip.
Recipients: The account holder that received the content.

NCMEC CyberTip Numbers No responsive records located

Name Definition Name: Name provided by the account holder.
First: First name provided by the account holder.
Middle: Middle name provided by the account holder.
Last: Last name provided by the account holder.

Name
First Buddy
Middle
Last Dawkins

Emails Definition Registered Email Addresses: Displays a list of registered email addresses. To "register" an address, it requires confirmation by the account holder.

Registered Email Addresses
bryson.smith87@yahoo.com
bryson.smith.587@facebook.com

Vanity Definition Vanity: Username associated with the account.

Vanity Name bryson.smith.587

Registration Date Definition Registration Date: Date and time of account creation.

Registration Date 2010-11-08 22:05:12 UTC

DOCKET NO. 20-GS-11- 01147

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.

2020 SEP -8 AM 10: 38

BRANDY W. MCBEE

WITNESSES

Cherokee County Sheriff's Office

ARREST WARRANT(S)

2019A1110100985

ACTION OF GRAND JURY

TRUE BILL

Caroline Tague
Foreperson of Grand Jury
Date:

VERDICT

Guilty

Foreperson of Petit Jury
Date: 9/16/20

The State of South Carolina

County of Cherokee

Barry Barnette, Solicitor

COURT OF GENERAL SESSIONS

September 8, 2020 TERM

THE STATE

vs.

Bryson Jamar Smith

Indictment for

POSSESSION WITH INTENT TO DISTRIBUTE MARIJUANA

SC Code: 44-53-370

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHEROKEE)

INDICTMENT

At a Court of General Sessions, convened on September 8, 2020 the Grand Jurors of Cherokee County present upon their oath:

POSSESSION WITH INTENT TO DISTRIBUTE MARIJUANA

That Bryson Jamar Smith did in Cherokee County on or about August 12, 2019, manufacture, distribute, dispense, deliver, purchase or aid, abet, attempt, or conspire to manufacture, distribute, dispense, deliver, or purchase, or possess with intent to manufacture, distribute, dispense, deliver, or purchase a quantity of Marijuana, a schedule I controlled substance, defined by §44-53-190 of the SC Code of Laws, (1976), as amended, done in violation of §44-53-370, of the SC Code of Laws, (1976), as amended, such possession not having been authorized by law.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

ASSISTANT SOLICITOR

WITNESSES

Cherokee County Sheriff's Office

ARREST WARRANT NUMBER

2019A1110100987

ACTION OF GRAND JURY

TRUE BILL

Caroline Taylor
Foreperson of Grand Jury
Date:

VERDICT

Guilty

Foreperson of Petit Jury
Date: 11/6/20

DOCKET NO. 20-GS-11- 01148

The State of South Carolina

County of Cherokee

Barry Barnette, Solicitor

COURT OF GENERAL SESSIONS

September 8, 2020 TERM

THE STATE

vs.

Bryson Jamar Smith

Indictment for

POSSESSION WITH INTENT TO DISTRIBUTE COCAINE

SC Code: 44-53-370

FILED IN OFFICE OF CLERK OF COURT CHEROKEE COUNTY, S.C.

2020 SEP -8 AM 10: 38

BRANDY W. MCBEE

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHEROKEE)

INDICTMENT

At a Court of General Sessions, convened on September 8, 2020, the Grand Jurors of Cherokee County present upon their oath:

POSSESSION WITH INTENT TO DISTRIBUTE COCAINE

That Bryson Jamar Smith, did in Cherokee County on or about August 12, 2019, manufacture, distribute, dispense, deliver, purchase or aid, abet, attempt, or conspire to manufacture, distribute, dispense, deliver, or purchase, or possess with the intent to manufacture, distribute, dispense, deliver or purchase a controlled substance, to wit: a quantity of Cocaine, a schedule II controlled substance under provisions of §44-53-110, in violation of §44-53-370 CODE OF LAWS OF SOUTH CAROLINA, (1976), as amended, such possession not having been authorized by law.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

Assistant Solicitor

WITNESSES

Cherokee County Sheriff's Office

ARREST WARRANT NUMBER

2019A1110100988

ACTION OF GRAND JURY

TRUE BILL

Caroline Tayne
Foreperson of Grand Jury
Date:

VERDICT

Guilty

M. Phillips
Foreperson of Petit Jury
Date: 9/8/20

DOCKET NO. 20-GS-11- 01149

The State of South Carolina

County of Cherokee

Barry Barnette, Solicitor

COURT OF GENERAL SESSIONS

September 8, 2020 TERM

THE STATE

vs.

Bryson Jamar Smith

Indictment for

TRAFFICKING IN METHAMPHETAMINE

SC Code: 44-53-375
CDR: 450
CLASS: FEL/F

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C

2020 SEP -8 AM 10: 38

BRANDY W. MCBEE

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHEROKEE)

INDICTMENT

At a Court of General Sessions, convened on September 8, 2020, the Grand Jurors of Cherokee County present upon their oath:

TRAFFICKING IN METHAMPHETAMINE

That Bryson Jamar Smith, did in Cherokee County on or about August 12, 2019, knowingly sell, manufacture, deliver, purchase or bring into this State, or did provide financial assistance or did otherwise aid, abet, attempt, or conspire to sell, manufacture, deliver, purchase, or bring into this State, or did knowingly actually or constructively possess, or did knowingly attempt to actually or constructively possess (10) ten grams or more, but less than (28) twenty-eight grams of Methamphetamine, a schedule II controlled substance, in violation of §44-53-375, *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

ASSISTANT SOLICITOR

WITNESSES

Cherokee County Sheriff's Office

ARREST WARRANT NUMBER

2019A1110100989

ACTION OF GRAND JURY

TRUE BILL

Caroline Tagen

Foreperson of Grand Jury
Date:

VERDICT

Guilty

Foreperson of Petit Jury
Date: 11/6/20

DOCKET NO. 20-GS-11- 01150

The State of South Carolina

County of Cherokee

Barry Barnette, Solicitor

COURT OF GENERAL SESSIONS

September 8, 2020 TERM

THE STATE

vs.

BRYSON JAMAR SMITH

Indictment for

POSSESSION WITH INTENT TO DISTRIBUTE FENTANYL

SC Code: 44-53-370

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C

2020 SEP -8 AM 10:38

BRANDY W. MCBEE

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHEROKEE)

INDICTMENT

At a Court of General Sessions, convened on September 8, 2020 the Grand Jurors of Cherokee County present upon their oath:

POSSESSION WITH INTENT TO DISTRIBUTE FENTANYL

That Bryson Jamar Smith did in Cherokee County on or about August 12, 2019, distribute, dispense, deliver, purchase or aid, abet, attempt, or conspire to distribute, dispense, deliver, or purchase, or possess with intent to distribute, dispense, deliver, or purchase a controlled substance, to-wit: a quantity of Fentanyl, a schedule II controlled substance, in violation of §44-53-370, *OF THE CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended, such possession not having been authorized by law.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

ASSISTANT SOLICITOR

WITNESSES

Cherokee County Sheriff's Office

ARREST WARRANT NUMBER

DIRECT INDICTMENT

ACTION OF GRAND JURY

TRUE BILL

Caroline Tagle
Foreperson of Grand Jury
Date:

VERDICT

Guilty

Foreperson of Petit Jury
Date: 11/6/20

DOCKET NO. 20-GS-11- 01151

The State of South Carolina

County of Cherokee

Barry Barnette, Solicitor

COURT OF GENERAL SESSIONS

September 8, 2020 TERM

THE STATE

vs.

BRYSON JAMAR SMITH

Indictment for

TRAFFICKING IN HEROIN

SC Code: 44-53-370

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.

2020 SEP -8 AM 10: 38

BRANDY W. MCBEE

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHEROKEE)

INDICTMENT

At a Court of General Sessions, convened on September 8, 2020 the Grand Jurors of Cherokee County present upon their oath:

TRAFFICKING IN HEROIN

That Bryson Jamar Smith did in Cherokee County on or about August 12, 2019, knowingly sell, manufacture, deliver, purchase, or bring into this State, or did provide financial assistance or did otherwise aid, abet, attempt, or conspire to sell, manufacture, deliver, purchase, or bring into this State, or did knowingly actually or constructively possess, or did knowingly attempt to actually or constructively possess (4) four grams or more, but less than (14) fourteen grams of Heroin, a schedule I controlled substance, in violation of §44-53-370, *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA)	
)	COURT OF COMMON PLEAS NONJURY
COUNTY OF CHEROKEE)	
BRYSON J. SMITH,)	TRANSCRIPT
)	
APPLICANT,)	OF
)	
vs.)	RECORD
)	
STATE OF SOUTH CAROLINA,)	2023-CP-11-145
)	
RESPONDENT.)	

February 20th, 2025

B E F O R E:

THE HONORABLE R. SCOTT SPROUSE, Judge.

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

JAMES M. BOYD
ESQ.
Attorney for the Applicant

BRYAN T. HALL
ASSISTANT ATTORNEY GENERAL
Attorney for the State

Pamela E. Green
Circuit Court Reporter

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P R O C E E D I N G S

THE COURT: All right. We ready?

MR. HALL: Yes, judge.

THE COURT: All right. Call the case.

MR. HALL: May it please the Court.

Assistant Attorney General Bryan Hall for the State.

Your Honor, this is the case of Bryson Smith versus State of South Carolina. Docket Number 2023-CP-11-00145.

In September of 2020 the Cherokee County Grand Jury indicted Mr. Smith for trafficking meth, Indictment Number 2020-GS-11-01149, trafficking heroin, indictment number ending in 01151, possession with intent to distribute Fentanyl, indictment number ending in 01150, possession with intent to distribute marijuana, indictment ending in 01147, and possession with intent to distribute cocaine, indictment ending in 01148.

On November 3rd of 2020, Mr. Smith proceeded to a jury trial before the Honorable R. Keith Kelly. Assistant Solicitors Matt Kendall and Kim Leskanic prosecuted the case and Mr. Smith was represented by E. Joshua Schultz.

Mr. Smith was convicted by the jury and sentenced to a concurrent sentence of 25 years for trafficking meth, 25 years for PWID cocaine, and 20 years for PWID marijuana, and he was sentenced to a consecutive sentence of 25 years

for trafficking heroin and 15 years for PWID Fentanyl.

Mr. Smith filed an appeal and was represented by Appellate Defender Adam Ruffin who filed an Anders brief and the Court of Appeals affirmed the conviction and sentence and the remittitur was sent on July 5th of 2022.

This PCR was timely filed on February 27th of 2023 and, in his all -- in his application, Mr. Smith is alleging ineffective assistance of counsel, ineffective assistance of appellate counsel. The appellate counsel claim was withdrawn.

On July 10th of 2023, Mr. Smith filed an amended application. In the amended application he is alleging ineffective assistance of counsel for failure to object to the Court's jury instructions on possession and constructive possession, failure to move for directed verdict on grounds that the State failed to present sufficient evidence that Mr. Smith had dominion and control over the area where the drugs were found, that Mr. Smith was seen by jurors while in chains and handcuffs, and he informed his attorney who did not address it with the Court or move for a mistrial, failure to strike Juror Number 66 who was related to a witness for the State, failure to object to the search warrant for the premises, and failure to establish that a letter found on

the premises entered as State's Exhibit 42 was from 2017 and before the date of the search.

In November of 2024, Mr. Smith filed a second amendment to his application in which he alleged ineffective assistance of counsel for failure to object to State's Exhibits 10 and 20, which are Facebook messages between Mr. Smith and others regarding the drug transactions, on grounds that the probative value was substantially outweighed by the danger of unfair prejudice under Rules 403 and inadmissible under Rule 404(b).

Judge, just to give you a brief factual background regarding this case, law enforcement arrived at the home of Mr. Smith or, or the home of Mr., Mr. Smith's mother to serve warrants. Mr. Smith's mother gave consent for law enforcement to enter.

Upon entering, law enforcement was directed by Mr. Smith's mother to a room that had his belongings. In that room, law enforcement observed drugs and drug paraphernalia in plain view.

Yesterday, judge, the State filed a memorandum addressing the legal issues regarding constructive possession surrounding the judge's jury charge as well as the directed verdict allegation and the allegation regarding the Facebook records under Rules 403 and 404(b). Prior to filing, the State did serve opposing counsel with

that, and, Your Honor, we would hand up a copy for, for you.

THE COURT: Yes, sir.

MR. HALL: May I approach?

THE COURT: Yes, sir.

MR. HALL: Thank you.

THE COURT: Thank you.

MR. HALL: Before this Court are the PCR records, the appellate records, the records from the subject conviction, as well as Mr., Mr. Smith's SCDC records and the clerk records.

Mr. Smith is present and represented by James Boyd and the State is ready to proceed.

THE COURT: All right. Thank you, Mr. Hall.

Mr. Boyd.

MR. BOYD: Yes, sir, Your Honor.

On -- proceeding on this matter, I believe there are several legal issues that I think I can make arguments for that does -- do not require testimony. That being the jury charge issue, the directed verdict issue, and the Facebook admissibility issues.

There's a -- several issues, however, that will require testimony. The, the juror issue, Juror 66 issue, I think is partial -- I can make a partial argument from the record. But I think they'll be -- need to be

additional testimony on that issue and other issues that I think that will require testimony.

So, I'd just like to inquire if the Court wants me to proceed. I can address the legal issues first or --.

THE COURT: Why don't we go ahead you present the testimony that you're seeking to, to put in and then you can argue in full at the end and Mr. Hall will have the opportunity to argue in full as well.

MR. BOYD: All right. That's fine.

THE COURT: All right. So, go ahead and call your first witness.

MR. BOYD: I'd call Bryson Smith.

BRYSON SMITH, being first duly sworn, testified as follows:

THE COURT: Yes, sir.

DIRECT EXAMINATION

BY MR. BOYD:

Q. State your name please.

A. Bryson Jamar Smith.

Q. Okay. And you're the applicant in this case.

Is that correct?

A. Yes, sir.

Q. Okay. I want to take you back to when you were originally charged with these charges.

Did, did you have retained counsel?

A. Yes, sir.
Q. And who was that?
A. Joshua Schultz.
Q. Okay. And how did he come, come your attorney?
A. My mother hired him.
Q. Okay. And, at that time, were you charged with, besides the drug charges we're talking about here today where you had -- did you have some other charges pending?
A. Yes, sir.
Q. Okay. And what was that?
A. A probation violation and a -- three counts of attempted murder.
Q. Okay. And -- well the -- was the probation -- was he retained on the probation violation and the attempted murder also?
A. He was retained for all the charges that I had around that time.
Q. Okay. The -- now, on the attempted murder charge, did you ultimately go to trial on that charge?
A. Yes, sir.
Q. Okay. Did he represent you on that charge?
A. No, sir, like -- probably like a year before I went to trial for that, after I went to trial for the drug charges, he had a hearing to get relieved as counsel.
Q. Okay. And was that granted?

A. Yes, sir.
Q. And then were you ultimately -- did you ultimately go to trial on those charges and were found not guilty?
A. Yes, sir.
Q. Okay. Now, at what -- how did -- what was your first contact with Mr. Schultz?
A. My first contact was when I was in -- incarcerated in Cherokee County Detention Center.
Q. Okay. Did he come to see you?
A. Yes, sir.
Q. Okay. And what was discussed the first time you met with him?
A. The probation violation.
Q. Okay. Did he discuss anything about the drug charges at that time?
A. No, sir.
Q. Okay. And did you, did you see him at the probation violation hearing?
A. Yes, sir.
Q. Okay. And did you, at that time when you saw him, did you discuss the charges, drug charges which we're here about today?
Did you discuss that with him---
A. No. No, sir.
Q. ---at the time?

A. We just went to -- from the probation people I had. My probation was for three years, but he wanted me to plead guilty to a five year sentence, and I was no, I just rather go in front of the judge and let him do what he's gon' do.
Q. Okay. Did you -- but you didn't discuss the drug charges in that time?
A. No, sir.
Q. Okay. And did -- when was the next time you saw him?
A. The next time I saw him was -- I never saw him in person again until the, the, the -- till I went to court that Friday. I saw him on video -- I saw him on Zoom the Friday before I went to trial.
Q. Okay.
A. I went to trial that Monday and I saw him on Zoom that Friday.
Q. Okay. So, you saw him the Friday before you started the trial on these drug charges?
A. Yes, sir.
Q. Okay. And that was by Zoom?
A. Yes, sir.
Q. Okay. So, you didn't see him in person?
A. No, sir.
Q. Okay. At, at that time, had you been provided any discovery by, by---

A. Yeah, he sent me a motion discovery I want to say 30 to -- I'm gon' give him leniency. So I'm gon' say 30 to 90 days before I went to trial when I got back to the Cherokee County Detention Center.
Q. Okay. And what, what did y'all discuss when you met him on that day?
Well, didn't meet him.
What -- when you had the Zoom conference with him, what did y'all discuss?
A. He said we might be going to trial Monday. So, I'm gonna -- I'm gonna -- I, I got these bodycam footages that I want you to view.
Q. Okay. Did -- and did you view it?
A. Sir?
Q. Did you view the body---
A. Oh, yes, I got to watch some of it. Not all of it because he was only the video, the video -- the Zoom only lasted for an hour. So, he said he only paid for an hour. So, I got to watch a little bit of it and then I think they brought a -- they brought me a disk that -- no, I saw the disk when I got back to the county from my, my other lawyer when I went to -- for the attempted murder charges.
So, I never seen -- he never showed me the disk. I just saw it on his Zoom call.
Q. Okay. Did he discuss anything with you about some

items -- well, let me back up a minute.

You understand this was -- the charge against you was based on a search of a home or a property your mother owns.

Is that correct?

A. Say it again, sir. I apologize.

Q. The, the charges against you were based on the search of a home that your mother owned?

A. Oh, yes, sir.

Q. Is that correct?

A. Yes, sir.

Q. And basically it's your understanding, and introduced at trial, there were certain exhibits of, of some mail correspondents of -- that were allegedly found in that room that was introduced against you?

A. Yes, sir.

Q. Okay. Did he discuss with you, when you -- on that Friday, anything about the items that you -- that were found in the home?

A. Not to my recollection.

Q. Okay. Did he -- did you, on that Monday of trial, did you meet with him?

A. Yes, sir, I -- when I got to the courtroom, he was, he was, he was waiting on me.

Q. All right. What was discussed at that time?

A. We was getting prepared for trial, and while we sitting there, I was like tell -- could you tell the solicitors I'll take 10 years. To keep my mother from getting on the stand, I'll, I'll plead guilty to everything and take 10 years. He was like they're not gonna do. They want to give you 15 years. And, by this time, the bailiff was coming out to tell us they was ready to pick the jury.

Q. Okay. Did he -- had you -- the 15 years been discussed with you that Friday before?

A. Yes, sir.

Q. Okay. Had you told him then?

A. That I was prepared to go to trial, I, I don't think 15 years was a good plea.

Q. Okay. And then, on that Monday, you brought up the 10 years?

A. Yes, sir.

Q. Okay. To your knowledge, did he, did he go to the solicitor and make -- tell them you were offering to plead guilty for 10 years?

A. No, sir, he just said they not gon' do and, by this time, the, the bailiff was coming out to tell us they ready to pick the jury. So, we went right in there, sat down, and start picking a jury.

MR. BOYD: Okay. Your Honor, may I approach the

witness?

THE COURT: Yes, sir.

Q. I want to, I want to show you these items. This is back -- to the items they said were found. These -- at trial, those items introduce -- introduced as State's Exhibit 41 and the -- that was a photograph that was introduced in evidence.

Is that right?

A. Yes, sir.

Q. Okay. And then State's Exhibit 36, that was also a photograph.

Is that correct?

A. Yes, sir.

Q. And State's Exhibit 42 was an envelope -- a photograph of an envelope.

Is that correct?

A. Yes, sir.

Q. Okay. And then there was this item that was introduced, the photograph.

Is that correct?

A. Yes, sir.

Q. Okay. And this -- this is I think basically a photograph -- Exhibit 37.

Is that correct?

A. Yes, sir.

Q. Okay. And were, were any of the originals of these items introduced at trial?
A. No, sir, just those pictures.
Q. Okay. When were -- these items were found in that room.
Do you know how long those items had been in that room?
A. I know the probation letter was from 2017 cause I got out of prison from Livesay -- I maxed out from Livesay from a, from a probation -- violation of probation before that. So, that would -- I turned -- I went to the Cherokee County probation office August the 2nd and I re -- I got released August the 1st. So that was from August the 2nd, 2017.
Q. Okay.
A. And the other mail, I, I can't tell you how long. I'm not sure how long that's been in there.
Q. Okay. Well, did your -- you discuss -- they were entered -- those items were -- these photographs were introduced do -- in evidence.
Is that correct?
A. Yes, sir.
Q. Okay. Did your attorney, at that time, had he discussed with you anything about how long those items had been in your room?

A. Not to my recollection. I'm --.
Q. Okay. And that's, that's the room they alleged you were using?
A. Yes.
Q. Is that correct?
A. Yes, sir.
Q. Okay. And I believe that fact was disputed in trial whether you were living there or not.
Is that correct?
A. Yes, sir.
Q. Okay. So, basically the State was use -- introducing these letters to try to show you had dominion and control over that room---
A. Yeah.
Q. ---where the drugs were---
A. Yes, sir.
Q. ---allegedly found?
A. Yes, sir.
Q. Is that correct?
A. Yes, sir.
MR. BOYD: Okay. I would like to introduce these into evidence, Your Honor.
THE COURT: You want to mark them as a group or individual?
MR. BOYD: A group would be fine.

THE COURT: Okay. That would be Applicant's No. 1.
Any objection?
MR. HALL: No objection.
THE COURT: All right, sir. Applicant's No. 1 would be admitted without objection.
(WHEREUPON, the group of photographs was marked as Applicant's Exhibit No. 1 and received into evidence at this time.)
THE COURT: Thank you.
Q. Okay. So, let's go back to the Monday. You'd had a discussion about a plea bargain and you -- to your knowledge, he never conferred your offer to plead to 10 years to the prosecution?
Is that---
A. I mean I walked out at the same time he did. So, I know he didn't talk to the solicitor about the 10 year plea.
Q. Okay. So, y'all, at that point, as the trial started, y'all proceeded to draw a jury.
Is that correct?
A. Yes, sir.
Q. Okay. Tell me about the jury selection process.
Did -- as, as jurors were picked out of a box and came down, did you, did you con -- did he confer with you about whether these jurors should be accepted or rejected?

A. I, I, I can't remember cause it was like -- it was so many people in the jury that knew me personally that stood up and raised they hand and they say they knew me personally. So, after that, I just -- I wasn't really in, in that moment. But I know I for sure I told him about the, the girl being the kin to the officer.
Q. Okay. Well, we're talking about Juror 66.
Is that correct?
A. Yes, sir.
Q. Okay.
A. Her sister was also there too. But she said she was -- she had family members on the jury.
Q. All right. The juror -- Juror 66 had stood up and said she was related to a State's witness.
Is that correct?
A. She -- yes, sir.
Q. Is that correct?
A. Yes, sir.
Q. And she also stated that she was related to a Cherokee County Sheriff's Department employee.
Is that correct?
A. Well, she said she was related to Cherokee County Sheriff's Department. But she -- I don't think she knew he was a, a witness at the time. Nah, I don't think she did. But she said she was kin to a Cherokee County

sheriff officer member.
Q. Well, it, it -- she also, in the record, said that she was -- that Juror 66 stood up and said she was a witness -- a -- related to a witness in the case.
A. Okay.
Q. Is that right?
A. I guess so, yeah.
Q. And I believe all the witnesses who testified against you at trial, except one, were sheriff's -- Cherokee County deputies.
Is that correct?
A. Yes, sir.
Q. All right. In law enforcement or somebody in law enforcement?
A. Yes, sir.
Q. Is that correct?
Did -- your, your attorney accepted Juror 66 as a juror and 66 served as a juror in your case.
Is that correct?
A. Yes, sir.
Q. Okay. And when you -- when she did -- before accepting that juror when she was drawn, did your attorney discuss with you whether that juror should be accepted as a juror in this case?
A. I mean I told him that she kin to the police -- she

said she was kin to a, a law enforcement official. He was like I done used all my strikes.

Q. Okay. He told you he'd used all his strikes?

A. Yeah, that what he told me --

Q. Okay.

A. -- or he close to using all his strikes one.

Q. All right. Now, the, the trial proceeded and you -- at, at some point were you seen by some jurors while you were in handcuffs and chains?

A. Three days on with the trial.

Q. All right. Tell me how, how -- tell us how that happened.

What happened?

A. See, when you come from the Cherokee County -- the, the detention center, you pull up at the back of the courthouse, and, at the back of the courthouse, the jurors also park there. So, when we getting on the elevator, I didn't really pay it no attention because, in my mind, I'm not, I'm not knowing about this at the time.

So, we get in the elevator to go in and the next -- and we -- and when they, they enter -- they intervene or when they got the trial done with that day, I told -- I -- they -- the same thing happened. Like the juror still out there -- when they went to break, it was jurors out there smoking cigarettes, and, when you on break, sometime they

take you back to the county so you can eat.

And when I was discussing my case with another, another, another person and they was like man, you know your jurors don't suppose to see you like that. And also, when I went to court for the attempted murder, I -- the same thing happened and I told my lawyer about it then. He was like you sure. I was like yes, sir. He was like we gon' call a mistrial because jurors don't suppose to see you like that and that's when it dawned on me that the same thing happened in, in this -- in, in this trial.

Q. Okay. Did you tell your attorney at the -- in the drug trial that the jurors had seen you in chains?

A. I told them it was jurors back there smoking cigarettes when I was going on break and --.

Q. And did he -- what did he tell you in response to that?

A. I mean he said it, it wouldn't change -- it, it didn't matter. He like kind of shrugged it off.

Q. Okay. Did, did he take any action---

A. No.

Q. ---to your knowledge---

A. He never---

Q. ---about it?

A. He never said anything about it.

Q. Let me -- during -- did he meet with you -- did your

attorney meet with you after court was over or during breaks to discuss how the trial was going or any of those things?

A. No, he went to the back and talked to the solicitor and the judge. Most of the time -- I mean that's the only time -- that's, that's where I saw him at mostly. They had me in the holding cell.

So, we never talked during the breaks and the next conversation I had with him was after they got -- after I got my sentence. He said he was gon' put in for appeal and that's all he was hired to do was to put in for the appeal.

Q. Thank you.

Those are all the questions I have at this time, Your Honor.

THE COURT: Okay. All right. Mr. Hall, cross-examination.

MR. HALL: Beg the Court's indulgence.

(Pause.)

CROSS-EXAMINATION

BY MR. HALL:

Q. How you doing, Mr. Smith?

A. Fine.

How you doing, sir?

Q. Good.

Mr. Smith, you testified that you met with your attorney before trial.

Isn't that right?

A. Yeah, I talked to him prior to him video calling.

Q. Okay. And you testified that your attorney sent you the discovery 30 to 90 days before trial.

Isn't that right?

A. That's what I recollect.

Q. Okay. Now, you testified that you reviewed the discovery including the videos.

Isn't that right?

A. I've screw -- I reviewed the videos when I got back to the county jail.

Q. Okay. And you also testified that the State offered you 15 years on, on the Friday before trial.

A. That's what he---

Q. Isn't that right?

A. That's what he said.

Q. Okay. And you didn't want to take the 15?

A. Nah.

Q. Right?

A. No, sir.

MR. HALL: Okay. May I approach, Your Honor?

THE COURT: Yes, sir.

Q. Mr. Smith, I want to hand you what's been entered as

Applicant's Exhibit 1.

Can you flip through those for me?

A. (WHEREUPON, the witness complies.)

Q. And, Mr. Smith, I want to ask you, in those photos of the items that were found in the room, there's no dates on any of those items.

Isn't that right?

A. No, sir.

Q. Okay. And you testified that the letter that was found and, and entered in your trial was from 2017.

Isn't that right?

A. The probation letter?

Q. Okay.

A. Yes, sir.

Q. And how do you know it was from 2017 --

A. Because that's the only---

Q. -- when you---

A. Cause when I got out of prison, you had to report to the probation officer because they sentenced me -- after my sentence, I got sentenced to more probation. So, I had to report to the probation officer. I got out on the 1st. I didn't make it down there the 1st because I went to my aunt house.

So, the 2nd, that morning, you got her -- we got to report to the probation office within, I want to say, 48

to 72 hours after you're released. So, I went down there on the 2nd.
Q. Okay. But, again, there's no date on those letters. Isn't that correct?
A. No, sir.
Q. So you can't say for sure that it was from 2017?
A. I can say for sure because, when I went to trial for my attempted murders, the probation -- the, the, the solicitors also had a printout of my lingus (phonetic) report of when I was turned over to probation and parole. I'm like -- and if you pull it -- and if you can print my relingwish (phonetic) report, it -- that you, that you probably can get ahold to, it will tell you that I was released to probation and parole August the 2nd, 2017.
Q. Okay. Mr. Smith, I want to ask you specifically about that letter that you, that you have a photograph of.
A. Yes, sir.
Q. There's no date on that letter, right?
A. No, sir.
Q. Okay. And, Mr. Smith, I'll take those back.
One moment.
(Pause.)
Q. And, Mr. Smith, isn't it true that, at your trial, the State entered into evidence Facebook messages between you and an individual by the name of Long -- Longway

Horton and Adonas Willis.

Isn't that right?

A. Yeah, and I -- yes, sir.

Q. Okay. And isn't it true that those Facebook messages were made from a Facebook account that was linked to your email address.

Isn't that right?

A. That's what the State said.

Q. Okay. But the email address --

A. Yes, sir.

Q. -- contained your name?

A. Yes, sir.

Q. Okay.

A. No, it said Buddy Dawkins. It didn't -- I don't think it said my name. But my aunt -- I ain't for sure.

Q. If I told that the record---

A. If you can show me, I mean I can -- you have more proof than I got.

Q. Sure. Beg the Court's indulgence.

(Pause.)

MR. HALL: May I approach, Your Honor?

THE COURT: Yes, sir.

Q. Mr. Smith, I'm handing you what's been -- what was entered in your trial as State's Exhibit 20. It's a part of the record -- Your Honor, you should have a copy as

well. It's in Volume 2 of Mr. Smith's record on appeal.
Can you take a look at that for me?
A. Bryson Smith. Bryson.Smith.
Q. And I'm sorry.
Could you repeat that?
A. It said Bryson.Smith.
Q. Okay. And that was the email address for the Facebook account, right?
A. Yeah, I -- yes, sir.
Q. Okay. And isn't it true that, in those Facebook messages, when asked by the individuals that you were messaging whether or not you could get them drugs, you responded yes, you could?
Maybe not literally but you told them you could get them some?
A. I mean I remember, when that came up in trial, once a person said I said I could get some perks, and the other person said something about some weed, I was like no, I don't have no weed. Yeah, I remember that from trial.
Q. You said no, you didn't have weed?
A. I didn't -- yes, sir.
Q. But you told them that you could get them perks, right?
A. Yeah, I did.
Q. Okay.

A. Yes, sir.
Q. And isn't it true that, when law enforcement went to your mother's house and entered the room that had your belongings, they found drugs and drug para -- paraphernalia?
Isn't that right?
A. It wasn't just my belongings in that room though.
Q. But the room had your belongings, right?
A. I mean it had some clothes that I -- cause I wasn't staring up -- but they wasn't -- they said it was my clothes.
Q. Well, well, yes or no, it had, it had items that belonged to you in the room?
A. No.
Q. Okay. Isn't it true that, at trial, your mother testified, testified that the room was your room?
A. From what I -- from what I seen, she said I haven't stayed there in two years and the room wasn't mine. But I guess you got more recollection than I got.
Q. If I told you that your mother testified that she identified that room as belonging to you, would you refute that?
A. No, I wouldn't have no choice but to believe you.
MR. HALL: Okay. And just for the record, Your Honor, that is at Page 271 or -- I'm sorry. Excuse me.

That's at Page 371 and 379 through 80 of the record on appeal.

No further questions, Your Honor.

THE COURT: Any redirect, Mr. Boyd?

MR. BOYD: Just one.

REDIRECT EXAMINATION

BY MR. BOYD:

Q. Those documents that Ex -- Exhibit No. 1, the correspondents --

A. Yes, sir.

Q. -- there is no date on them.

Is that correct?

A. They got the date folded up. It's like they never unfolded the whole piece of paper. They just got the date covered up where it just states my name. Like if they would of unfolded the whole piece of paper and brought it to Court, it would of said the same thing that I'm saying now.

Q. And, and did your attorney ever do any investigation as to what dates were actually---

A. No.

Q. ---on those---

A. Not at all.

Q. ---correspondents?

A. Not even a, a wink or a, a wince or he never

investigated.
Q. And the originals weren't put into evidence. So, this was---
A. No, they just had---
Q. ---the -- is that correct?
A. ---those pictures showing now.
Q. All right. Thank you. That's all the questions I have at this point, sir.
THE COURT: Anything further from this witness?
MR. HALL: Nothing from the State.
THE COURT: Thank you, Mr. Smith.
THE WITNESS: Thank you.
THE COURT: You may step down.
THE WITNESS: Yes, sir.
MR. BOYD: Your Honor, our next witness I'd call is Tracy M. Smith.
MR. HALL: Your Honor, the State objects to this witness. We didn't have notice of Ms. Smith being called.
THE COURT: Mr. Boyd.
MR. BOYD: I don't know of any discovery rule that limit me who I was suppose to give a list of witnesses.
MR. HALL: Well, Your Honor, we, we would cite to Love v. State stating that the State must have notice to be able to accurately, accurately -- adequately respond to the allegations of any witnesses that are called.

THE COURT: And, and who is this witness?

MR. BOYD: That's my mother -- his mother who testified at trial.

THE COURT: All right. I'll, I'll allow this witness.

TRACY SMITH, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. BOYD:

Q. State your name please.

A. Tracy M. Smith.

Q. Okay. And, Mrs. Smith, what is your relation to Brian -- Bryson?

A. I'm his mother.

Q. Okay. And were you -- did you -- when he was charged with these offenses, did you -- were you the person that actually hired his attorney?

A. Yes, sir, I did.

Q. Okay. And did -- just going -- did his attorney ever discuss the facts of this case with you?

A. No, sir, I never had a conversation with his lawyer until like when Bryson would call me and I would set up appointment Mr. -- his lawyer to -- for Bryson to talk to him on the phone or when I was taking payments to his office. But I didn't see him then. I was just giving it

to his receptionist.
Q. Okay. Now, the, the charges that he was charged with on these drug charges arose out of drugs that were allegedly found in a room in a house you owned.
Is that correct?
A. Yes, sir, that's correct.
Q. Okay. And the -- and I believe you testified at trial in this case.
Is that correct?
A. Yes, sir, I did.
Q. Okay. I want to ask you concerning -- if I may approach, Your Honor?
THE COURT: Yes, sir.
Q. I want to show you these exhibits, Applicant's Exhibit No. 1.
First, let me show you what appears to be two copies of something from the Department of Parole on, on this. This was allegedly -- well, the original was originally in a room in the house where drugs, where drugs were found and photocopies were introduced at trial.
Were you familiar with those documents?
A. Can I look through them?
Q. Yeah.
A. Yes, sir.
Q. Well, but first---

A. Yes, sir.
Q. I'm just asking you first on this. We're gonna go through each one one by one.
A. Okay.
Q. That one first.
A. This is the first time I ever seen this right here.
Q. Okay.
A. And I -- if, if they said they found it in a room, it had to be woah, at least when he got out of prison because I haven't never seen that before. So if they found it in the room --.
Q. Okay. This -- the next one -- and this is what was State's Exhibit 42 at trial on this case. It's a photo of an envelope. That was allegedly found.
Do you know, know anything about that envelope?
A. This right here looks like an envelope where Bryson had got some AT&T from about nine, ten years ago to my, my add -- my house and they was sending out bills where he didn't pay it. And this look like one of those envelopes where -- when he had got that service nine, ten years ago that he didn't pay the bill. That look like one of those from AT&T.
Q. Okay. And did -- so how long approximately had that envelope been in that room?
A. It -- years because before -- Bryson wasn't staying

in the house and I had -- the house was rented out to a family member, her boyfriend.

So all -- I had two junk rooms that was full of they stuff and my kid's stuff from when they stayed in the house when they was at school -- when they was in school. So, I had two junk rooms.

It was only one room in the house that was people that I let -- laid in it that was there and I own -- everything was in a junk room. It's two junk rooms. The first two bedrooms was junk rooms that I had furniture, the -- my -- the person that rented the house, they stuff was in the room. I had my kid's furniture, the -- they mail. It just a -- two junk rooms in there.

So, I guess they must -- I don't know how they -- they must of went in the drawer and got -- but it was mail. When I went in the room after the police left, it was just mail. Everything was just throwed on the bed. Like a whole lot of stuff just throwed on the bed.

Q. Okay. But as far as that at -- I mean had that been there for a period of time?

A. Oh, yeah, that had been there a long time. That -- it was -- everything that come in the, in the room for my kids or mail that come in the room, I just throwed it in a room in the drawer.

Q. Okay. I show you these -- this and I'm not sure --

it looks like it was a pic -- photograph made of these on the bed.

Do you know anything---

A. Yeah.

Q. ---about that?

A. If, if you can see, that's, that's where I had a mattress laying on a floor cause it was a junk room and I guess they must of -- I can't tell exactly what it is because I can't see it. But I can't, you know, tell you what -- exactly what it was because, when I went in there, it was just stuff thrown everywhere.

Q. Okay. And, and this is a portion of a picture of a document that was State's Exhibit 41.

Do you know what -- anything about that?

A. Yeah, this is where I ordered some shoes at. This is where I had told Bryson -- he ordered the -- my grandbaby some shoes. It's like a one that came from Journeys or -- well, they send them to your house.

This is right here is for Journeys that he told me that the shoes was coming to the house, that he had ordered his son some shoes and that had been there for a while because the -- he was still in elementary school. My grand, my grandbaby was in elementary school.

Q. All right. So how long, approximately, had that been -- I think Exhibit 41 from the trial exhibit been in,

in that room?
A. It, it had been there for a while.
Q. And when you say a while---
A. I remember that.
Q. ---are you talking months---
A. Yeah.
Q. ---years?
A. Years, yeah. It had been there years because it came in a little black, little black bag and this right here was on the front of the bag and the bag was still in the room with all the stuff. It was, it was just a junk room.
Q. Okay. Did Bryson's attorney ever discuss with you anything about these exhibits?
A. No, sir, I never seen him until you just showed them to me.
Q. Okay. So, did he ever -- he never went over those exhibits with you and to ask you how long they had been there?
A. No, sir, I never had a conversation with him about the case. Only time -- I let -- when Bryson would call me, he would say mama, can you make an appointment to see Mr. Josh so I could talk to him and I was like yeah. And I would always go to his office and Bryson would call and Mr. Joshua would be on, you know, would listen to him and they would talk that way.

But me and him never discussed what evidence that the State had or, you know, what was going on with the trial. The only time that I went is when I made payments for like, you know, made payments for Bryson's fees and when Bryson needed to talk to him on the phone.

Q. And you testified at trial.

Is that correct?

A. Yes, sir, I did.

Q. And he never asked you anything at trial about these exhibits, these envelopes, exhibits, correspondents---

A. No, sir.

Q. ---or how long they had been there?

A. No, sir.

Q. Is that correct?

A. No, sir.

MR. BOYD: Thank you. That's all the questions I have.

THE COURT: All right. Mr. Hall.

MR. HALL: Beg the Court's indulgence.

(Pause.)

CROSS-EXAMINATION

BY MR. HALL:

Q. How you doing, Mrs. Smith?

A. How you doing today, sir?

Q. Good.

Mrs. Smith, you testified that you hired Mr. Schultz to represent your son, Bryson Smith?
A. Yes, sir, I did.
Q. Okay. And so he was your son's attorney.
Isn't that right?
A. Yes, sir.
Q. Okay. But he wasn't your attorney, was he?
A. He wasn't, no, sir.
Q. Okay. Mrs. Smith, you testified that this room was a junk room.
Isn't that right?
A. Yes, sir.
Q. Okay. But isn't it true that, in Mr. Smith's trial, when law enforcement came to your home -- well, let me withdraw. I'll rephrase that question.
A. Okay.
Q. Isn't it true that, in Mr. Smith's trial, the State presented evidence in the form of bodycam footage from law enforcement, right?
A. Yeah, they was -- they had pictures of -- well, we had a, a party down there and, the balloons, they had that. That's all I seen on the bodycam footage that they had.
Q. Well, let me ask you this.
A. Okay.

Q. If I told you that the record reflects that the State presented evidence in the form of video bodycam from when officer's came to your home to look for Mr. Smith, would you refute that?
A. Bodycam?
Yeah, they did have a body camera.
Q. Okay. And isn't it true that, in the body cam videos that the State presented at -- in Mr. Smith's trial, you stated and identify the room that you allege is a junk room, you identified it as Mr. Smith's room?
A. No, sir, I did not.
MR. HALL: I want to direct the Court's attention to Page 371 of the record on appeal.
Mrs. Smith, I'm gonna read you your testimony from Mr. Smith's trial.
A. Okay.
Q. Okay. Beginning at Line 5, the solicitor asked, "just to be clear, you never identify this room to the officers as belonging -- as being Bryson's room?
And beginning at Line 7 you testify no. They might of asked me did he go in that room. But I identified that as Bryson's room because Bryson didn't live there.
And then, on Page 372, the State presented bodycam foot -- footage from when officers arrived at the house and, in that footage, you told the officers that Bryson

had a key to the house.

Isn't that right?

A. No, sir, I did not.

Q. Okay. Want to direct the Court's attention to Page 372 beginning at Line 18. The solicitor asked, so -- after the video was played, the solicitor's asked so you just told the officer that he did have a key to the house and then you denied it. You say you didn't hear that part and then, at Line 25, you said you never heard me say yeah.

On Page 373, the -- beginning at Lines 3 and 4, you didn't, you didn't say -- you didn't verbally say yeah. But the solicitor pointed out that you affirmatively nod -- nodded your head yeah.

A. No, sir, I would of never nodded my head to that right there because that wasn't true. None of that was not true. He did not have a key because somebody else was staying in the house.

Q. But the record reflects you nodded in the officer's bodycam video?

A. No. I mean known I -- yeah. No, I ain't nodded my head to, to something like that when I was -- when they was asking questions and I was giving them truthful answers to what they was asking me.

Q. Okay. I'll move along.

A. Okay.

MR. HALL: No further questions, Your Honor.

THE COURT: Any redirect?

MR. BOYD: No, that's all.

THE COURT: All right. Thank you, Mrs. Smith.

THE WITNESS: Thank you so much, sir.

MR. BOYD: Your Honor, that's all the testimony I intend to present. I do have some legal arguments concerning matters in the record that don't require testimony.

THE COURT: Okay. And we -- I'm gon' deal with that after the testimony's completed.

Let me -- let's hear from the State.

MR. HALL: The State calls E. Joshua Schultz.

JOSHUA SCHULTZ, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. HALL:

Q. How you doing, Mr. Schultz?

A. Very well. Hope you are.

Q. Doing well.

Mr. Schultz, how long have you been practicing law?

A. This fall it's gonna be 20 years.

Q. And how much of that time has been spent in criminal practice?

A. Almost exclusively.
Q. Criminal defense?
A. Yes, sir.
Q. And you were retained by Mr. Smith's mother to represent him.
Isn't that right?
A. Yes.
Q. Okay. And during the course of representation, about how many times did you meet with Mr. Smith?
A. Can't remember an exact figure but it was several.
Q. Several times?
A. Yes.
Q. Do you believe that you met with him sufficiently to be prepared for trial?
A. Yes. And, and, and in a trial like this, it -- it depended on -- upon a lot of, I guess, legal defenses, objections that were made during the course of the trial cause the case itself was fairly simple.
Q. Okay. And did you request and receive discovery in this case?
A. I did.
Q. Okay. Can you tell the Court what evidence the State had against Mr. Smith?
A. Well, I, I think it's been testified here today, it was a search conducted of, of a residence in Cherokee

County. The allegations, at least, is that it was Bryson Smith room where the narcotics were found. There are obviously some defenses that were maintained by me and, and Mr. Smith all throughout the trial.

But that was what they had. They had bodycams, they're several bodycams, testimony of the officers, and also Facebook messages or Facebook correspondences as well.

Q. Okay. And can you tell the -- do you recall what was in the Facebook messages?

Can you tell the Court about that?

A. I can't remember the specific Facebook messages. But they were -- the State was attempting to connect Mr. Smith to the narcotics found through these Facebook messages.

Q. All right. And did you review this discovery with Mr. Smith?

A. I did. I believe I sent him everything that I had and I also sent him what the State presented or at least, at least what the State had as far as the other incident goes and those, those were the attempted murders.

Q. Okay. And did you engage in plea negotiations with the State prior to trial?

A. I did.

Q. Can you tell the Court about that?

A. The, the offer on everything with this was 15.

Mr. Smith is indeed correct, he testified to this about a half an hour ago, that he would plead, and I remember this distinctly, to 10 on everything. They offered -- Kendall and I believe Ms. Leskanic offered 15.

I came back. I told them very briefly he would plead to 10. That was rejected and I'm not sure if that was on the record or not. But I have a distinct recollection of asking for 10 in this case.

I don't -- I, I reviewed the transcript. I don't see where the record indicates that I counteroffered with 10. But I remember I, I counteroffered with 10 and they, they -- the solicitor said -- Mr. Kendall said that that was unacceptable. They wanted 15.

Q. And you communicated, communicated that to Mr. Smith?

A. I did.

Q. Okay.

A. And that was 15 non or excuse me. Fifteen violent at 85 percent.

Q. Okay. Mr. Schultz, can you tell the Court about your defense strategy for trial?

A. The defense strategy for trial was to -- obviously the, the State had their case and everything. But my defense strategy was to, was to present Bryson Smith's mother for testimony to say that it wasn't his room or he did not have command and control or at least dominion and

control, I'm sorry, of, of the room at the time that the -- around the time that the, that the search warrant was executed.

Q. And in preparation for trial, did you review the search warrant?

A. Yes.

Q. Did you see anything wrong with the search warrant in this case?

A. I think the search warrant was based upon probable cause that -- I, I believe what, what had happened with the case is the officers went to serve an arrest warrant for Mr. Smith. There were trying to locate him. In plain view they found or they, they saw some narcotics I believe. Based upon that fact, they went to a magistrate, got a search warrant, and executed soon thereafter. So no.

Q. And do you believe that, if you had challenged the search warrant, do you believe that that would of been successful?

A. Yes.

Q. If---

A. No. I'm sorry. My challenge would of been un -- unsuccessful. The State would of been successful in admitting the search into evidence after the search warrant was executed.

Q. Okay. And Mr. Smith proceeded to trial.

During jury selection, do you recall there being a discussion between you and Mr. Smith regarding Juror Number 66?

A. This was a long time ago. And, and so I do not distinctly remember a discussion about Juror 66. This was more than now four years ago. This was the week of the presidential election during 2020. It was during COVID.

So, I don't necessarily remember that. I, I remember that, at some point, I believe that I ran out of strikes.

So, I don't think I was able to strike Juror Number 66 cause I, I think I was out of strikes. At least that's what my recollection is. Again, this is a long time ago.

Q. Do you recall, during trial, any discussions between you and Mr. Smith regarding the jurors seeing him in chains?

A. I, I don't remember that and Cherokee -- Cherokee County is set up in a, I, I guess for lack of a better word, in a weird way.

Inmates are transported up an elevator from the holding facility which is essentially almost like right directly across the street in a, in a van. They go up the elevator on the second floor, which is where the actual courtroom is in Cherokee County.

And -- but I don't -- I, I don't think, during the

time at least during taking direct testimony and cross-examination, that Mr. Smith was in cuffs during that time. I don't, I don't think that happened. So, I'm not sure where Mr. Smith is saying that he's alleging that the jurors saw him in handcuffs.

Q. And if he had brought that to your attention, would you have raised that to the---

A. I probably would of, yes.

Q. Okay. I want to ask you about some of the evidence in this case.

Did Mr. Smith ask you to conduct any independent investigations in this case?

A. I can't remember that. I, I -- independent meaning hire a private investigator?

Q. Yes.

A. I, I don't -- I, I can't remember him requesting that.

Q. Okay. Did he -- do you recall him asking you to investigate anything specific in this case?

A. No.

Q. Okay. Do you recall him asking you to investigate mail that was found in the room?

A. Yes.

Q. Okay. Can you tell me -- can you, can you tell the Court about that?

A. Well, I, I reviewed it in, in pretrial discovery. As far as like an actual independent investigator, I, I did not retain one in this case cause I thought it was unnecessary. So, I -- I'm not, I'm not really sure where you're going with that.
Q. It's okay. I'll move, I'll move on.
A. Okay.
Q. The mail that was found and the photographs that were entered into evidence, there were no dates on, on those exhibits or in those exhibits?
A. That's correct.
Q. Okay. And actually the -- if I told you that the State, in admitting those exhibits, specifically State's Exhibit 42, there was testimony they were -- that there was no date on that exhibit.
Would you refute that?
A. No, I would not.
MR. HALL: Okay. And just for the record, that's at Transcript Page 323 through 324 of the record on appeal.
Q. I want to ask you, Mr. Schultz, do you believe that if either State's Exhibit 42 or State's Exhibit I believe it's 66, which is another letter, letter, if those exhibits were from 2017, do you believe that would of changed the outcome in this case?
MR. BOYD: Your Honor, I'm gonna object to

speculation on this point.

THE COURT: Overruled.

A. Potentially, yes.

Q. Okay. I'll rephrase the question.

A. Okay.

Q. Based on the evidence that the State presented---

A. Yes, sir.

Q. ---and your impressions of the case, in your opinion, do you believe that, if those letters had been dated for 2017, that would of resulted in a different outcome in this case?

A. Yes, there's always a possibility that that could -- that could of happened.

Q. Could of happened but you can't say for sure, can you?

A. I can't say, say for sure, no.

Q. Okay. I want to ask you about the directed verdict motion. The record reflects that you made a motion for directed verdict.

A. I did. After the close of the State's evidence.

Q. Okay. And the trial court ultimately denied that directed verdict?

A. Yes, sir.

Q. Okay. And when the jury was charged, did you have any concerns or questions about the judge's jury charges?

A. No.
Q. If you had any concerns, would you have raised those with the trial court?
A. Yes, sir.
MR. HALL: Beg the Court's indulgence.
(Pause.)
Q. At trial you called Mrs. Tracy Smith, who is Mr. Smith's mother, as a witness.
Is that---
A. Yes, sir.
Q. Okay. And prior to calling her as a witness, did you speak to Mrs. Smith, interview her before trial?
A. I did.
MR. HALL: Okay. No further questions, Your Honor.
Please answer anything opposing counsel has.
A. Yes, sir.
THE COURT: All right. Mr. Boyd.

CROSS-EXAMINATION

BY MR. BOYD:

Q. Good morning.
A. Good morning.
Q. Let me -- so, when you were originally, originally hired to represent Bryson Smith, how many cases were you originally retained to represent him on?
A. Originally retained to represent him on all of his

pending charges and I believe his probation of violation as well.
Q. Okay. And I believe you re -- did you represent him on the probation violation?
A. Yes, sir.
Q. Okay. And at some point you asked to be relieved on the attempted murder case.
A. Yes.
Q. Is that correct?
A. Yes, that was after he received the sentence for the trafficking charges.
Q. Okay. And, and why did you decide to, to move to be relieved?
A. Well, I, I felt it was probably in the best interest. I, I don't think Mr. Smith wanted me on the case anymore, wanted me on that pending case anymore.
Q. Okay. Did -- who actually hired you, paid you for representing him?
A. Mr. Smith's mother I believe.
Q. Okay. Do you -- did you keep a record of how many times you met with Mr. Smith?
A. I, I kept records of correspondences. But, no, I, I did not keep a record of, of that, at least written documentation of that.
Q. Okay. All right. Going to the trial, the -- are you

familiar now with the State versus Stewart opinion?
A. I am.
Q. Okay. And, of course, that hasn't -- opinion hadn't been issued during the trial of this case.
Is that---
A. Yes, I think it was issued I believe several months afterwards I believe --
Q. Right.
A. -- if I'm not mistaken.
Q. Okay. Did you -- when it -- when the unpublished opinion came out from the Court of Appeals, did you read, read that case?
A. I did.
Q. Okay. And you said you'd practiced -- your main field is criminal law.
A. Absolutely.
Q. Is that correct?
A. Yes.
Q. Okay. And, and the un -- unpublished opinion basically affirmed the decision in Stewart.
Is that correct?
A. I believe so, yes.
Q. Okay. And did or were you aware that Stewart had been -- Stewart applied for cert from the Supreme Court?
A. I believe so, yes.

Q. Okay. So -- and I believe Rauch Wise was representing Stewart.

Is that correct?

A. I, I---

MR. HALL: Objection. Relevance.

MR. BOYD: Well --.

THE COURT: Overruled.

MR. BOYD: Okay.

THE COURT: I'll, I'll -- you can go a ways with this.

Q. Well, do you know Rauch Wise?

A. I do.

Q. Okay. And you know if he gets an issue on appeal he's gonna stick with it till the doom's day, isn't he?

A. I know he's---

MR. HALL: Objection. Speculation.

THE COURT: Yeah.

MR. BOYD: Okay.

THE COURT: Let's, let's direct the questioning to --

MR. BOYD: All right.

THE COURT: -- the pertinent parts of this case. I---

MR. BOYD: Okay.

THE COURT: The Court, Court knows Mr. Wise.

Q. Okay. And let me -- do -- so you were aware that

the -- Stewart had been -- applied for cert from the Supreme Court.

Is that correct?

A. Yes, sir.

Q. Okay. Were you aware that cert had been granted by the Supreme Court at the time this case was tried?

A. I don't believe so, no.

Q. Okay. All right. If, if you knew the Supreme Court had granted certiorari, would you have put an, an objection to the charge in this case?

A. Quite possibly, yes.

Q. All right. Now, the -- you, you stated you moved for directed verdict.

What did you -- what grounds did you move for directed verdict on?

A. I, I can't remember the grounds that I moved on directed verdict. If I -- I don't have a transcript with me. But I, I know I moved. It's my practice to move for a directed verdict in almost every criminal case I try.

Q. Okay. And you said -- I believe you said -- stated on direct exam you didn't move to suppress the search, that you didn't think that would be successful.

Is that correct?

A. The, the -- after the search warrant was executed?

Q. Yeah. Right.

A. Yes. Correct.
Q. Okay. And the -- I believe the transcript shows that you were prepared to make an argument on that issue and it was basically a standing issue whether --
A. Yeah.
Q. -- there was -- the -- every -- argue that issue, you would have to concede---
A. Thank you for refreshing my memory with that because, if I had argued that the search warrant was invalid, then I would have -- be asserting standing, standing at least that Mr. Smith had at least possession and control over that room or at least parts of that room.
Q. Okay.
A. So, it's a double-edged sword. So, if I -- if, if I made a motion to suppress, then that would present its own difficulty, and then if I didn't make a motion to suppress, that could possibly be a PCR issue.
Q. Right.
A. So, it's, it's, it's a double-edged sword.
Q. Right.
A. It's difficult and I think you pointed that out correctly.
Q. All right. And do you recall what grounds you were preparing to make the motion to suppress on?
A. I, I can't remember specifically but it was basically

lack of probable cause. The arrest -- the arrest warrant came in there. The -- and the, the argument, at least if, if I would of presented that, would of been, would of been something like police came in with an arrest warrant. Mr. Smith was not there. They should not have been in the position to see narcotics with only the arrest warrant at their disposable if that makes sense.

Q. Okay. And you did not believe that would be successful?

A. I did not believe that would be successful and then I had the double-edged side of that -- the double-edged sword of the standing problem --

Q. Okay.

A. -- as well.

Q. All right. And the -- concerning the exhibits then, I believe -- I'll let --.

A. Yes, sir.

Q. If I can show you those?

A. Thank you.

Q. Those are copies of exhibits that were introduced at trial of items that were found in the bedroom in question.

A. Yes, sir.

Q. During your going through discovery and looking -- the -- investigating this case, did you ever see the originals of those items?

A. I did not.
Q. Okay. Those items are undated?
A. Yes, sir.
Q. Did you do any investigation to determine what dates that were -- those items were actually mailed or dates that were on them?
A. No, sir.
Q. Okay. Now, I want to ask you about the Juror 66, and if you don't mind, I'm gonna, I'm gonna show you -- I'm gonna give you a copy of the transcript.
A. Yes, sir.
Did, did you want these exhibits back?
Q. Thank you.
A. Yes, sir.
Q. Okay. If you look at -- I don't know if the pages are the same but I've got Page 18, Line 19.
A. Okay.
Q. And -- well, I'm sorry. I'm looking at Page 19---
A. Yeah.
Q. ---Line 13. It may be different of yours. But it's starting out when I call your name, please stand where you are. The clerk is stating that.
Do you see that?
A. Are you on Page 18?
Q. Okay. I'm thinking it may be 18 on yours and it---

A. Okay.
Q. I think it's 19 on mine.
A. Are, are you looking for a specific -- I'm sorry, judge.
Are, are you looking for something specific regarding Juror Number 66?
Q. Well, not, not at -- not yet.
A. Yes, sir.
Q. Okay. But that's the start of the jury sel -- actual jury selection.
Is that correct?
A. Yes, sir.
Q. Okay. It looks like the first juror that came up was Number 69.
Is that correct?
A. Yes.
Q. Okay. And I believe you -- both sides seated that juror.
Is that correct?
A. Yes.
Q. Okay. And then Juror 32 came up and you excused Juror 32.
Is that correct?
A. Yes, sir.
Q. So that's one strike you've had?

A. Yes, sir.
Q. Is that correct?
Okay. And then Juror 39 came up and you excused Juror 39.
Is that correct?
A. Yes, sir.
Q. Okay. So that's two strikes you have at that point.
Is that correct?
A. Yes, sir.
Q. Juror 40 came up and the -- I believe that was -- the juror was excused by the State.
Is that correct?
A. Yes, sir.
Q. Juror 41 came up and that juror was seated.
Is that correct?
A. Yes, sir.
Q. Okay. Number 19 came up. That juror was seated.
Is that correct?
A. Yes.
Q. Okay. Juror 10 came up. That juror was seated.
Is that correct?
A. Yes, sir.
Q. Then Juror 31 came up. That juror was seated.
Is that correct?
A. Yes, sir.

Q. Juror 53 was -- came up. That juror was seated.
Is that correct?
A. Yes, sir.
Q. Okay. Then Juror 46 came up. That juror was seated.
Is that correct?
A. Yes, sir.
Q. Juror 22 came up and that juror was excused by the State.
Is that correct?
A. Yes, sir.
Q. And then the next juror that came up was Juror 66.
Is that correct?
A. That's right.
Q. Tara Phillips and that juror was seated by -- is that correct?
A. Yes.
Q. So actually you had only exercised two---
A. Yes.
Q. ---strikes at that time?
A. That's correct.
Q. Is that correct?
A. Yes.
Q. Did you have any strategic reason for seating a juror who was related to a witness in the case and was related to a sheriff's -- Cherokee County Sheriff's Office and all

the witnesses except one were Cherokee County Sheriff's officers. So, she was related to a sheriff's -- Cherokee County Sheriff's officer and she was seated on the jury.

What strategic, strategic reason did you have to do that?

A. I, I can't remember specifically if I had a strategic reason. Looking back, I, I probably would not have seated her.

Q. Thank you.

Did you consider, if you remember, actually making a request to -- for the judge to disqualify her because of her relationships?

A. I don't think the record reflects that I made that.

Q. Okay. But in looking back over it now, you agree you should of struck that juror?

A. Yes.

Q. Thank you. That's all the questions I have.

A. You want your transcript back, sir?

THE COURT: Just hang on to it for now.

THE WITNESS: Yes, sir.

THE COURT: Any redirect?

MR. HALL: Briefly, Your Honor.

REDIRECT EXAMINATION

BY MR. HALL:

Q. Mr. Schultz, isn't it true that when the Court

questions Juror 66 about her relation to the State's witness that she told the Court that it would not interfere with her ability to be fair and impartial?

A. Yes.

Q. That's---

A. I -- if, if I could find that?

Q. Yes, I can---

A. Do you know what page it's on?

Q. Yes, it's on Page 9 --

A. Okay.

Q. -- of the record on appeal beginning at Line 17 and ending at Line --

A. Yes, sir.

Q. -- 24.

A. Do you want me to read that?

Q. Sure. If you'd like.

A. All right. Line 20, starting right here, ma'am, your number?

Juror 66. She said 66.

Court: Would that interfere with your -- I'm sorry. Let me go back.

Is there any, any member of the jury panel who is now or related by blood or marriage to any of these potential witnesses, if so, please stand.

Starting right here.

Ma'am, your number?

Juror 66. She responds 66.

The Court: Would that interfere with your ability to be fair and impartial?

Juror 66: No, sir.

The Court: You may stay.

Q. And so, in hindsight, I believe you testified that perhaps you should of struck her.

But you can't say for certain that that would of changed the outcome in this case?

A. No, sir.

MR. HALL: No further questions, Your Honor.

THE COURT: Anything further from this witness?

MR. BOYD: No, Your Honor.

THE COURT: Thank you, Mr. Schultz.

THE WITNESS: Thank you, Your Honor.

MR. HALL: Your Honor, may he be excused?

THE COURT: Any objection to this witness being excused?

MR. BOYD: None, Your Honor.

THE COURT: Mr. Schultz, you are excused.

THE WITNESS: Thank you, Your Honor.

MR. HALL: Judge, at this time the State rests.

THE COURT: Okay. Mr. Boyd, is there any reply testimony?

MR. BOYD: No reply, Your Honor.

THE COURT: All right. All right. The testimony is concluded.

Let me hear arguments.

So, Mr. Boyd, I'm gon' let you -- you have the burden of proof in the case. So I'm gon' let you open. Tell me all the arguments that haven't been brought in with the testimony and, and you, you can also give a summation on what's been testified to.

I'll let Mr. Hall---

MR. HALL: Yes, sir.

THE COURT: ---give his argument and then I'll give you an opportunity to reply to that.

So go ahead.

MR. BOYD: Your Honor, the first thing I would like to bring up is the issue regarding the charge to the juror -- the jury.

In charging, there's basically three parts of that charge I want to address. The -- in charging what the State had to prove to prove possession, the Court gave the following charge, and I'm quoting, "to prove possession, the State must prove, beyond a reasonable doubt, that he had both the power and intent to control the disposition and use of" and then it goes through different drugs. He charged it a number of time (sic).

But looking at the transcript, it's Page 480, Lines 3 through 6, and then 481, 7 to 20.

Your Honor, the, the proper charge I think is that, and I'm quoting from the Stewart decision, "to prove possession, the State must prove, beyond a reasonable doubt, the defendant had knowledge of, power over, and the intent to control the disposition of use of the drugs involved."

The instruction by the trial court left out a key word and that's knowledge. The -- this -- and this is not -- I know but there's an issue of State versus Adams that -- about the law part -- what law was in effect at this time. This is not something Ad -- Adams charged.

This is the law that was in effect at that time. This was a charge that the Stewart Court said was appropriate. But the, the -- in -- the, the difference between this case and what the Stewart charge is, the judge, in that case, said the, the -- must have knowledge. And so that was left out in this case.

And then you go into the -- farther in the charge, constructive possession, may, may -- and this is what the Court charged. Constructive possession means the State, I'm sorry, that the defendant had dominion and control or the right to exercise dominion and control over the marijuana on the property or the property on which the

marijuana was found and that's from Page 480, Lines 10 through 14.

The trial court then, in charging constructive possession on the other charges, what that amounts to, just, just referred back to this definition, which was going through the marijuana charge.

Your Honor, in Stewart, the Court said there was two elements to a constructive possession. One, the State has to prove, by other evidence, must -- that the -- they had right -- the defendant had the right and power to exercise control over the drugs.

Second, the State has to prove the defendant had knowledge of the drugs and the intent to control the disposition of the use of, of the drugs. And the, the, the Court, in Stewart, said there was -- it's a problematic statement that constructive possession means the defendant had dominion and control or the right to exercise dominion and control over the -- either the drugs itself or the property in which the drugs were found, which was what the Court charged in this case.

In Stewart, the Court affirmed that. But the reason the Court affirmed that is that -- and, and they noted that -- they, they stated if we consider that statement that I just read only in isolation, it failed to convey both elements to the jury.

In Stewart, the Court gave -- also gave a mere possession charge. In this case, we only -- we have only the statement in isolation. We do not have a mere presence charge.

And, again, Your Honor, this is the law that was in effect at the time of this trial. Trial counsel failed to object to either of these charges or to request a mere presence charge and we -- I submit that's -- we submit that's ineffective assistance of counsel and made a difference in this case.

The -- in looking -- the other ground, Your Honor, on the charge itself, and the, the Court instructed the jury the defendant's knowledge and possession may be inferred when a substance is found on property under his control.

Now, that's the exact instruction that was found to be improper in Stewart. The trial counsel failed to object to this instruction.

Now, this is a little different than the others because State -- in State versus Adams, the Court had approved that charge. That's a 1987 case. The -- Stewart came out later and said this was an improper charge.

So, I'm sure the attorney general argues well, State versus Adams applied because it says a lawyer doesn't have to be clairvoyant to -- in looking at what changes may be involved.

But if you look at the, the scenario, June the 5th, 2019, the Court of Appeals affirmed Stewart in an unpublished opinion. Mr. Storak (sic) testified he knew about that. He also knew that a writ of certiorari had been requested in that case. And March 12th, in fact, the Supreme Court, of 2020, the Supreme Court agreed to hear Stewart.

This case was tried on November the 3rd, 2020. November 18th of 2020, about two weeks later, oral arguments were heard in Stewart. Stewart decision wasn't issued until May 19th, 2021.

My argument is, Your Honor, that Mr. Storak (sic) says he practices almost exclusively in criminal law. He should of known that this was a hot issue. In fact, his testimony was that he was aware that certiorari had been requested in Stewart.

All he had to do was make the objection to the charge. He knew it was an issue that was on appeal. It's no strategic reason for not making the objection to the charge and he didn't do that. If he had, like the attorney did in Stewart, I submit that Mr., Mr. Smith would of gotten a new trial because it would of been an improper charge that was objected to.

So, I submit to you this case differs from the Adams case in that it's not asking an attorney to foresee

something that may happen in the future. It's an issue that's on appeal that his attorney knew was on appeal yet it's in -- his attorney failed to object to it. I, I -- I'll submit that was ineffective assistance of counsel for that reason.

Your Honor, another issue I want to bring up is the, the issue of -- then on the, the Facebook messages that were introduced into evidence, Your Honor. I think that's, that's on record on appeal Page 159, 161.

The -- in that, there's a conversation -- the Court can review it. But it's the -- it -- it states that my client allegedly, if he's the person in those Facebook messages, says they're asking him to provide drugs. He says he can get perks.

The -- there's no evidence -- well, perks, I believe the officer testified to when they asked him what it was, is some kind of pill or some kind of pain pill. There was no -- there was no evidence ever present -- presented that perks or Percocets were found as part of -- in the search of this case.

So, the drug they're talking about on the Facebook messages is not something that was found in the search of this case. So, the State maintains that it goes to his intent and that may be correct if he'd of been talking about having marijuana, cocaine, methamphetamine,

Fentanyl, or heroin, which were the drugs actually found. But, but, but he wasn't talking about that. He was talking about perks.

So, here -- what we have here is another act that's, that's not -- doesn't have anything to do with the drugs found. They're basically putting in the propensity, propensity to be a drug dealer because perks is something different. I, I submit that that goes, goes against, if you look at Rules 403 and 404, the -- and particularly 40 -- 404(b), evidence of other crimes, wrongs, or acts is not come -- permissible to -- admissible to prove character or action in conformity therewith.

What this is doing is showing that he is a drug dealer and he's acting in conformity with that in selling or providing perks. But that's another issue that's another bad act. It has nothing to do with what was actually found on the premises.

So, I submit to you it's not a question of trying to go to intent under State versus Lyle. But it's going under -- it's going under propensity. So, I submit to you that the -- he -- the failure to object on those grounds was, was ineffective assistance of counsel.

He did object -- Mr. Schultz did object to the Facebook messages on the grounds of hearsay and on the -- whether they were authentic or not and he did a great job

of objecting on those grounds. But a -- I think he missed another ground that he should of objected on. So, we submit that is ineffective assistance of counsel also.

The -- Your Honor, the directed verdict issue, I, I believe the record will show that he did not, he did not cite the State versus Heath case and basically, in State versus Heath, the Supreme Court overturned a conviction of Mr. Heath. I'm very familiar with that case cause it was my case. But it said we hold the State failed to present evidence that appellate, Mr. Heath, could exercise dominion and control over the area where the crack was found.

Appellant lived in the home where the crack was found. However, the home was owned by appellant's mother. As a result, it is arguable that the appellate merely had the right to access the area where the crack was found, not actual domain and control over the property.

In this case, we have a similar situation. We have a situation where my client's mother owns the house. There's testimony that other people live in the house. There's testimony that the drugs were found in a room where, even if Mr. Smith has access to that room, it's no, no evidence presented that he had exclusive access to that room.

So, I submit to you that the, the State versus Heath

is directly on point on this case and trial counsel should of moved for directed verdict based on State versus Heath grounds.

Your Honor, the other issue I just want to reiterate, on the, the Juror 66 issue, it, it -- it's inconceivable to me when a defense attorney would, with knowledge, put a relative of a sheriff's deputy who was a witness in the case on a jury. Frankly, I would maintain he should of asked -- moved to strike that juror for cause even though the juror said they could be fair.

I mean -- and, and, and, at the very least, he should of asked for further inquiry about this from this jury whether she could really be fair or not. There was a one can you be fair. She said yes, sir. I mean that was it. But I think Mr. Schultz even himself admitted, in retrospect, he should of struck that juror.

He was not out of strikes. He had three strikes remaining if I calculate correctly. There's no reason to put a juror on there that, that is related to a law enforcement officer who is a, a, a witness in the case and I -- that, that, I'm assume -- submit is ineffective assistance of counsel to do so.

Other grounds you've heard testimony on and I think we'll just stand on those grounds. But that's our argument, Your Honor.

THE COURT: Thank you, Mr. Boyd.

Mr. Hall, response?

MR. HALL: Beg the Court's indulgence Your Honor.

(Pause.)

MR. HALL: Your Honor, may I approach?

THE COURT: Yes, sir.

MR. HALL: Judge, what we're handing up is printed copies of the cases I'm gonna be citing and making my argument.

THE COURT: Okay.

MR. HALL: Judge, I'll be brief since we argued -- we argue our legal position in the memorandum that was filed yesterday.

But essentially, judge, regarding the possession and constructive possession charges, judge, under the Strickland standard that -- this Court is to evaluate counsel's conduct by the law that was available at the time of trial, and, in fact, there are several cases that state that counsel is not required to anticipate changes in the law.

And so it doesn't matter that the Stewart case was on appeal at the time of this trial. The Stewart case wasn't actually decided and an opinion wasn't issued until after trial.

This trial was in November of 2020 and the Stewart

decision came out in I believe it was June of 2021.

And so, counsel's conduct wouldn't have been under the Stewart standard. And so, under Strickland, this Court is to evaluate counsel's conduct and whether or not he should of made an, made an objection to the charge by the law that was available at the time of trial, which would of been State v. Adams.

And, under Adams, the Supreme Court held that the trial court could charge the jury that knowledge may be inferred by a defendant, make sure I'm citing that correctly, by the mere fact that a defendant had control over the property.

The trial judge in this case gave the Adams charge, and just for reference so Your Honor can point to that charge, it was given on Page 480 of the record on appeal. So, the Adams charge was the proper and correct charge in this case. And so counsel can't be deemed ineffective for, for failing to object to a proper and lawful charge under the law existing at the time of trial.

And, judge, if we could briefly mention the directed verdict grounds. Mr. Smith's alleging that the State failed to present sufficient evidence that he had dominion and control over the area where the drugs were found.

Your Honor, the record refutes that. Mr. Smith cites to the Heath case, and if we could -- judge, we can show

that this case is distinguished from the Heath case.

In the Heath case, the drugs were found -- I believe it was in -- at -- somewhere outside and the State didn't have any evidence that linked that particular defendant to the drugs that were found on the property.

In this case, Your Honor, the State presented the Facebook messages, and in the Facebook messages, Mr. Smith admitted to being able to get the drugs that were requested, whether it be Percocets or marijuana or the -- or any of the other, any of the other drugs that were found in that room. Mr. Smith acknowledged that he could obtain those drugs that were requested.

In that case -- and the facts of this case is similar to the Lane case that we cite in our memo. In the Lane case, a business owner -- drugs were found on a business owner's premises and the business owner told law enforcement that he could get more drugs. And it was the fact that he made the statement that he could get more that established that he had the right to exercise control or establish the fact that he knew about the drugs and could get more.

And so, Your Honor, that's similar here. The thing that was missing from the, from the Heath case was evidence that linked the defendant to the drugs and you have that here in the Facebook message. And if want to

review the messages, Your Honor, it's in Volume 2 of the record on appeal that's (sic) was handed to Your Honor.

Judge, regarding the Facebook messages, they allege that counsel should of objected under Rules 403 and 404. Again, I'll be brief since this issue's briefed in our memo.

But the drugs were or the evidence was relevant and it wasn't substantially -- there wasn't the substantial risk of unfair prejudice and also the drugs were admissible under Rule 404(b) because they weren't evidence of intent. They weren't admitted to prove Mr. Smith's propensity to sell drugs. But they were admitted to prove his intent.

The fact -- the -- not only the intent but his knowledge of the drugs in the home and his intent to control disposition of the drugs, drugs by selling them to others. And so that was admissible under both rules.

Judge, if I could meet -- if I could talk about the Juror 66, the juror stated to the trial judge that her relation to the -- any of the State's witnesses did not effect her ability to be fair and impartial and the burden's on Mr. Smith to prove otherwise.

Judge, we cite to State v. Hillman (sic), 87 S.C. 434. That's a 1911 Supreme Court case. But, in that case, the Supreme Court held, it's still good law, but the

Supreme Court held that the defendant failed to prove that a juror's relationship affected the juror's ability to be fair and impartial and failed to prove a reasonable and -- or I'm sorry. Excuse me. I'm gonna restate.

This Hill -- the Kill -- the Hilton case, the Supreme Court's held that there's no rule of common law nor is there any statute disqualifying a juror on account of his relationship to a witness. And there have been subsequent cases throughout the years that have held that the burden is on the applicant to prove that a juror's relation to any witness would of affected the outcome in the case and Mr. Smith hasn't done that here.

Regarding the allegation that the jurors saw Mr. Smith in chains, again, counsel testified that he doesn't recall that. He doesn't recall that conversation, and if Mr. Smith had, in fact, told him about that, that he would of raised it to the trial court. And so we would ask Your Honor to defer to counsel's judgment and this testimony regarding that issue.

But we cite to Foye, F-O-Y-E, v. State, 335 S.C. 586. That's a 1999 case in which the -- I believe it was a -- Supreme Court held that a PCR applicant failed to prove prejudice based on his claim that members of the jury saw him in chain -- in chains because the applicant failed to present evidence that the jurors had actually saw him in

chains. And Mr. Smith hasn't presented such evidence here.

And so his allegation is purely speculative and this Court -- I mean this Court can't decide issues on, on mere speculation without their being evidence to support it.

And so, Your Honor, we would ask that you deny Mr. Smith's PCR application on those grounds.

THE COURT: Thank you, Mr. Hall.

Mr. Boyd, any -- I'll give you last, last word.

Any reply?

MR. BOYD: Yes, sir, Your Honor.

Your Honor, just replying to all the charge issue (sic), I would submit it's right -- the State versus Adams does say a lawyer doesn't have to be clairvoyant.

In this case, you're not ask -- we're not asking that he be clairvoyant. This is not a esoteric issue that may be in the future. This was an issue that was on appeal at that time. He testified he knew the issue was on appeal at that time.

So, I would submit that clearly a lawyer who knows that's an issue knows that's an issue that's going before the Supreme Court has a duty to raise that issue.

The -- on the, on the issue -- the 403 issue concerning the messages, the, again, I don't see there's -- it doesn't show intent to poss -- of any of the

drugs actually found on the -- in the house. There's certainly no testimony of that.

It's saying he could get an entirely different drug called perks. That goes nothing but to propensity to other bad acts, the propensity of him to commit a crime.

We -- the -- we submit, Your Honor, that the applicant has raised several grounds which merit a new trial and merit a finding of ineffective assistance of counsel.

Thank you.

THE COURT: Thank you, Mr. Boyd.

Well, counsel, there are a number of issues for me to consider, a lot of material for me to go over. So, I'm gonna take this under advisement.

Thank you and my law clerk will be in touch with you.

MR. BOYD: Thank you.

MR. HALL: Thank you, Your Honor.

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

C E R T I F I C A T E

I, Pamela E. Green, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas Nonjury for Cherokee County, South Carolina, on the 20th day of February, 2025.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

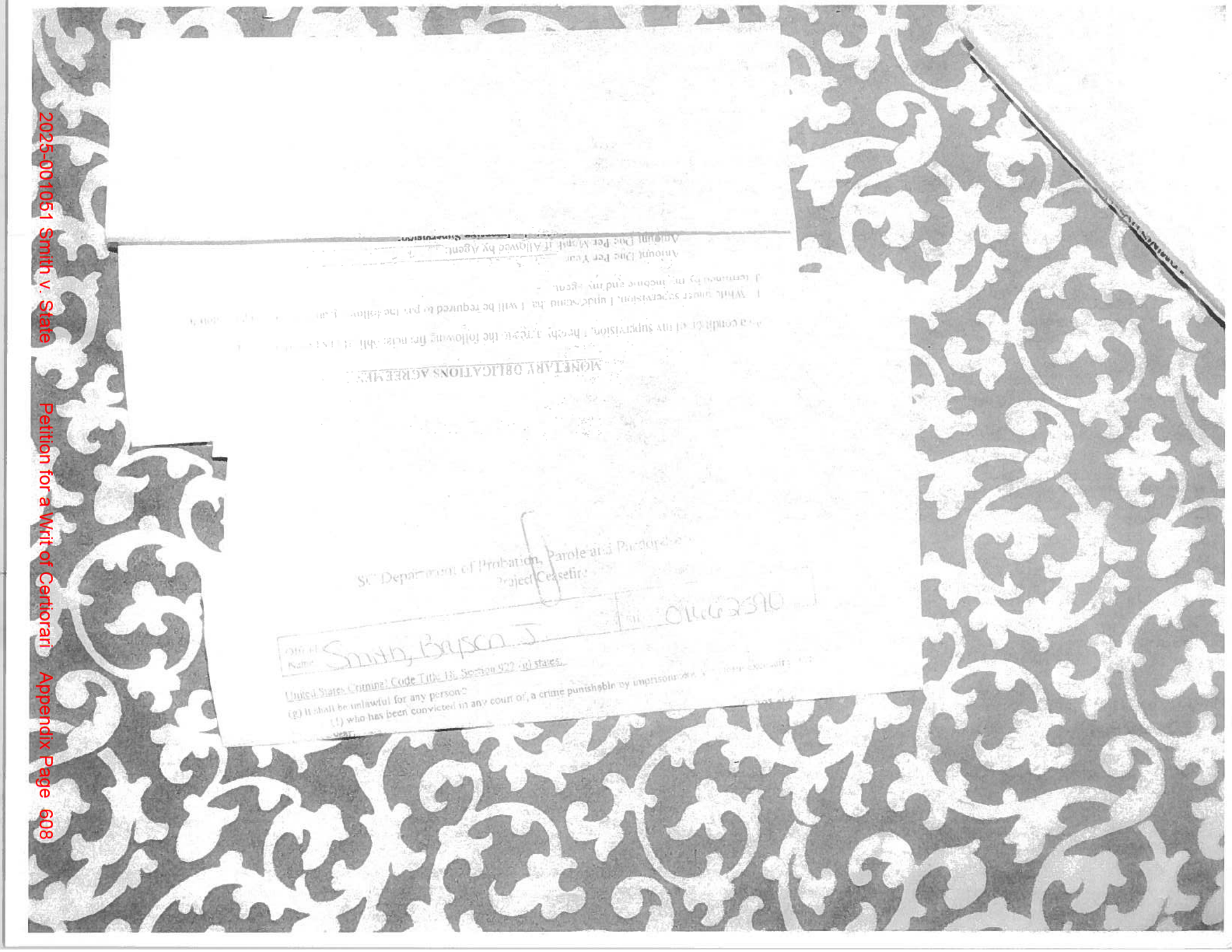
March 21st, 2025

_____

PAMELA E. GREEN, Court Reporter




PENGAD 800-631-6989
STATE'S EXHIBIT
Smith


Name: Smith, Bryson J.

United States Criminal Code Title 18, Section 922 -(g) states,

(g) It shall be unlawful for any person:

(1) who has been convicted in any court of, a crime punishable by imprisonment

2025-001051 Smith v. State Petition for a Writ of Certiorari Appendix Page 608

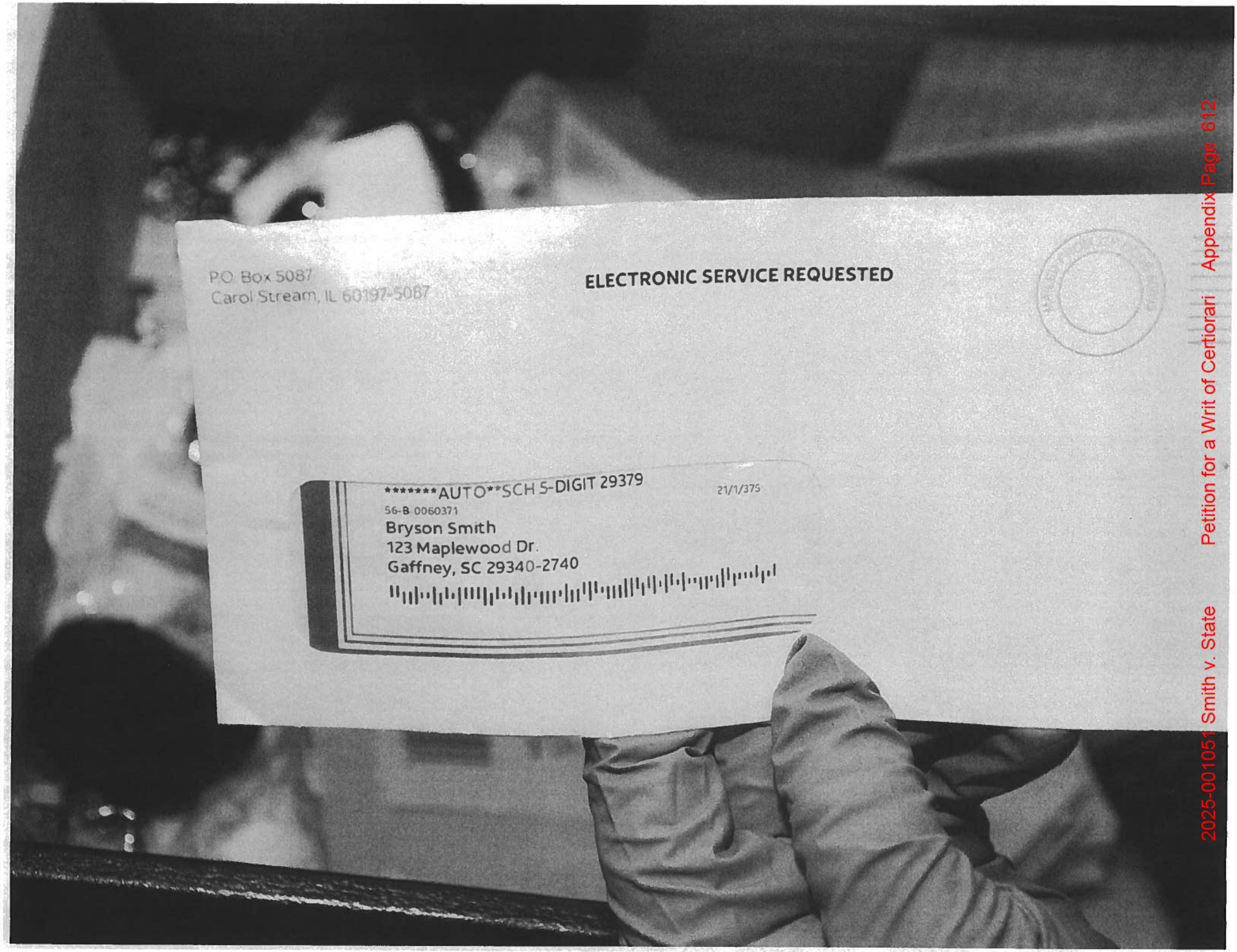

STATE'S
EXHIBIT
37
SMITH

57991 SALEABLE
JC DIST CENTER
3210 S US HIGHWA
JUNCTION CITY KS

SHIP TO:
B SMITH
123 MAPLE
GAFFN

2025-001051 Smith v. State Petition for a Writ of Certiorari Appendix Page 610


STATE'S
EXHIBIT
41
11/5/20 SWTK
PENGAD 800-631-6989



2025-001051 Smith v. State Petition for a Writ of Certiorari Appendix Page 612


STATE'S
EXHIBIT
11/5/20
PENDAD 800-631-6989

STATE OF SOUTH CAROLINA COUNTY OF CHEROKEE BRYSON JAMAR SMITH #366967, PLAINTIFF, v. STATE OF SOUTH CAROLINA, DEFENDANT.	)	IN THE COURT OF COMMON PLEAS SEVENTH JUDICIAL CIRCUIT APPLICATION FOR POST-CONVICTION RELIEF 23CP-110145

1. Place of detention: **Allendale Correctional Institution 1057 Revolutionary Trail Fairfax, SC 29827**

2. Name and location of Court which imposed sentence: **Cherokee County Court of General Sessions 125 E Floyd Baker Blvd, Gaffney, SC 29340**

3. Name(s) of co-defendant(s) (if any): **None**

4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:

(a) **2020GS1101147- MANU/POSS DRG SCH-3RD,SUB**

(b) **2020GS1101148- MDP NARC SCHED-3RD,SUB**

(c) **2020GS1101149- TRAF METH 10G - <28G 3RD**

(d) **2020GS1101150- MDP NARC SCHED-3RD,SUB**

(e) **2020GS1101151- TRAFFICKING IN ILL.DRUGS**

FILED IN OFFICE OF CLERK OF COURT CHEROKEE COUNTY, S.C.
2023 FEB 27 P 3:19
BRANDY W. MCBEE

5. The date upon which sentence was imposed and the terms of the sentence:

(a) **2020GS1101147- November 6, 2020 20 years concurrent**

(b) **2020GS1101148- November 6, 2020 25 years and $50,000.00 fine concurrent**

(c) **2020GS1101149- November 6, 2020 25 years and $50,000.00 fine concurrent**

(d) **2020GS1101150- November 6, 2020 15 years consecutive to 1151**

(e) **2020GS1101151- November 6, 2020 25 years and $100,000.00 fine**

6. Check whether a finding of guilty was made:

(a) after a plea of guilty

(b) after a plea of not guilty **X**

(c) after a plea of nolo contendere

7. Did you appeal from the judgment of conviction or the imposition of sentence? **Yes**

8. If you answered "yes" to (7), list:

(a) the name of each Court to which you appealed:

i. **SC Court of Appeals**

ii. _____

iii. _____

(b) the result in each such Court to which you appealed:

i. **Appeal dismissed**

ii. _____

iii. _____

(c) the date of each such result:

i. **June 15, 2022**

ii. _____

iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. **Unpublished Opinion Case No. 2020-001499**

ii. _____

iii. _____

9. If you answered "no" to (7), state your reasons for not so appealing:

(a) _____

(b) _____

(c) _____

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) **Ineffective assistance of counsel.**

(b) _____

(c) _____

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

(a) **Please see attachment.**

(b) _____

(c) _____

12. Prior to this application have you filed with respect to this conviction:

(a) any petition in a State Court under South Carolina Law? **No**

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? **No**

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? **No**

(d) any other petitions, motions or applications in this or any other Court? **No**

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i. _____

ii. _____

iii. _____

iv. _____

(b) the name and location of the Court in which each was filed:

i. _____

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

i. _____

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

iv. N/A

(d) the date of each such disposition:

i. N/A

ii. N/A

iii. N/A

iv. N/A

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. N/A

ii. N/A

iii. N/A

iv. N/A

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

No.

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. N/A

ii. N/A

iii. N/A

(b) the proceedings in which each ground was raised:

i. N/A

ii. N/A

iii. N/A

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) This is the Applicant's first PCR Application and the Applicant respectfully reserves the right to Amend later.

(b) _____

(c) _____

17. Were you represented by an attorney at any time during the course of:

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? **N/A**

(b) your trial, if any? **Yes**

(c) your sentencing? **Yes**

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? **Yes**

(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? **N/A**

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:

i. **E. Joshua Schultz, Schultz Law Firm, LLC, 184 N. Daniel Morgan Avenue Spartanburg, SC 29306**

ii. **Adam Sinclair Ruffin, S.C. Commission on Indigent Defense, 3685 Rivers Ave, Suite 101 North Charleston, SC 29405**

iii. _____

_____

(b) the proceedings at which each such attorney represented you:

i. **E. Joshua Schultz- Trial**

ii. **Adam Sinclair Ruffin- Appeal**

iii. _____

19. State clearly the relief you seek in filing this application:

New Trial

20. Are you now under sentence from any other court that you have not challenged? **No**

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SEVENTH JUDICIAL CIRCUIT
COUNTY OF CHEROKEE	)	
	)	
BRYSON JAMAR SMITH #366967,	)	
	)	
PLAINTIFF,	)	
	)	GROUNDS FOR POST-CONVICTION RELIEF
v.	)	
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
DEFENDANT.	)	
	)	

23CP-11 0145

1. Counsel was ineffective in failing to object to the Courts jury instruction on "possession" and "constructive possession" in the following particulars:

In instructing the jury the definition of possession on each charge, the Court stated as follows:

"To prove possession, the State must prove beyond a reasonable doubt that he had both the power and the intent to control the disposition or use of" the drugs. This instruction left out a key word. "knowledge". The proper charge is "To prove possession, the State must prove beyond a reasonable doubt that the defendant had knowledge of, power over, and the intent to control the disposition or use of the drugs involved." *State v. Lane, 271 S.C. 68, 245 S.E.2d 114 (1978), State v. Stewart, 28029 (S.C. 2021)*

In defining constructive possession, the Court instructed the jury that constructive possession means the defendant had dominion and control over either the drugs or the property on which the drugs were found. In *Stewart*, the Court found the language "the property upon which the drugs were found" to be "problematic". In *Stewart*, the Supreme Court found the Trial Court's instructions

adequately conveyed the definition of "constructive possession" when taken as a whole. The Court noted that immediately after the problematic statement the Trial Court instructed the jury that "mere presence at the scene where drugs were found is not enough to prove possession". In this case, the "mere presence instruction" was not given. Trial counsel neither objected to the instruction nor requested a "mere presence instruction" so the error was not preserved for review. The Trial Court's failure to use the word knowledge and the failure to give a mere presence instruction failed to adequately convey the elements of "constructive possession" to the jury.

The Trial Court further instructed the jury that "the defendant's knowledge and possession may be inferred when a substance is found on property under his control." This is the exact instruction that was found to be improper in *Stewart*. Trial counsel failed to object to this instruction. This instruction was approved in *State v. Adams, 291 S.C. 132, 352 S.E.2d 483, (1987)*. The Supreme Court has held that an attorney is not required to anticipate changes in the law that were not in effect at the time of trial. The *Stewart* decision was not issued until May 19, 2021. However, on March 12, 2020, the Supreme Court agreed to hear *Stewart*. Oral arguments were heard on *Stewart* on November 18, 2020, two weeks after the trial in this case. Trial Counsel should have been aware that the Supreme Court was reviewing whether this instruction was proper. By failing to object to the instruction the error was not preserved for review.

2. Trial counsel was ineffective in failing to move for a directed verdict on the grounds that the State failed to present sufficient evidence that the applicant had dominion and control

over the area where the drugs were found. In *State v. Heath, 370 S.C. 326, 635 S.E.2d 18 (2006)*, the Supreme Court found that even though the Defendant lived at his mother's home there was insufficient evidence that the defendant exercised dominion and control over the area where the drugs were found. The Court held the Defendant may have only had the right to access the area. In the present case, the property where the drugs were found was owned by Applicant's mother. Applicant was not even present when the drugs were found. There was a lack of evidence that Applicant had dominion and control over the area. Because trial counsel failed to move for a directed verdict on these grounds the issue was not preserved for review.

Applicant reserves the right to supplement this application.

s/James W. Boyd
James W. Boyd SC Bar #824
James W. Boyd Law Firm LLC
1544 Ebenezer Road
Post Office Box 36425
Rock Hill, SC 29732
(803) 328-2600 Phone
(803) 328-5747 Fax
jamesboyd@comporium.net
Attorney for Plaintiff

February 6, 2023
Rock Hill, South Carolina

ATTACHMENT

10. State concisely the grounds on which you base your allegations that you are being held in custody unlawfully.

(a). Ineffective Assistance of Trial Counsel E. Joshua Schultz.

(b). Ineffective Assistance of Appellate Counsel Mr.Adam Sinclair Ruffin

(c). Violations of Applicant's Sixth and Fourteenth Amendment to the United States Constitution and to the State's Constitution Art 1 Sections 3 & 4

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.
2023 FEB 27 P 3:20
BRANDY W. MCBEE

ATTACHMENT

11.State concisely and in the same order the facts which support each of the grounds set out in (10):

FILED IN THE OFFICE OF THE CLERK OF COURT, S.C. CHEROKEE COUNTY, S.C.
2023 FEB 27 P 3:20
BRANDY W. HOBBS

(a). INEFFECTIVE ASSISTANCE OF MR.E. Joshua Schultz

1. Counsel was ineffective for only admitting to his client about the two plea offers. As a result the Applicant was prejudiced.

2. Counsel failed to consult with his client violation the S.C. Appellate Court Rule 407 1.4 Communication. As a result Applicant was prejudiced.

3. Applicant requested that his counsel negotiate the counter plea for a term of ten years. Counsel stated that their not going to do it. He said that they offered you fifteen years. Because of counsel's negligence Applicant was prejudiced.

4. Counsel failed to properly investigate, because he failed to call witnesses on the Applicant's behalf such as his probation officer to be cross-examined. The question to relevance is whether or not Applicant lived at the address?

5. Counsel was ineffective for violations of Rule 407 1.1 Competence, 1.3 Diligence, 2.1 Advisor and 3.2, and because of counsel's ineffectiveness Applicant was prejudiced.

6. Counsel deprived the Applicant of his Sixth Amendment right to receive Effective Assistance.

7. Counsel deprived the Applicant of his due process rights to receive due compulsory process, preliminary hearing, and fundamental fairness.

ATTACHMENT

8. Counsel was inadequate because he failed to respond to requests made by the Applicant when he requested that client's case file be turn over as required by the Supreme Court rulings in the matter of Haddock, and Crossland.

9. Counsel was inadequate because he deprived the Applicant to a fair trial.

10. Counsel deprived the Applicant of his Sixth Amendment guarantee to the right to receive Effective Assistance of Counsel, the right to cross-examine the witnesses against him, and the right to an Compulsory process. Because of counsel's ineffectiveness the Applicant was prejudiced.

11. Counsel was inadequate because of an conflicting interest in client's case based upon what the State told him but presented no physical evidence as proof, and by counsel failing to challenge the State, as a result Applicant was prejudiced.

(b . INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL ADAM SINCLAIR RUFFIN

1. Appellate counsel was inadequate for failing to properly investigate case but filed an Anders Brief stating that there were no merits, depriving Applicant of his Sixth Amendment right to receive Effective assistance.

2. Appellate counsel was ineffective for following the lead of trial counsel and because of his inadequatecy the Applicant was prejudiced.

3. Appellate counsel abandoned the Applicant depriving him of his right to appeal guarantee under the Fourteenth Amendment procedural due process.

4. Appellate counsel had an conflicting interest in his case, and because of this the Applicant was prejudiced.

ATTACHMENT

(c). Violations of Applicant's Sixth and Fourteenth Amendments to the United States Constitution and to the State's Constitution Art 1 Sections 3 & 14.

1. Both the trial Counsel and the Appellate counsel violated the Applicant's right to effective assistance and his procedural rights to due process of the law.

2. State's Constitution section 3 of Art 1, states Privileges, Rights to Due Process shall not be violated. Because of this issue with both counsels the Applicant was prejudiced.

3. United States Constitutional Amendment 14 Section 1, States, No State shall deprive any persons of life, liberty, or property without due process of the law, nor shall any State deprive persons of equal protection of the laws.

4. State Constitution Art 1 Section 14, States Privileges, Defenses shall not be taken away or nor shall any persons be deprived of those rights to effective assistance, not just assistance but competent assistance of counsel. Shall not be violative.

5. Applicant alleges being denied effective assistance during direct appeal in violation of his Sixth Amendment. See * Evitts v Lucey, 469 U S 387 105 S Ct 830. Appellate Counsel deprived client of effective assistance and because of Appellate's actions the Applicant's rights were violated and he was prejudiced

6 Trial Counsel violated Applicant's Sixth Amendment right to receive effective assistance by failing to following Rules of Evidence Rule 402 Relevant Evidence Admissible, where counsel failed to examine relevant evidence that could have change the outcome of Applicant's trial had counsel examined evidence as a result Applicant was prejudiced. See State v Stewart, 433 S.C.382 858 S.E2d 808

Exhibit #1

STATE OF SOUTH CAROLINA

COUNTY OF Cherokee
STATE VS.
Bryson Jamar Smith
AKA:

Race: BLACK Sex: M Age: 33
DOB: [redacted] SS#: [redacted]
Address: 123 Maplewood Dr
City,State,Zip: Gaffney, SC 29340-2740
DL#: [redacted] SID#:
*CDL Yes☐ No☐ CMV Yes☐ No☐ Hazmat Yes☐ No☐

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2020GS1101147
A/W#: 2019A1110100985
Date of Offense: 8/12/2019
S.C. Code § : 44-53-0370(b)(2)
CDR Code #: 0188

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was
TO: PWID Marijuana 3rd (5-20 yrs) no more than 10
☒ CONVICTED OF or ☐ PLEADS
in violation of § 44-53-0370(b)(2) of the S.C. Code of Laws, bearing CDR Code # 0188
☒ NON-VIOLENT ☐ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. _____ (defendant's initials)
The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: KENDALL, MATT — SCB77213 SC Bar# — Bryson Smith Defendant — Schultz, E. Joshua Attorney for Defendant — SCB74518 SC Bar# 14637

WHEREFORE, the Defendant is commited to the ☒ **State Department of Corrections,** ☐ **County Detention Center,** for a determinate term of 20 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 Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____

☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by SCDOC.
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-3-135.
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.

FILED IN OFFICE OF CLERK OF COURT CHEROKEE COUNTY, S.C. 2020 FEB 27 P 3 20 BRANDY WILBEE

SPECIAL CONDITIONS:

☐ **RESTITUTION:** ☐**Deferred** ☐**Def. Waives Hearing** ☐**Ordered** **PTUP** _____

Total: $ _____ plus 20% fee: _____ $ _____

Payment Terms: _____
☐ Set by SCDPPPS _____

Recipient: _____

*Fine:		$
§14-1-206 (Assessments 107.5 %)		$
§14-1-211(A)(1) (Conv. Surcharge)	$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/Probation)	$500	$
§14-1-212 (Law Enforce. Funding)	$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)		$
TOTAL		$

_____ days/hours Public Service Employment
Obtain GED ☐
Attend Voc. Rehab. or Job Corp. _____
May serve W/E begining _____
Substance Abuse Counseling ☐
Random Drug/Alcohol testing ☐
Fine may be pd. in equal, consecutive weekly/monthly pmts. of $ _____ beginning _____
$ _____ paid to Public Defender Fund
Other: _____

☐ Appointed PD or appointed other counsel, Proviso requires $500 be paid to Clerk during probation and shall be collected before any other fees.

Clerk of Court/ Deputy Clerk _____
Court Reporter: _____
Presiding Judge R. Keith Kelly
Judge Code: _____
Sentence Date: 6 November 2020

DOCKET NO. **20-GS-11-** 01147

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C

2020 SEP -8 AM 10: 38

BRANDY W. MCBEE

The State of South Carolina

County of Cherokee

Barry Barnette, Solicitor

COURT OF GENERAL SESSIONS

September 8, 2020 TERM

THE STATE

vs.

Bryson Jamar Smith

Indictment for

POSSESSION WITH INTENT TO DISTRIBUTE MARIJUANA

SC Code: 44-53-370

WITNESSES

Cherokee County Sheriff's Office

ARREST WARRANT(S)

2019A1110100985

ACTION OF GRAND JURY

Caroline Tagere

Foreperson of Grand Jury

Date:

VERDICT

Guilty

Foreperson of Petit Jury

Date: 9/6/20

2025-001051 Smith v. State Petition for a Writ of Certiorari Appendix Page 628

Exhibit #3 - A

STATE OF SOUTH CAROLINA **IN THE COURT OF GENERAL SESSIONS**

COUNTY OF Cherokee
STATE VS.
Bryson Jamar Smith
AKA:

Race: BLACK Sex: M Age: 33
DOB: [redacted] SS#: [redacted]
Address: 123 Maplewood Dr
City,State,Zip: Gaffney, SC 29340-2740
DL#: [redacted] SID#:
*CDL Yes☐ No☐ CMV Yes☐ No☐ Hazmat Yes☐ No☐

INDICTMENT/CASE#: 2020GS1101148
A/W#: 2019A1110100987
Date of Offense: 8/12/2019
S.C. Code § : 44-53-370
CDR Code #: 0185

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS
TO: PWID Cocaine, Sch. II, 3rd offense [10-30 years and/or $0-50k]

in violation of § 44-53-0370 of the S.C. Code of Laws, bearing CDR Code # 0185
☐ NON-VIOLENT ☐ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

The charge is: ☐ As Indicted. ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. _____ (defendant's initials)
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:
KENDALL, MATT — SCB77213 SC Bar# — Defendant — Schultz, E. Joshua Attorney for Defendant — SCB74518 SC Bar#

WHEREFORE, the Defendant is commited to the ☒ **State Department of Corrections,** ☐ **County Detention Center,** for a determinate term of 25 days/months/years or ☐ under the **Youthful Offender Act** not to exceed ____ years and/or to pay a fine of $ 50,000.; 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 Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____

☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by SCDOC.
☐ The Defendant is to be placed on the 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: _____ $ _____

Payment Terms: _____
☐ Set by SCDPPPS _____

Recipient: _____

*Fine:		$
§14-1-206 (Assessments 107.5 %)		$
§14-1-211(A)(1) (Conv. Surcharge)	$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/Probation)	$500	$
§14-1-212 (Law Enforce. Funding)	$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)		$
TOTAL		$

Clerk of Court/ Deputy Clerk _____
Court Reporter: _____

_____ days/hours Public Service Employment
Obtain GED ☐
Attend Voc. Rehab. or Job Corp. _____
May serve W/E begining _____
Substance Abuse Counseling ☐
Random Drug/Alcohol testing ☐
Fine may be pd. in equal, consecutive weekly/monthly pmts. of $ _____ beginning _____
$ _____ paid to Public Defender Fund
Other: _____

☐ Appointed PD or appointed other counsel, Proviso requires $500 be paid to Clerk during probation and shall be collected before any other fees.

Presiding Judge R. Keith Kelley
Judge Code: 2165
Sentence Date: 2/21/2020

FILED BRANDY MCABEE CLERK OF COURT CHEROKEE COUNTY, SC 2020 FEB 21 P 3:21

SCCA/217 (04/2018)

Exhibit #3-B

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHEROKEE)

INDICTMENT

At a Court of General Sessions, convened on September 8, 2020, the Grand Jurors of Cherokee County present upon their oath:

POSSESSION WITH INTENT TO DISTRIBUTE COCAINE

That Bryson Jamar Smith, did in Cherokee County on or about August 12, 2019, manufacture, distribute, dispense, deliver, purchase or aid, abet, attempt, or conspire to manufacture, distribute, dispense, deliver, or purchase, or possess with the intent to manufacture, distribute, dispense, deliver or purchase a controlled substance, to wit: a quantity of Cocaine, a schedule II controlled substance under provisions of §44-53-110, in violation of §44-53-370 CODE OF LAWS OF SOUTH CAROLINA, (1976), as amended, such possession not having been authorized by law.

FILED IN OFFICE OF CLERK OF COURT CHEROKEE COUNTY, S.C.
2023 FEB 27 P 3:21
BRANDY W. MCBEE

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

Assistant Solicitor

Exhibit #4

STATE OF SOUTH CAROLINA

COUNTY OF Cherokee
STATE VS.
Bryson Jamar Smith
AKA:
Race: BLACK Sex: M Age: 33
DOB: [redacted] SS#: [redacted]
Address: 123 Maplewood Dr
City,State,Zip: Gaffney, SC 29340-2740
DL#: [redacted] SID#:
*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2020GS1101149
A/W#: 2019A1110100988
Date of Offense: 8/12/2019
S.C. Code § : 44-53-0375
CDR Code #: 0452

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS
TO: Trafficking in methamphetamine- 10 g or more, but less than 28 g - 3rd offense [25-30 and $50k]
in violation of § 44-53-0375 of the S.C. Code of Laws, bearing CDR Code # 0452
☐ NON-VIOLENT ☒ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45
The charge is: ☐ As Indicted, ☐ Lesser Included Offense. ☐ Defendant Waives Presentment to Grand Jury. _____ (defendant's initials)
The plea is: ☐ Without Negotiations or Recommendation. ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:
KENDALL, MATT — SCB77213 (SC Bar#) — Bryson Smith (Defendant) — Schulz, E. Joshua (Attorney for Defendant) — SCB74518 (SC Bar#)
16837

WHEREFORE, the Defendant is committed to the ☒ **State Department of Corrections,** ☐ **County Detention Center,** for a determinate term of 25 ~~days/months/~~years or ☐ under the **Youthful Offender Act** not to exceed ~ years and/or to pay a fine of $ 50,000.; 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 Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____

FILED IN THE OFFICE OF THE CLERK OF COURT CHEROKEE COUNTY, S.C. 2023 FEB 21 P 3:21 BRANDI MOBLEY

☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by SCDOC.
☐ The Defendant is to be placed on the 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: _____ $ _____

Payment Terms: _____
☐ Set by SCDPPPS _____

Recipient: _____

*Fine:		$
§14-1-206 (Assessments 107.5 %)		$
§14-1-211(A)(1) (Conv. Surcharge)	$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/Probation)	$500	$
§14-1-212 (Law Enforce. Funding)	$25	$
§14-1-213 (Drug Court Surcharge)	$150	$
§50-21-114(DUI Breath Test Fee)	$50	$
§56-5-2942(J) (Vehicle Assessment)	$40/ea	$
3% to County (if paid in installments)		$
TOTAL		$

Clerk of Court/ Deputy Clerk _____
Court Reporter: _____

_____ days/hours Public Service Employment

Obtain GED ☐
Attend Voc. Rehab. or Job Corp. _____
May serve W/E begining _____
Substance Abuse Counseling ☐
Random Drug/Alcohol testing ☐
Fine may be pd. in equal, consecutive weekly/monthly pmts. of $ _____ beginning _____
$ _____ paid to Public Defender Fund
Other: _____

☐ Appointed PD or appointed other counsel. Proviso requires $500 be paid to Clerk during probation and shall be collected before any other fees.

Presiding Judge R. Keith Kelley
Judge Code: 2165
Sentence Date: 6 November 2000

SCCA/217 (04/2018)

Exhibit #5

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHEROKEE)

INDICTMENT

At a Court of General Sessions, convened on September 8, 2020, the Grand Jurors of Cherokee County present upon their oath:

TRAFFICKING IN METHAMPHETAMINE

That Bryson Jamar Smith, did in Cherokee County on or about August 12, 2019, knowingly sell, manufacture, deliver, purchase or bring into this State, or did provide financial assistance or did otherwise aid, abet, attempt, or conspire to sell, manufacture, deliver, purchase, or bring into this State, or did knowingly actually or constructively possess, or did knowingly attempt to actually or constructively possess (10) ten grams or more, but less than (28) twenty-eight grams of Methamphetamine, a schedule II controlled substance, in violation of §44-53-375, *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended.

FILED IN CLERK OF COURT CHEROKEE COUNTY, S.C.
2020 FEB 27 P 3:21
BRANDY W. MCBEE

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

ASSISTANT SOLICITOR

Exhibit #6

STATE OF SOUTH CAROLINA | **IN THE COURT OF GENERAL SESSIONS**

COUNTY OF Cherokee
STATE VS. Bryson Jamar Smith
AKA:
Race: BLACK Sex: M Age: 33
DOB: [redacted] SS#: [redacted]
Address: 123 Maplewood Dr
City,State,Zip: Gaffney, SC 29340-2740
DL#: [redacted] SID#:
*CDL Yes☐ No☐ CMV Yes☐ No☐ Hazmat Yes☐ No☐

INDICTMENT/CASE#: 2020GS1101150
A/W#: 2019A1110100989
Date of Offense: 8/12/2019
S.C. Code §: 44-53-0370
CDR Code #: 0185

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS
TO: PWID Fentanyl, Schedule II, 3rd offense [10-30 years and/or $0-50k] 10 or 15 more

in violation of § 44-53-0370 of the S.C. Code of Laws, bearing CDR Code # 0185
☐ NON-VIOLENT ☐ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

The charge is: ☐ As Indicted. ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. _____ (defendant's initials)
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:
KENDALL, MATT
SCB77213 SC Bar#
Bryson Smith Defendant
Schultz, E. Joshua Attorney for Defendant
SCB74518 SC Bar#

WHEREFORE, the Defendant is commited to the ☒ **State Department of Corrections,** ☐ **County Detention Center,** for a determinate term of 15 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 Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☒ CONSECUTIVE to sentence on: 2020-1151

☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by SCDOC.
☐ The Defendant is to be placed on the 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: _____ $ _____

Payment Terms: _____
☐ Set by SCDPPPS _____

Recipient: _____

*Fine:		$
§14-1-206 (Assessments 107.5 %)		$
§14-1-211(A)(1) (Conv. Surcharge)	$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/Probation)	$500	$
§14-1-212 (Law Enforce. Funding)	$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)		$
TOTAL		$

Clerk of Court/ Deputy Clerk _____
Court Reporter: _____

_____ days/hours Public Service Employment
Obtain GED ☐
Attend Voc. Rehab. or Job Corp. _____
May serve W/E begining _____
Substance Abuse Counseling ☐
Random Drug/Alcohol testing ☐
Fine may be pd. in equal, consecutive weekly/monthly pmts. of $ _____ beginning _____
$ _____ paid to Public Defender Fund
Other: _____

☐ Appointed PD or appointed other counsel, Proviso requires $500 be paid to Clerk during probation and shall be collected before any other fees.

Presiding Judge R. Keith Kelly
Judge Code: 2465
Sentence Date: 6 November 2020

FILED
2020 FEB 27 P 3:21
BRANDY W. HALL
CLERK OF COURT
CHEROKEE COUNTY, SC

WITNESSES

Cherokee County Sheriff's Office

ARREST WARRANT NUMBER

2019A1110100989

ACTION OF GRAND JURY

TRUE BILL

Caroline Tagen

Foreperson of Grand Jury

Date:

VERDICT

Guilty

Foreperson of Petit Jury

Date: 11/6/20

DOCKET NO. 20-GS-11- 01150

The State of South Carolina

County of Cherokee

Barry Barnette, Solicitor

COURT OF GENERAL SESSIONS

September 8, 2020 TERM

THE STATE

vs.

BRYSON JAMAR SMITH

Indictment for

POSSESSION WITH INTENT TO DISTRIBUTE FENTANYL

SC Code: 44-53-370

FILED IN OFFICE OF CLERK OF COURT CHEROKEE COUNTY, S.C.

2020 SEP -8 AM 10: 38

BRANDY W. MCBEE

Exhibit #7

2025-001051 Smith v. State Petition for a Writ of Certiorari Appendix Page 634

STATE OF SOUTH CAROLINA Exhibit # 8) IN THE COURT OF GENERAL SESSIONS

COUNTY OF Cherokee)
STATE VS.)
Bryson Jamar Smith)
AKA:)
Race: BLACK Sex: M Age: 33)
DOB: [redacted] SS#: [redacted])
Address: 123 Maplewood Dr)
City,State,Zip: Gaffney, SC 29340-2740)
DL#: [redacted] SID#:)
*CDL Yes☐ No☐ CMV Yes☐ No☐ Hazmat Yes☐ No☐

INDICTMENT/CASE#: 2020GS1101151
A/W#: 2020GS1101151
Date of Offense: 8/12/2019
S.C. Code §: 44-53-0370
CDR Code #: 0156

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS
TO: Trafficking in Heroin, 4-14g, 2nd/sub offense [25 years and $100k] no more 15

in violation of § 44-53-0370 of the S.C. Code of Laws, bearing CDR Code # 0156
☐ NON-VIOLENT ☒ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. _____ (defendant's initials)
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:
KENDALL, MATT — SCB77213 SC Bar# — Bryson Jamar Smith Defendant — Schultz, E. Joshua Attorney for Defendant — 74518 SC Bar#

WHEREFORE, the Defendant is committed to the ☒ **State Department of Corrections,** ☐ **County Detention Center,**
for a determinate term of 25 ~~days/months~~/years or ☐ under the **Youthful Offender Act** not to exceed — years
and/or to pay a fine of $ 100,000 ; 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 Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☒ CONSECUTIVE to sentence on: 2020-1150

☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by SCDOC.
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 63-25-135.
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.

FILED
2021 FEB 27 P 2:21
CLERK OF COURT
CHEROKEE CO. SC
BY: [illegible]

SPECIAL CONDITIONS:

☐ **RESTITUTION:** ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered **PTUP** _____

Total: $ _____ plus 20% fee: _____ $ _____

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine:		$
§14-1-206 (Assessments 107.5 %)		$
§14-1-211(A)(1) (Conv. Surcharge)	$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/Probation)	$500	$
§14-1-212 (Law Enforce. Funding)	$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)		$
TOTAL		$

_____ days/hours Public Service Employment

Obtain GED ☐
Attend Voc. Rehab. or Job Corp. _____
May serve W/E begining _____
Substance Abuse Counseling ☐
Random Drug/Alcohol testing ☐
Fine may be pd. in equal, consecutive weekly/monthly pmts. of $ _____ beginning _____
$ _____ paid to Public Defender Fund
Other: _____

☐ Appointed PD or appointed other counsel, Proviso requires $500 be paid to Clerk during probation and shall be collected before any other fees.

Clerk of Court/ Deputy Clerk _____
Court Reporter: _____

Presiding Judge R. Keith Kelley
Judge Code: 2165
Sentence Date: December 2020

WITNESSES

Cherokee County Sheriff's Office

ARREST WARRANT NUMBER

DIRECT INDICTMENT

ACTION OF GRAND JURY

TRUE BILL

Caroline Tagge

Foreperson of Grand Jury

Date:

VERDICT

Guilty

Foreperson of Petit Jury

Date: 11/6/20

DOCKET NO. **20-GS-11- 01151**

The State of South Carolina

County of Cherokee

Barry Barnette, Solicitor

COURT OF GENERAL SESSIONS

September 8, 2020 **TERM**

THE STATE

vs.

BRYSON JAMAR SMITH

Indictment for

TRAFFICKING IN HEROIN

SC Code: 44-53-370

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.

2020 SEP -8 AM 10: 38

BRANDY W. MCBEE

Exhibit #9

2025-001051 Smith v. State Petition for a Writ of Certiorari Appendix Page 636

Exhibit #10

SCHULTZ LAW FIRM
LLC

E. JOSHUA SCHULTZ, ESQ.

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.
2021 FEB 27 P 3:20
BRANDY W. MCBEE

July 16, 2021

Inmate Bryson Jamar Smith #00366967
Ridgeland Correctional Instituiton
PO Box 2039
Ridgeland SC 29936

Dear Mr. Smith,

Please find a filed motion for me to be relieved in your case. This hearing is to be held, the week of August 9, 2021. at the in General Sessions Court in Gaffney, at the Cherokee County Courthouse.

Sincerely,

E. Joshua Schultz

184 North Daniel Morgan Avenue • Spartanburg, South Carolina 29306
Telephone: 864-582-3030

Exhibit #11

FILED IN OFFICE OF CLERK OF COURT CHEROKEE COUNTY, S.C.
2021 JUL 15 AM 10:11
BRANDY W. MCBEE

STATE OF SOUTH CAROLINA	)	IN THE GENERAL SESSIONS COURT
	)	SEVENTH JUDICIAL CIRCUIT
COUNTY OF **CHEROKEE**	)	
	)	**MOTION TO BE**
State	)	**RELIEVED AS COUNSEL**
	)	
	)	
	)	**WARRANT(S)/CHARGE(S):**
VS	)	2019A1110100974- Attempted Murder
	)	2019A1110100975- Attempted Murder
	)	2019A1110100976- Attempted Murder
	)	2019A1110100977- Poss. weapon during violent crime
	)	2019A1110100978- Assault & Battery High & Aggravated
	)	2019A1110100979-Assault & Battery High & Aggravated
	)	2019A1110100980-Assault & Battery High & Aggravated
	)	2019A1110100981- Assault & Battery High & Aggravated
Bryson Jamar Smith	)	2019A1110100986-PWID 3rd offense
	)	2019GS1101740A- Poss. weapon during violent crime
	)	2019GS1101741A- Poss. weapon during violent crime
	)	2019GS1101742- Poss. weapon during violent crime
	)	2019GS1101742A- Poss. weapon during violent crime
	)	2019GS1101743-Attempted Murder
	)	2019GS1101743A- Poss. weapon during violent crime
	)	2019GS1101744-Poss. weapon during violent crime
	)	2019GS1101744A- Poss. weapon during violent crime
	)	2019GS1101745- Poss. weapon during violent crime
DEFENDANT.	)	2019GS1101745A- Poss. weapon during violent crime

TO: CHEROKEE CO CLERK OF COURT & SOLICITOR'S OFFICE

YOU WILL PLEASE TAKE NOTICE that the undersigned attorney on behalf of the above-name Defendant, will move immediately before the Seventh Judicial Circuit during the term of General Sessions Court beginning **AUGUST 9, 2021**, for an Order allowing the undersigned to be relieved as counsel.

S/ Schultz

E. JOSHUA SCHULTZ SCB# 74518

SCHULTZ LAW FIRM, LLC
184 North Daniel Morgan Avenue
Spartanburg, South Carolina 29306
Phone: (864) 582-3030

July 14, 2021
Spartanburg, South Carolina

Exhibit #12

SCHULTZ
LAW FIRM, LLC

E. JOSHUA SCHULTZ

184 North Daniel Morgan Avenue
Spartanburg, South Carolina 29306
Telephone: 864-582-3030 | Facsimile: 864-751-8482
www.spartanburglawoffice.com

November 16, 2020

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.
2021 FEB 27 P 3:20
BRANDY W. MCBEE

Bryson Jamar Smith (#00366967)
Kirkland Correctional Institution
4344 Broad River Road
Columbia SC 29210

RE: THE STATE VS. BRYSON JAMAR SMITH

Dear Mr. Smith:

As you know, I was retained solely for the purpose of trial or plea. To protect your rights, I filed a Notice of Intent Appeal with the SC Court of Appeals and enclosed copies of these documents.

Enclosed please find an Affidavit of Indigency. Please complete **INCLUDING the form being Notarized**. Then return to me in the self-addressed stamped envelope provided. Failure to return this document to me forthwith may result in your appeal not being perfected. Please note again that my responsibilities in handling your appeal have ceased. As a courtesy to you I will ensure the Affidavit of Indigency is forwarded to Appellate Defense so long as you return it to me in a timely fashion.

Sincerely yours,

E. Joshua Schultz

EJS/dcl
Enclosures

cc: Office of Indigent Defense

Exhibit #13

SCHULTZ
LAW FIRM, LLC

E. JOSHUA SCHULTZ

184 North Daniel Morgan Avenue
Spartanburg, South Carolina 29306
Telephone: 864-582-3030 | Facsimile: 864-751-8482
www.spartanburglawoffice.com

November 19, 2020

Bryson Jamar Smith (#00366967)
Kirkland Correctional Institution
4344 Broad River Road
Columbia SC 29210

FILED IN THE OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.
2023 FEB 27 P 3:20
BRANDY W. MCBEE

RE: THE STATE VS. BRYSON JAMAR SMITH

Dear Mr. Smith:

As you know, you were previously sent an Affidavit of Indigency in an effort to assist you in obtaining counsel to perfect your appeal. As of this date, we have not received your completed Affidavit. As a courtesy, I am enclosing another application.

I must ask that you please complete the Affidavit of Indigency immediately. INCLUDING the form being Notarized. Return the Affidavit in the self-addressed stamped envelope. As you have already been made aware, ***there is a strict time line, and failure to return this document forthwith may result in your appeal not being perfected. We must have this Affidavit as soon as possible but not later than JULY 8, 2019.***

Please note again that **Mr. Schultz's responsibilities in handling your appeal have ceased.** Again, we will gladly forward the Affidavit of Indigency to the Office of Appellate Defense so long as you return it in a timely fashion.

Sincerely yours,

Courtney Tucker
Legal Assistant to E. Joshua Schultz

Exhibit #14-A

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHEROKEE COUNTY
Court of General Sessions
The Honorable R. Keith Kelly, Circuit Court Judge

Case Nos. 2020GS1101151, 2019A1110100989, 2019A1110100988, 2019A1110100987, 2019A1110100985

The State,.....Respondent

v.

Bryson Jamar Smith,.....Appellant

FILED IN OFFICE OF CLERK OF COURT CHEROKEE COUNTY, S.C.
2023 FEB 27 P 3:21
BRANDY W. MCBEE

PROOF OF SERVICE

The undersigned, Courtney C. Tucker, hereby certifies that she is employed in the office of E. Joshua Schultz, Attorney at Law, and is a person of such age and discretion as to be competent to serve papers and that a copy of the **Notice of Intent to Appeal**, was served upon the following person(s) on the State, by depositing copies of same in the United States Mail, with sufficient postage affixed thereto, on November 9, 2020 addressed as follows:

Matt Kendall, Esquire
Seventh Circuit Solicitor's Office
125 E. Floyd Baker Blvd
Gaffney SC 29340

(Signature on second page)

Exhibit #14-B

COURTNEY C. TUCKER

SWORN BEFORE ME THIS
9 DAY OF November ,2019

NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES: 9-29-2026

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.
2023 FEB 27 P 3:21
BRANDY W. MCBEE

Exhibit #15

SCCID
SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

Division of Appellate Defense
1330 Lady Street, Suite 401
Columbia, South Carolina 29201-3332
Post Office Box 11589
Columbia, South Carolina 29211-1589
Telephone: (803) 734-1330
Facsimile: (803) 734-1397

Robert M. Dudek, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender

August 20, 2021

FILED IN THE OFFICE OF CLERK OF COURT CHEROKEE COUNTY, S.C.
2023 FEB 27 P 3:22
BRANDY W. MCBEE

Bryson Smith, #366967
Ridgeland Correctional Institution
P.O. Box 2039
Ridgeland, SC 29936

Re: Your case

Dear Mr. Smith:

Thank you for your recent letter. I am looking forward to handling your appeal. I have been handling criminal appeals for over two years now and was a public defender for over five years prior to that. I will get to your case as soon as I possibly can and review the transcript with the points you raised in mind. I will do my best to find reversible error in your case. I will send you a copy of your appellate brief as soon as I have written it.

Please do not hesitate to contact me if you have any questions or concerns.

Thank you,

Adam S. Ruffin
Appellate Defender

ASR/sl

U.S.v Matlock
415 U.S. 164
SC appeal S screen 9

Exhibit #16-B cont.

SC code 18-1-90
appeal bond

The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
CHIEF DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211

1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201

TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

September 8, 2021

Bryson J. Smith, 00366967
Ridgeland Correctional Institution
P.O. Box 2039
Ridgeland SC 29936

FILED
CLERK OF COURT
CHEROKEE COUNTY, S.C.
2023 FEB 27 P 3:22
BRANDY W. MCBEE

Re: The State v. Bryson J. Smith
Appellate Case No. 2020-001499

Dear Mr. Smith:

Your counsel has filed a brief indicating that this appeal is without merit and moves to be relieved as your counsel. *Anders v. California*, 386 U.S. 738, 87 S. Ct. 1396, 18 L.E.2d 493 (1967). The records in this office reflect counsel has served you with a copy of the brief and record on appeal.

You may, within forty-five (45) days of the date of this letter, file with this Court a *pro se* brief addressing any issues you believe the Court should consider in this appeal. Upon receipt of your *pro se* brief or the expiration of forty-five (45) days, this appeal will be submitted to the Court for its consideration.

Exhibit #7 - A

SCCID
SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

Division of Appellate Defense
1330 Lady Street, Suite 401
Columbia, South Carolina 29201-3332

Post Office Box 11589
Columbia, South Carolina 29211-1589
Telephone: (803) 734-1330
Facsimile: (803) 734-1345

Robert M. Dudek, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender

June 15, 2022

FILED IN THE OFFICE OF CLERK OF COURT CHEROKEE COUNTY, S.C.
2023 FEB 27 P 3:22
BRANDY W. MCBEE

Mr. Bryson Jamar Smith, #366967
Allendale Correctional Institution
PO Box 1151, Hwy. 47
Fairfax, SC 29827

Re: Your Case

Dear Mr. Smith:

Enclosed is a copy of the opinion of the Court of Appeals affirming your conviction pursuant to the Anders v. California procedure. Please be advised that our office has closed your case along with this letter.

Please be aware that there is a **one-year statute of limitations for filing an application for post-conviction (PCR) relief.** This is one year from the date of the enclosed opinion. This statute of limitations **is very strictly enforced,** so please be sure that **you** comply with it. Please understand *it is your responsibility alone to be sure this PCR application is timely filed.* **This application must be filed with the clerk of court in the county of your conviction.** There is also now a **one-year statute of limitations for filing for federal habeas.** However, you must **exhaust** your **PCR claims** in state court, before raising them in federal court.

Please be aware that the time between your direct appeal becoming final, and the date your PCR application is filed **will count against your federal habeas statute of limitations in the future.** I do wish you the best. Feel free to contact me if you have any questions.

Sincerely,

Adam Sinclair Ruffin
Appellate Defender

ASR/sl

Enclosure: Post-Conviction Relief Application

Exhibit #17-B

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State, Respondent,

v.

Bryson Jamar Smith, Appellant.

Appellate Case No. 2020-001499

FILED IN THE OFFICE OF CLERK OF COURT CHEROKEE COUNTY, S.C.
2023 FEB 27 P 3:22
BRANDY W. MCBEE

Appeal From Cherokee County
R. Keith Kelly, Circuit Court Judge

Unpublished Opinion No. 2022-UP-263
Submitted May 1, 2022 – Filed June 15, 2022

APPEAL DISMISSED

Appellate Defender Adam Sinclair Ruffin, of Columbia, for Appellant.

Attorney General Alan McCrory Wilson and Senior Assistant Deputy Attorney General William M. Blitch, Jr., both of Columbia, for Respondent.

PER CURIAM: Dismissed after review pursuant to *Anders v. California*, 386 U.S. 738 (1967). Counsel's motion to be relieved is granted.

Exhibit #17-C

APPEAL DISMISSED.[1]

WILLIAMS, C.J., and KONDUROS and VINSON, JJ., concur.

FILED IN THE OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.
2023 FEB 27 P 3:22
BRANDY W. MCBEE

[1] We decide this case without argument pursuant to Rule 215, SCACR.

ORIGINAL

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SEVENTH JUDICIAL CIRCUIT
COUNTY OF CHEROKEE	)	2023CP1100145
	)	
BRYSON JAMAR SMITH #366967,	)	
	)	**AMENDED APPLICATION FOR POST-CONVICTION RELIEF**
APPLICANT,	)	
	)	
v.	)	
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
RESPONDENT.	)	
	)	

1. Place of detention: **Allendale Correctional Institution 1057 Revolutionary Trail Fairfax, SC 29827**

2. Name and location of Court which imposed sentence: **Cherokee County Court of General Sessions 125 E Floyd Baker Blvd, Gaffney, SC 29340**

3. Name(s) of co-defendant(s) (if any): **None**

4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:

(a) **2020GS1101147- MANU/POSS DRG SCH-3RD,SUB**

(b) **2020GS1101148- MDP NARC SCHED-3RD,SUB**

(c) **2020GS1101149- TRAF METH 10G - <28G 3RD**

(d) **2020GS1101150- MDP NARC SCHED-3RD,SUB**

(e) **2020GS1101151- TRAFFICKING IN ILL.DRUGS**

FILED IN OFFICE OF CLERK OF COURT CHEROKEE COUNTY, S.C.
2023 JUL 10 A 9:14
BRANDY W. MCBEE

5. The date upon which sentence was imposed and the terms of the sentence:

(a) **2020GS1101147- November 6, 2020 20 years concurrent**

(b) **2020GS1101148- November 6, 2020 25 years and $50,000.00 fine concurrent**

(c) **2020GS1101149- November 6, 2020 25 years and $50,000.00 fine concurrent**

(d) **2020GS1101150- November 6, 2020 15 years consecutive to 1151**

(e) **2020GS1101151- November 6, 2020 25 years and $100,000.00 fine**

6. Check whether a finding of guilty was made:

(a) after a plea of guilty

(b) after a plea of not guilty **X**

(c) after a plea of nolo contendere

7. Did you appeal from the judgment of conviction or the imposition of sentence? **Yes**

8. If you answered "yes" to (7), list:

(a) the name of each Court to which you appealed:

i. **SC Court of Appeals**

ii. _____

iii. _____

(b) the result in each such Court to which you appealed:

i. **Appeal dismissed**

ii. _____

iii. _____

(c) the date of each such result:

i. **June 15, 2022**

ii. _____

iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. **Unpublished Opinion Case No. 2020-001499**

ii. _____

iii. _____

9. If you answered "no" to (7), state your reasons for not so appealing:

(a) _____

(b) _____

(c) _____

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) **Ineffective assistance of counsel.**

(b) _____

(c) _____

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

(a) **Please see attachment.**

(b) _____

(c) _____

12. Prior to this application have you filed with respect to this conviction:

(a) any petition in a State Court under South Carolina Law? **No**

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? **No**

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? **No**

(d) any other petitions, motions or applications in this or any other Court? **No**

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i. _____

ii. _____

iii. _____

iv. _____

(b) the name and location of the Court in which each was filed:

i. _____

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

i. _____

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed? **No**

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

(b) the proceedings in which each ground was raised:

i. _____

ii. _____

iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) **This is the first opportunity applicant has had to raise ineffective assistance of counsel.**

(b) _____

(c) _____

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? **N/A**

(b) your trial, if any? **Yes**

(c) your sentencing? **Yes**

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? **Yes**

(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? **N/A**

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:

i. **E. Joshua Schultz, Schultz Law Firm, LLC, 184 N. Daniel Morgan Avenue Spartanburg, SC 29306**

ii. **Adam Sinclair Ruffin, S.C. Commission on Indigent Defense, 3685 Rivers Ave. Suite 101 North Charleston, SC 29405**

iii. _____

_____

(b) the proceedings at which each such attorney represented you:

i. **E. Joshua Schultz- Trial**

ii. **Adam Sinclair Ruffin- Appeal**

iii. _____

19. State clearly the relief you seek in filing this application:

New Trial

20. Are you now under sentence from any other court that you have not challenged? **No**

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SEVENTH JUDICIAL CIRCUIT
COUNTY OF CHEROKEE	)	2023CP1100145
	)	
BRYSON JAMAR SMITH #366967,	)	
	)	
APPLICANT,	)	
	)	**AMENDED GROUNDS FOR POST-CONVICTION RELIEF**
v.	)	
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
RESPONDENT.	)	
	)	

1. Counsel was ineffective in failing to object to the Courts jury instruction on "possession" and "constructive possession" in the following particulars:

In instructing the jury the definition of possession on each charge, the Court stated as follows:

> "To prove possession, the State must prove beyond a reasonable doubt that he had both the power and the intent to control the disposition or use of" the drugs. This instruction left out a key word. "knowledge". The proper charge is "To prove possession, the State must prove beyond a reasonable doubt that the defendant had knowledge of, power over, and the intent to control the disposition or use of the drugs involved." *State v. Lane, 271 S.C. 68, 245 S.E.2d 114 (1978), State v. Stewart, 28029 (S.C. 2021)*

In defining constructive possession, the Court instructed the jury that constructive possession means the defendant had dominion and control over either the drugs or the property on which the drugs were found. In *Stewart*, the Court found the language "the property upon which the drugs were found" to be "problematic". In *Stewart*, the Supreme Court found the Trial Court's instructions adequately conveyed the definition of "constructive possession" when taken as a whole. The Court noted that immediately after

the problematic statement the Trial Court instructed the jury that "mere presence at the scene where drugs were found is not enough to prove possession". In this case, the "mere presence instruction" was not given. Trial counsel neither objected to the instruction nor requested a "mere presence instruction" so the error was not preserved for review. The Trial Court's failure to use the word knowledge and the failure to give a mere presence instruction failed to adequately convey the elements of "constructive possession" to the jury.

The Trial Court further instructed the jury that "the defendant's knowledge and possession may be inferred when a substance is found on property under his control." This is the exact instruction that was found to be improper in *Stewart*. Trial counsel failed to object to this instruction. This instruction was approved in *State v. Adams, 291 S.C. 132, 352 S.E.2d 483, (1987)*. The Supreme Court has held that an attorney is not required to anticipate changes in the law that were not in effect at the time of trial. The *Stewart* decision was not issued until May 19, 2021. However, on March 12, 2020, the Supreme Court agreed to hear *Stewart*. Oral arguments were heard on *Stewart* on November 18, 2020, two weeks after the trial in this case. Trial Counsel should have been aware that the Supreme Court was reviewing whether this instruction was proper. By failing to object to the instruction the error was not preserved for review.

2. Trial counsel was ineffective in failing to move for a directed verdict on the grounds that the State failed to present sufficient evidence that the applicant had dominion and control over the area where the drugs were found. In *State v. Heath, 370 S.C. 326, 635 S.E.2d 18 (2006)*, the Supreme Court found that even though the Defendant lived at his mother's home there was insufficient evidence that the defendant exercised dominion and control over the area where the drugs were found. The Court held the Defendant may have only had the right to access the area.

In the present case, the property where the drugs were found was owned by Applicant's mother. Applicant was not even present when the drugs were found. There was a lack of evidence that Applicant had dominion and control over the area. Because trial counsel failed to move for a directed verdict on these grounds the issue was not preserved for review.

ADDITIONAL GROUNDS FOR INEFFECTIVE ASSISTANCE OF COUNSEL

3. Applicant was seen by some jurors while he was in chains and handcuffs. Applicant told his Attorney, his Attorney failed to move for a mistrial or address the court on this issue;

4. Defense counsel failed to strike juror 66, although the juror was related to a witness for the State;

5. Defense counsel failed to object to the search warrant for the premises;

6. Defense counsel failed to establish the letter found on premises (State's Exhibit 42) was from 2017, well before the date of the search.

s/James W. Boyd
James W. Boyd SC Bar #824
James W. Boyd Law Firm LLC
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Rock Hill, SC 29732
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Attorney for Plaintiff

June 28, 2023
Rock Hill, South Carolina

ORIGINAL

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SEVENTH JUDICIAL CIRCUIT
COUNTY OF CHEROKEE	)	2023CP1100145
	)	
BRYSON JAMAR SMITH #366967,	)	
	)	
APPLICANT,	)	**2nd AMENDED APPLICATION FOR POST-CONVICTION RELIEF**
	)	
v.	)	
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
RESPONDENT.	)	
	)	

APPLICANT, through his undersigned attorney, amends his application for Post Conviction Relief to add the following grounds for relief:

Applicant's trial attorney was ineffective in failing to object to the State's Exhibits 10 and 20 on the grounds that the evidence's probative value was substantially outweighed by the danger of unfair prejudice pursuant to SC R EVID 403 and were inadmissible pursuant to SC R EVID 404(b).

Exhibit 10 and 20 were Facebook messages of what the State contended to be drug transactions which occurred prior to the date of the incident for which Applicant was on trial. Applicant's trial attorney objected to the introduction of the evidence but did not object on the grounds of SC R Evid 403 or 404.

FILED IN OFFICE OF CLERK OF COURT CHEROKEE COUNTY, S.C.
2024 NOV 14 A 11:52
BRANDY W. MCBEE

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jamesboyd@comporium.net
Attorney for Applicant

November 13, 2024
Rock Hill, South Carolina

STATE OF SOUTH CAROLINA COUNTY OF CHEROKEE	)	IN THE COURT OF COMMON PLEAS FOR THE SEVENTH JUDICIAL CIRCUIT
Bryson J. Smith, #366967, Applicant, v. State of South Carolina, Respondent.	)	CASE NO. 2023–CP–11–00145 **RETURN** (Counsel Appointed)

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.
2024 JUL -1 A 8:53
BRANDY W. MCBEE

In response to Bryson J. Smith's (Applicant) action for post-conviction relief (PCR) commenced on February 27, 2023, Respondent, the State of South Carolina, makes the following Return:[1]

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections (SCDC) pursuant to the Cherokee County Clerk of Court's orders of commitment. During its September 2020 term, the Cherokee County Grand Jury indicted Applicant for one count of possession with intent to distribute marijuana (2020-GS-11-01147), one count of possession with intent to distribute cocaine (2020-GS-11-01148), trafficking methamphetamine (2020-GS-11-01149), and

[1] Respondent's return was due to be filed within ninety days of receipt of Applicant's instant post-conviction relief application. See Rule 12(a), SCRCP ("[T]he State of South Carolina shall answer or otherwise respond to an application for post-conviction relief within 60 days after service of the application, if it arises out of a guilty plea, and 90 days if it arises out of a trial."). Now, having completed the return required in this matter, and in light of no demonstrable prejudice to Applicant as a consequence of the delay, Respondent respectfully asks this Court to accept this return as timely filed. See S.C. Code Ann. § 17-27-70(a) (establishing that the Court may fix the time in which the State must respond and that "respondent shall file with its answer the record or portions thereof that are material to the questions raised in the application."); Guinyard v. State, 260 S.C. 220, 195 S.E.2d 392 (1973) (holding the trial court may extend the time for filing and that the time limit prescribed by the statute is not mandatory, but discretionary with the trial court.).

one count of possession with intent to distribute fentanyl (2020-GS-11-01150). E. Joshua Schultz, Esquire, represented Applicant. Seventh Circuit Assistant Solicitors Matthew Kendall and Kim L. Leskanic, Esquires, prosecuted the case.

On November 3, 2020, Applicant proceeded to a jury trial before the Honorable R. Keith Kelly, circuit court judge. Applicant was found guilty as indicted. Judge Kelley sentenced Applicant to concurrent terms of twenty-five years imprisonment for the trafficking of heroin, trafficking methamphetamine, and the possession with the intent to distribute cocaine charges and a term of twenty years imprisonment for the possession with intent to distribute marijuana to be served concurrently. Additionally, Judge Kelley sentenced Applicant to a term of fifteen years imprisonment for the possession with intent to distribute fentanyl.

Applicant filed a timely notice of appeal. Applicant's appeal was perfected by Appellate Defender Adam S. Ruffin, Esquire, pursuant to Anders v. California.[2] On June 15, 2022, the South Carolina Court of Appeals denied Applicant's appeal and affirmed the lower court. State v. Bryson Jamar Smith, Unpub. Op. No. 2022-UP-263 (Ct. App. filed June 15, 2022). The Remittitur was returned on July 5, 2022.

FACTS GIVING RISE TO THE CONVICTION

On August 12, 2019, Officer Randy Gardner ("Gardner") responded to a shooting in Cherokee County. (R. 74, 11. 4 – 13). Gardner arrived at the scene to find two individuals had been shot and taken to Spartanburg Regional for Medical Assistance. (R. 74, 11. 14 – 17). Through interviewing witnesses, Gardner was able to decipher a version of the events leading to this shooting. (R. 74, 11. 17 – 22). One of these witnesses explained to Garner his belief that the shooter was Applicant. (R. 75, 11. 1 – 3). This witness' belief was corroborated by one of the

[2] 386 U.S. 738 (1967).

victim's mothers, who informed investigators that Applicant and her son had been arguing. (R. 75, 11. 3 – 6). The victim's mother provided Gardner with social media posts made by Applicant and Applicant's profile picture on Facebook. (R. 75, 11. 6 – 8).

John Fuller, of the Cherokee County Sheriff's Office, along with several other officers, went to an address on Maplewood Drive to serve an arrest warrant on Applicant. (R. 129, 11. 3 – 21). Applicant's mother came to the front door and allowed the officers to come inside to look for Applicant. Fuller recalled that the first room he looked in appeared to be a storage room. The second room was a bedroom and had an odor of marijuana, and Fuller observed marijuana lying on the bed. (R. 130, 11. 4 – 21). Fuller also observed the "guts" of a cigar, a bag of marijuana, crack cocaine, and a digital scale in the bedroom. (R. 132, 11. 2 – 25).

Officers obtained a search warrant for the house so that they could conduct a more thorough search. (R. 244, 11. 16- 19). In searching the house, the officers found paperwork and mail with Applicant's name on it, along with a box that had Applicant's initials on it in the second bedroom. (R. 261, 1. 20 - 262, 1. 3; R. 267, 11. 3 - 10; R. 269, 11. 12 – 18). In that same bedroom, several different forms and amounts of drugs were located, including 149 grams of marijuana. (R. 189, 1. 17 - 190, 1. 13).

Other drugs found were 2.55 grams of cocaine, 84 fentanyl pills, 69 pills containing both heroin and fentanyl with a weight of 7.78 grams, 50 more fentanyl pills, and 73 pills of methamphetamine with a weight of 11.15 grams. (R. 207, 1. 22 - 208, 1. 18). The SLED analyst who tested the drugs admitted that she did not test every single pill that was obtained but instead only tested a portion of a single tablet. The analyst then extrapolated the results from one tablet to the rest of the pills that were found. (R. 219, 1. 2 - 222, 1. 10).

CURRENT APPLICATION

On February 27, 2023, Applicant filed his initial application for post-conviction relief, in which Applicant alleges he is being held in custody unlawfully based on the following:[3]

1. "Ineffective Assistance of Trial Counsel, E. Joshua Schultz."
   a. "Counsel was ineffective in failing to object to the Courts (*sic*) jury instruction on "possession" and "constructive possession.""[4]
   b. "Trial Counsel was ineffective in failing to move for a directed verdict on the grounds that the State failed to present sufficient evidence that the applicant had dominion and control over the area where the drugs were found"[5]
   c. "Counsel was ineffective for only admitting to his client about the two plea offers. As a result the Applicant was prejudiced."
   d. "Counsel failed to consult with his client violation of the S.C. Appellate Court Rule 407 1.4 Communication. As result Applicant was prejudiced."
   e. " Applicant requested that his counsel negotiate the counter plea for a term of ten years. Counsel stated that their not going to do it. He said that they offered you fifteen years. Because of counsel's negligence Applicant was prejudiced."
   f. "Counsel failed to properly investigate, because he failed to call witnesses on the Applicant's behalf such as his probation officer to be cross-examined. The question to relevance is whether or not Applicant lived at that address?"
   g. "Counsel was ineffective for violations of Rule 407 1.1 Competence, 1.3 Diligence, 2.1 Advisor, and 3.2 and because of Counsel's ineffectiveness Applicant was prejudiced."
   h. "Counsel deprived the Applicant of his Sixth Amendment

---

[3] A portion of Applicant's allegations were typed (allegations listed as one and two following Applicant's typed application for PCR); however, these allegations were followed by a longer list (allegations 1(c-m), herein). The longer list possesses a different date than the first two typed allegations and is not signed by Applicant's retained Counsel. Therefore, it is unclear whether these allegations were completed by Applicant or Counsel—and if by Applicant—adopted by Counsel as a proper filing pursuant to the Rules of Civil Procedure. Notably, hybrid representation is not permitted in South Carolina.

[4] In a brief attached to his application for post-conviction relief, Applicant provides the section of the trial court's jury instruction with which he takes issue. This allegation has been consolidated for brevity.

[5] This allegation has been consolidated for brevity.

2025-001051 Smith v. State Petition for a Writ of Certiorari Appendix Page 661

right to receive Effective Assistance (*sic*)."

i. "Counsel deprived the Applicant of his due process rights to receive due compulsory process, preliminary hearing, and fundamental fairness."

j. "Counsel was inadequate because he failed to respond to requests made by the Applicant when he requested that client's case file be turned over as required by the Supreme Court rulings in the matter of Haddock, and Crossland."

k. "Counsel was inadequate because he deprived the Applicant to a fair trial."

l. "Counsel deprived the Applicant of his Sixth Amendment guarantee to the right to receive Effective Assistance of Counsel (*sic*), The right to cross-examine the witnesses against him, and the right to an (*sic*) Compulsory (*sic*) process. Because of counsel's ineffectiveness the Applicant was prejudiced."

m. "Counsel was inadequate because of an conflicting interest in client's case based upon what the State told him but presented no physical evidence as proof, and by counsel failing to challenge the State, as a result Applicant was prejudiced."

2. "Ineffective Assistance of Appellate Counsel, Mr. Adam Sinclair Ruffin."

a. "Appellate counsel was inadequate for failing to properly investigate case but filed an Anders Brief (*sic*) stating that there were no merits, depriving Applicant of his Sixth Amendment right to receive Effective (*sic*) assistance."

b. "Appellate counsel was ineffective for following the lead of trial counsel because of his inadequacy the Applicant was prejudiced."

c. "Appellate counsel abandoned the Applicant depriving him of his right to appeal guarantee (*sic*) under the Fourteenth Amendment procedural due process."

d. "Appellate counsel had an conflicting interest in his case, and because of this Applicant was prejudiced."

3. "Violations of Applicant's Sixth and Fourteenth Amendment to the United States Constitution and to the State's Constitution Art 1 Sections 3 & 4"

a. "Both the trial Counsel (*sic*) and the Appellate (*sic*) counsel violated the Applicant's right to effective assistance of his procedural rights to due process of the law."

b. "State's Constitution section 3 of Art 1, states Privileges, Rights to Due Process (*sic*) shall not be violated. Because of this issue with both counsels the Applicant was prejudiced"

c. "United States Constitutional Amendment 14 Section 1,

States, No State (*sic*) shall deprive any person of life, liberty, or property without due process of the law, nor shall any State (*sic*) deprive persons of equal protection of the laws."

d. "State Constitution Art. 1 Section 14, States privileges, Defenses (*sic*) shall not be taken away or nor shall any persons be deprived of those rights to effective assistance, not just assistance but competent assistance of counsel. Shall not be violative."
e. "Applicant alleges being denied effective assistance during direct appeal in violation of his Sixth Amendment. See * Evitts v. Lucey, 469 U.S. 387, 105, S. Ct. 803. (*sic*)"
f. Trial Counsel violated Applicant's Sixth Amendment right to receive effective assistance by failing to following (*sic*) Rule 402 Relevant Evidence Admissible (*sic*), where counsel failed to examine relevant evidence that could have change (*sic*) the outcome of Applicant's trial had counsel examined evidence as a result Applicant was prejudiced. See State v. Stewart, 433 S.C. 382 858 S. E2d. 808 (*sic*)."

On July 10, 2023, Applicant filed an amended application for post-conviction relief, bringing forth the following additional allegations:

4. "Additional Grounds for Ineffective Assistance of Counsel"
   a. "Applicant was seen by some jurors while he was in chains and handcuffs. Applicant told his Attorney, his Attorney failed to move for a mistrial or address the court on this issue;"
   b. "Defense counsel failed to strike juror 66, although the juror was related to a witness for the State;"
   c. "Defense counsel failed to object to the search warrant for the premises;"
   d. "Defense counsel failed to establish the letter found on premises (State's Exhibit 42) was from 2017, well before the date of the search"

Applicant requests relief as follows:

"New Trial."

Attached to this return and incorporated by reference are the Cherokee County Clerk of Court records regarding the subject's convictions and sentences, Applicant's records from the SCDC, Applicant's trial transcript, the complete appellate record, and the records of the current

PCR action. Respondent reserves the right to amend this return upon receiving any relevant materials.

INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL

Applications for PCR are inherently ingrained in allegations of ineffective assistance of counsel. Accordingly, Respondent addresses this general allegation, and Respondent submits that the record establishes Applicant will not be able to prove any ineffectiveness of counsel.

The Sixth and Fourteenth Amendments to the United States Constitution guarantee Applicant, like all other defendants, the right to "assistance by an attorney, whether retained or appointed, who plays the role necessary to ensure that the trial is fair." Strickland v. Washington, 466 U.S. 668 (1984). Ordinarily, PCR allegations are centered upon an allegation that the applicant did not receive *effective* assistance of counsel guaranteed by the Sixth Amendment. See generally S.C. Code Ann. § 17-27-20(A) (enumerating allegations cognizable in PCR actions). The allegation of denial of such representation sets forth a *prima facie* violation of that constitutional right and raises a question of fact that can only be determined by an evidentiary hearing. Rogers v. State, 261 S.C. 288, 291, 199 S.E.2d 761, 762 (1973).

In a post-conviction relief action, the applicant bears the burden of proving the allegations by a preponderance of the evidence—a mere allegation of ineffective assistance is not sufficient to warrant granting relief. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). The reviewing court applies the two-part test outlined in Strickland to determine whether counsel's conduct "was so ineffective as to require reversal" of the applicant's conviction or sentence. 466 U.S. at 687. To obtain reversal of a conviction, the applicant must prove that (1) their attorney's performance fell below an objective standard of reasonableness (the performance prong) and (2) the deficient performance prejudiced the defense

to the degree that it deprived the defendant of a fair trial (the prejudice prong). Id. at 690–95; Butler, 286 S.C. at 442, 334 S.E.2d at 814. The defendant's burden for proving both of these components is heavy in light of the strong presumption that counsel's conduct fell within the range of reasonable professional legal assistance. Strickland, 466 U.S. at 690. Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim. Id. at 700.

The first prong—constitutional deficiency—is "necessarily linked to the practice and expectations of the legal community." Padilla v. Kentucky, 559 U.S. 356, 366 (2010). In order to prove deficient performance, the applicant must show counsel's representation fell below an objective standard of "reasonableness under prevailing professional norms." Cherry v. State, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814.

Strickland, however, "does not guarantee perfect representation[—]only a 'reasonably competent attorney.'" Harrington v. Richter, 562 U.S. 86, 110 (2011) (quoting Strickland, 466 U.S. at 687). Representation is constitutionally ineffective only if counsel's conduct "so undermined the proper functioning of the adversarial process" that the defendant was denied a fair proceeding. Strickland, 466 U.S. at 686. Just as there is "no expectation that competent counsel will be a flawless strategist or tactician, an attorney may not be faulted for a reasonable miscalculation or lack of foresight or for failing to prepare for what appear to be remote possibilities." Harrington, 562 U.S. at 110.

Accordingly, "[j]udicial scrutiny of counsel's performance must be highly deferential, as it is all too tempting for a defendant to second-guess counsel's assistance after conviction or an

adverse sentence, and it is all too easy for a court, examining counsel's defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable." Strickland, 466 U.S. at 689; see also Yarborough v. Gentry, 540 U.S. 1, 6 (2003) ("The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight."). Thus, a fair assessment of attorney performance requires every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time. Strickland, 466 U.S. at 689. Because of the difficulties inherent in making such an evaluation, the reviewing court must indulge in a "strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance." Butler, 286 S.C. at 445, 334 S.E.2d at 816. The applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625.

A reviewing court "must judge the reasonableness of counsel's challenged conduct on the facts of the particular case, viewed at the time of counsel's conduct." Strickland, 466 U.S. at 690. An applicant making a claim of ineffective assistance "must identify the acts or omissions of counsel that are alleged *not* to have been the result of reasonable professional judgment." Strickland, 466 U.S. at 690 (emphasis added). The reviewing court must then "determine whether, in light of all the circumstances, the identified acts or omissions were outside the wide range of professionally competent assistance." Id.

The Strickland standard must be applied with scrupulous care, lest "intrusive post-trial inquiry" threaten the integrity of the very adversary process the right to counsel is meant to serve. 466 U.S. at 689-690; see also Harrington, 562 U.S. at 105 (cautioning that an ineffective assistance of counsel claim could potentially function as a way to escape rules of waiver and

forfeiture and raise issues not presented at trial). Even under *de novo* review, the standard for judging counsel's representation is a most deferential one. Harrington, 562 U.S. at 105. Unlike a later reviewing court, the attorney observed the relevant proceedings; knew of materials outside the record; and interacted with the client, opposing counsel, and the judge. Thus, the question is whether an attorney's representation amounted to incompetence under "prevailing professional norms," *not* whether it deviated from best practices or most common custom. Id. (quoting Strickland, 466 U.S. at 690) (emphasis added).

The second, or "prejudice" prong of Strickland is rooted in the very purpose of the Sixth Amendment guarantee of counsel—to ensure a defendant has the assistance necessary to justify reliance on the outcome of the proceeding. Id. at 691–92. In order to prove prejudice, an applicant must demonstrate counsel's deficient performance prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. A reasonable probability is a probability "sufficient to undermine confidence in the outcome." Strickland, 466 U.S. at 694. In determining prejudice, the reviewing court must consider the totality of the evidence before the jury. Id. at 695.

Thus, it is not enough "to show the errors had some conceivable effect" on the outcome of the proceeding—counsel's errors must be "so serious as to *deprive the defendant of a fair trial.*" Id. at 687 (emphasis added). "An error by counsel, even if professionally unreasonable, does not warrant setting aside the judgment of a criminal proceeding if the error had no effect on the judgment." Id. at 668. Moreover, the South Carolina Supreme Court has repeatedly held a PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish

prejudice. Bannister v. State, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998).

Finally, the performance and prejudice standards, however, "do not establish mechanical rules; [t]he ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged." Strickland, at 696. Moreover, "there is no reason for a court deciding an ineffective assistance claim to approach the inquiry in the same order or even to address both components of the inquiry if the defendant makes an insufficient showing on one." Id. at 697. The court "need not determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. Id. If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, the court may evaluate the prejudice prong only. Id.

RESPONSE TO ALLEGATION TRIAL COUNSEL FAILED TO OBJECT

Applicant alleges Trial Counsel was constitutionally ineffective for failing to object to the trial court's jury instruction on "possession" and "constructive possession" and to the search warrant issued for Applicant's premises. Respondent submits that Applicant's claims are without merit.

Ultimately, the "use and timing of objections at trial is a quintessential matter of strategy and discretion on the part of the trial attorney, and will very seldom constitute objectively deficient representation." United States v. Nguyen, 379 F. App'x 177, 181 (3d Cir. 2010); see Humphries v. Ozmint, 397 F.3d 206, 234 (4th Cir. 2005) (Luttig, J., concurring) ("[I]t is well established that failure to object to inadmissible or objectionable material for tactical reasons can constitute objectively reasonable trial strategy under Strickland."); cf. Bergmann v. McCaughtry, 65 F.3d 1372, 1380 (7th Cir.1995) (noting that deciding when to object is a matter of trial strategy that a lawyer has to make on the spot.).

When analyzing counsel's performance, the reviewing court will "strong[ly] presume[e] that counsel's attention to certain issues to the exclusion of others reflects trial tactics rather than sheer neglect. Yarborough v. Gentry, 540 U.S. 1, 8 (2003) (internal quotation marks omitted); cf. Sallie v. State of N.C., 587 F.2d 636, 640 (4th Cir. 1978) (Strickland standard was not developed to was not "intended to promote judicial second-guessing on questions of strategy as basic as the handling of a witness"). Accordingly, when counsel articulates a valid strategic reason for his action or inaction, counsel's performance should not be found ineffective. Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992); see Whitehead v. State, 308 S.C. 119, 417 S.E.2d 529 (1992) ("Courts must be wary of second guessing counsel's trial tactics; and where counsel articulates a valid reason for employing such strategy, such conduct is not ineffective assistance of counsel).

Jury Instruction

Applicant alleges Trial Counsel was constitutionally ineffective for failing to object to the trial court's jury instruction on "possession" and "constructive possession." Respondent contends that Applicant's claim is without merit.

Applicant alleges that Trial Counsel was ineffective for failing to object to the trial court instructing the jury on the definition of possession on each charge. In his original and amended applications for post-conviction relief, petitioner cites the court in their definition of "possession." The trial Court's instruction was as follows:

> To prove possession, the State must prove beyond a reasonable doubt that he had both the power and intent to control the disposition or use of the marijuana. Possession may be either actual or constructive possession. Actual possession means it was actually in his physical custody.

(R. 480, 11. 3 – 9). Alleging this instruction left out a keyword, "knowledge." Applicant contends the proper charge would have been "To prove possession, the State must prove beyond a reasonable doubt that the defendant had knowledge of, power over, and the intent to control the disposition or use of the drugs involved." Citing "State v. Lane, 271 S.C. 68, 245 S.E.2d 114 (1978)," and "State v. Stewart, 28029 (S.C. 2021).[6]"

In his original and amended applications for post-conviction relief, Applicant alleges the trial court, in their definition of "constructive possession," instructed the jury that where Applicant had dominion and control over either the drugs or the property on which the drugs were found, he had constructive possession of those drugs. The trial court's instruction on the definition of constructive possession was as follows:

> Constructive possession means that the defendant had dominion and control or the right to exercise dominion and control over either the marijuana or the property on which the marijuana was found. The defendant's knowledge and possession may be inferred when a substance is found on property under his control. However, this inference is simply an evidentiary fact to be taken into consideration along with other evidence and to be given what weight you decide it should have.

(R. 480, 11. 10 – 20). Applicant again cites Stewart, in which the court found the language "the property upon which the drugs were found" to be problematic. Applicant alleges that Stewart is distinct from the instant case, as the trial court in Stewart gave a "mere presence" instruction, informing the jury that a defendant's "mere presence at the scene where drugs were found is not enough to prove possession." Applicant alleges Trial Counsel's representation was outside the scope of reasonableness under prevailing professional norms by failing to object to the lack of a "mere presence instruction" or to request that one be given.

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[6] State v. Stewart, 435 S.C. 405, 867 S.E.2d 33 (Ct. App. 2021).

Applicant further alleges that the trial court then instructed the jury that "the defendant's knowledge and possession may be inferred when a substance is found on property under his control." Applicant contends that this is the "exact instruction that was found to be improper in Stewart." In his argument Applicant acknowledges that this instruction was found to be proper by the Supreme Court in State v. Adams, 291 S.C. 132 S.E. 2d 483, (1987). Applicant further acknowledges that attorneys are not required to anticipate changes in the law that were not in effect at the time of trial, where the decision in Stewart was issued on May 19, 2021, and Applicant's trial concluded on November 6, 2020. However, Applicant opines that Trial Counsel should have anticipated the outcome in Stewart as the Supreme Court agreed to hear Stewart on March 12, 2020, and oral arguments in that matter were heard on November 18, 2020, *two weeks after the conclusion* of Applicant's trial. Respondent submits this allegation is without merit.

Being that Applicant's trial occurred in 2020, and Trial Counsel is responsible only for advocating for Applicant within the confines of the law as it existed at the time of trial. See Pantovich v. State, 427 S.C. 555, 562–63, 832 S.E.2d 596, 600 (2019) (In deciding PCR claims, the court must "determine whether counsel was ineffective at the time of the alleged error."). Id. at 564, 832 S.E.2d at 601. (Establishing that the court must consider the law as it existed at the time of trial as opposed to the way "it has evolved today ...."). Trial Counsel cannot be found deficient for failing "to be clairvoyant or anticipate changes in the law ...." See Gilmore v. State, 314 S.C. 453, 457, 445 S.E.2d 454, 456 (1994), (*overruled on other grounds* by Brightman v. State, 336 S.C. 348, 520 S.E.2d 614 (1999)). Applicant has provided no applicable case law to support his contention that Trial Counsel was ineffective on this ground. Applicant has however provided case law to support the argument that Trial Counsel was not deficient in citing State v. Adams, 291 S.C. 132 S.E. 2d 483, (1987) (holding the proper charge on constructive possession

of drugs is to instruct the jury that defendants knowledge and possession may be inferred if the substance was found on premises, under his control and trial judge should explain to the jury that it is free to accept or reject this permissive inference of knowledge and possession depending upon its view of the evidence.), which was the governing law at the time of Applicant's trial.

Additionally, even if the trial court had made statements that this Court were to deem improper, when analyzing the entirety of the judicial charge Applicant has not shown sufficient prejudice to warrant reversal. While Trial Counsel is not bound the holding of a case that was decided after the conclusion of Applicant's trial, even if he were, Applicant would not be able to show prejudice resulting from Trial Counsel's failure to object to the cited language pursuant to Beaty. See Todd v. State, 355 S.C. 396, 585 S.E.2d 305 (2003) (South Carolina law dictates that jury instructions, when analyzed, must be considered in their entirety.); Welch v. Epstein, 342 S.C. 279, 536 S.E.2d 408 (Ct.App. 2000) (If the jury charge is reasonably free from error, isolated portions which might be misleading do not constitute reversible error.).

For the above-reasons, Applicant cannot satisfy either requirement of Strickland, nor show trial counsel was ineffective. However, the record likely does not refute or disprove Applicant's allegations of ineffective assistance of trial counsel; therefore, the State requests an evidentiary hearing to fully resolve the issues. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (providing an evidentiary hearing shall be held when a PCR application "alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the lower court").

Search Warrant

Applicant alleges Trial Counsel was constitutionally ineffective for failing to object to the search warrant for the premises. However, Applicant has not given any reasoning to support his

allegation or the merits on which it has arisen. The record reflects that during Applicant's trial, Trial Counsel attempted to challenge the search warrant issued for Applicant's mother's home and that Trial Counsel withdrew this motion only after that conversation with Applicant. (R. 43, l. 20 - 48, l. 19).

A large part of Applicant's defense at trial rested on his contention that he did not currently live at the residence where the drugs were found. (R. 43, l. 20 - 45, l. 15). Trial Counsel informed the court that he believed he could make the argument that Applicant had standing to challenge the search warrant without conceding that Applicant did reside at the premises. (R. 44, ll. 10 - 17). Trial Counsel and the court had a substantial discussion about standing involved in challenges to the search warrant, following which Trial Counsel requested permission to speak with applicant. (R. 43, l. 20 - 48, l. 19). After a conversation between Trial Counsel and Applicant occurred off the record, Trial Counsel stated to the trial court: "Your Honor, after conversation with my client, I'm going to withdraw the motion to contest the validity of the search warrant." (R. 48, ll. 14 - 16).

Strickland requires that trial counsel must be given leeway to make reasonable strategic decisions. "No particular set of detailed rules for counsel's conduct can satisfactorily take account of the variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how best to represent a criminal defendant." Strickland at 688-89. "Representation is an art, and an act or omission that is unprofessional in one case may be sound or even brilliant in another." Id. at 691. Therefore, "[j]udicial scrutiny of counsel's performance must be highly deferential." Id. at 689. Strickland therefore established the rule that in proving a claim of ineffectiveness, "the defendant must overcome the presumption that, under the circumstances, the challenged action 'might be considered sound trial strategy.'" Id.

For the above-reasons, Respondent maintains Applicant cannot satisfy either requirement of Strickland, or show trial counsel was ineffective. However, the record likely does not refute or disprove Applicant's allegations of ineffective assistance of trial counsel; therefore, the State requests an evidentiary hearing to fully resolve the issues. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (providing an evidentiary hearing shall be held when a PCR application "alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the lower court").

RESPONSE TO ALLEGATION TRIAL COUNSEL FAILED TO STRIKE JUROR 66

Applicant alleges Trial Counsel was ineffective for failing to "strike juror 66, although the juror was related to a witness for the state." During the jury selection process, Juror 66 made it known that while they are related to someone within the Cherokee County Police Department, it would not affect their ability to be fair and impartial. (R. 15, 11. 15 - 20). Further, both the State and defense counsel requested to seat the juror. (R. 22-23). The minimal contact between members of the jury and employees of the Cherokee County Police Department or a potential witness did not justify a motion to strike the jurors. As a result, Trial Counsel was not deficient for failing to move to strike.

Applicant seems to argue counsel should have moved to strike juror 66 for cause, because of the possible relationship with a potential State's witness. However, "a prospective juror generally is not automatically incompetent or subject to challenge merely because the juror has some relationship to or with a person involved in the case." 50A C.J.S. Juries § 378. Specifically, regarding jurors' potential relationships with a witness, this Court has held for many years that a relationship with a witness does not require disqualification of a juror. See State v. Jones, 298 S.C. 118, 121, 378 S.E.2d 594, 596 (1989) ("The mere fact that a person is a friend or

acquaintance of the deceased does not render him incompetent as a juror."); State v. Wells, 249 S.C. 249, 259–60, 153 S.E.2d 904, 909–10 (1967) (affirming qualification of a juror who directly employed victim a year or more prior to trial); State v. Hilton, 87 S.C. 434, 439, 69 S.E. 1077, 1078 (1910) ("There is no rule of the common law, nor is there a statute disqualifying a juror on account of his relationship to a witness, either by affinity or consanguinity, within any degree."). As a result, there would have been no basis for counsel to move to strike any jurors for cause based on their relationship with parties in the case and counsel could not be deficient in failing to request a relief to which he had no right.

Finally, even if counsel was deficient for failing to seek to remove the juror, Applicant has not demonstrated how he was prejudiced. Applicant presented no evidence of a connection between the jurors and a potential witness sufficient to undermine confidence in the final verdict of the jury. Further, he has failed to establish any basis for bias or prejudice, especially in light of the jurors' acknowledgment of the ability to be fair and impartial and not to have a bias for or against either party.

Applicant has failed to establish how, "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117–18, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 694). The strength of the State's case is considerable and it is not reasonable to think that had trial counsel been successful in removing the juror it would have altered the outcome reached. See Smalls v. State, 422 S.C. 174, 188, 810 S.E.2d 836, 843 (2018) ("In addition, the PCR court should consider the strength of the State's case in light of all the evidence presented to the jury. In general, the stronger the evidence presented by the State, the less likely the PCR court will find the applicant met his burden of proving prejudice.") (internal citation omitted). Accordingly, the State submits

Applicant's allegations regarding a failure to seek to remove the juror is without merit.

For the above reasons, Applicant cannot satisfy either requirement of Strickland or show trial counsel was ineffective. However, the record likely does not refute or disprove Applicant's allegations of ineffective assistance of trial counsel; therefore, the State requests an evidentiary hearing to fully resolve the issues. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (providing an evidentiary hearing shall be held when a PCR application "alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the lower court").

RESPONSE TO ALLEGATION TRIAL COUNSEL FAILED TO MOVE FOR DIRECTED VERDICT

Applicant alleges Trial Counsel was ineffective for failing to move to move for a directed verdict on the grounds that the State failed to present sufficient evidence that the applicant had dominion and control over the area where the drugs were found. The record reflects that Trial Counsel made a timely directed verdict motion at the conclusion of the State's case on other grounds:

> Your Honor, the [defense] moves for a directed verdict on all counts on the indictments.... The basis for the motion is the testimony of the expert that testified yesterday on Wednesday. That this was Miss McCormack who acknowledged or at least testified to the fact that the sum of the drugs that she tested were not tested completely.... I would move respectfully for a direct verdict on possession with intent to distribute Fentanyl and trafficking heroin at this time, Your Honor. So not on all indictments, but at least possession with intent to distribute Fentanyl and trafficking heroin.

(R. 421, l. 8 – 422, l. 14). This motion was denied by the trial court. (R. 424, l. 3 – 425, l. 2).

Applicants are not entitled to directed verdicts as a matter of law, and counsel will not be found ineffective for failure to move for a directed verdict if the motion would have been denied when viewed in the light most favorable to the State. See Teamer v. State, 416 S.C. 171, 181,

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786 S.E.2d 109, 114 (2016) (finding counsel was not ineffective for failing to request a directed verdict when, viewed in the light most favorable to the State, ample evidence of the defendant's guilt was clear). Here, given that ample evidence existed suggesting Applicant's involvement and that the jury ultimately found Applicant guilty, a directed verdict likely would have been denied.

For the above reasons, Applicant cannot satisfy either requirement of Strickland or show trial counsel was ineffective. However, the record likely does not refute or disprove Applicant's allegations of ineffective assistance of trial counsel; therefore, the State requests an evidentiary hearing to fully resolve the issues. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (providing an evidentiary hearing shall be held when a PCR application "alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the lower court").

RESPONSE TO ALLEGATION TRIAL COUNSEL INEFFECTIVE DURING PLEA BARGAINING

Applicant alleges Trial Counsel was constitutionally ineffective for failing to communicate all of his plea offers and for failing to negotiate a "counter plea." A defendant is entitled to effective assistance of counsel during plea negotiations. Judge v. State, 321 S.C. 554, 471 S.E.2d 146 (1996) overruled on other grounds by Jackson v. State, 342 S.C. 95, 535 S.E.2d 926 (2000). Davie v. State, 381 S.C. 601, 675 S.E.2d 416 (2009) (abrogated on other grounds by Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018)). "The United States Supreme Court has held that 'defense counsel has the duty to communicate formal offers from the prosecution to accept a plea on terms and conditions that may be favorable to the accused.'" Collins v. State, 422 S.C. 250, 261, 810 S.E.2d 871, 876 (2018) (quoting Missouri v. Frye, 566 U.S. 134, 145 (2012)); see also Lafler v. Cooper, 566 U.S. 156, 169-70 (2012) (rejecting proposition that a fair trial wipes clean any deficient performance by defense counsel during plea bargaining).

Generally, defense counsel provides deficient performance when he or she does not communicate such an offer to the defendant. Frye, 566 U.S. at 145.

To show prejudice, an applicant for post-conviction relief "must demonstrate a reasonable probability that: (1) he [or she] 'would have accepted the earlier plea offer had [he or she] been afforded effective assistance of counsel;' (2) 'the plea would have been entered without the prosecution canceling it or the trial court refusing to accept it;' and (3) 'the end result of the criminal process would have been more favorable by reason of a plea to a lesser charge or a sentence of less prison time.'" Collins, 422 S.C. at 262, 810 S.E.2d at 877 (quoting Frye, 566 U.S. at 147; citing Lafler v. Cooper, 566 U.S. 156, 164 (2012)). An applicant must show actual prejudice, but depending on the facts of the case, an applicant's self-serving statement *may* be sufficient to establish actual prejudice. Davie, 381 S.C. at 613, 675 S.E.2d at 422.

Respondent lacks sufficient information to admit or deny these allegations at this time. Respondent requests an evidentiary hearing on this ground for relief. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

RESPONSE TO ALLEGATION TRIAL COUNSEL FAILED TO CONSULT

Applicant alleges Trial Counsel was constitutionally ineffective for failing to consult with him, in violation of "S.C. Appellate Court Rule 407 1.4 Communication," and as a result, he was prejudiced. Rule 407, SCACR, Rules of Prof. Conduct, Rule 1.4 States:

(a) A Lawyer Shall:

(1): Promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in Rule 1.0(g), is required by these Rules;

(2): Reasonably consult with the client about the means by which the client's objectives are to be accomplished;

(3): Keep the client reasonably informed about the

status of the matter;

(4): Promptly comply with reasonable requests for information; and

(5): Consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Profession Conduct other law.

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

(SCACR Rule 407 RPC 1.4). However, the Rules of Professional Conduct, whose purpose is to regulate and guide the legal profession in ethical conduct, do not have any bearing on assessing a claim of ineffective assistance of counsel, and "[n]othing in the Rules should be deemed to augment any substantive legal duty of lawyers or the extra-disciplinary consequences of violating such duty." Langford v. State, 310 S.C. 357, 426 S.E.2d 793 (1993) (citing Rule 407, SCACR).

Alternatively, Respondent construes this allegation as one alleging Trial Counsel did not sufficiently communicate with him. Federal case law holds that there is no constitutional minimum number of meetings between attorneys and their clients to satisfy competency. Campbell v. Polk, 447 F.3d 270, 279 fn.2 (4th Cir. 2006) (no constitutional minimum number of meetings to satisfy competency); United States v. Olson, 846 F.2d 1103, 1108 (7th Cir. 1988) (reciting that there is no constitutional minimum number of meetings between attorney and client and observing that an experienced attorney may get more out of a single meeting than a neophyte). "Brevity of time spent in consultation, without more, does not establish that counsel was ineffective." Easter v. Estelle, 609 F.2d 756, 759 (5th Cir. 1980) (holding it is not enough to merely show that counsel only met with his client twice before trial as long as counsel devoted sufficient time to ensure an adequate defense and to become thoroughly familiar with the facts of

the case and the law applicable to the case, and holding the record revealed that counsel was so prepared.).

South Carolina case law has established that even if Trial Counsel only met with his client very briefly, that alone does not establish that he was unprepared or ineffective at trial. See Harris v. State, 377 S.C. 66, 75, 659 S.E.2d 140, 145 (2008) (citing Easter) ("First, there is no question that counsel met with [Applicant] on several occasions prior to the first trial. Even if the meetings were brief, this fact alone is not indicative of inadequate trial preparation.")

Respondent lacks sufficient information to admit or deny these allegations at this time. Respondent requests an evidentiary hearing on this ground for relief. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

RESPONSE TO ALLEGATION TRIAL COUNSEL FAILED TO INVESTIGATE

Applicant alleges Trial Counsel was constitutionally ineffective for failing to properly investigate by calling witnesses, such as his probation officer, to be cross-examined, failing to examine evidence pursuant to "Rule 402 Relevant Evidence Admissible," and failing to "establish the letter found on premises was from 2017, well before the date of search."

"[S]trategic choices made after thorough investigation of law and facts relevant to plausible options are virtually unchallengeable; and strategic choices made after less than complete investigation are reasonable precisely to the extent that reasonable professional judgments support the limitations on investigation." Strickland, 466 U.S. at 690-91. "In other words, counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." Id. at 691. "In any ineffectiveness case, a particular decision not to investigate must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel's judgments." Id.

"The reasonableness of counsel's actions may be determined or substantially influenced by the defendant's own statements or actions." Id. Counsel's actions are usually based, quite properly, on informed strategic choices made by the defendant and on information supplied by the defendant." Id. "In particular, what investigation decisions are reasonable depends critically on such information." Id.

In order to prevail upon a claim that counsel did not adequately prepare or investigate a case, an applicant must present evidence of what counsel could have discovered or what other defenses applicant could have requested counsel develop and present had counsel been more prepared. Harris v. State, 377 S.C. 66, 75-76, 659 S.E.2d 140, 145-46 (2008) (abrogated on other grounds by Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018)) (citing Jackson v. State, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998)). Furthermore, an applicant must also present evidence to show how the discoverable matters or defenses would have resulted in a different outcome. Id. (citing Davis v. State, 326 S.C. 283, 288, 486 S.E.2d 747, 749 (1997); Skeen v. State, 325 S.C 210, 214, 481 S.E.2d 129, 132 (1997)). Mere speculation as to how the alleged lack of preparation prejudiced an applicant is not sufficient to support a grant of relief. Id., 377 S.C. at 75, 659 S.E.2d at 145 (citing Glover v. State, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995)).

Failure to Call Witnesses

For the purposes of the claim of ineffective assistance, while the scope of a reasonable investigation depends upon a number of issues, at a minimum, counsel has a duty to interview potential witnesses and to make an independent investigation of the facts and circumstances of the case. Ard v. Catoe, 372 S.C. 318, 642 S.E.2d 590 (2007). However, see Thornes v. State, 310 S.C. 306, 426 S.E.2d 764 (1993), *overruled on other grounds by* Brightman v. State, 336 S.C.

348, 520 S.E.2d 614 (1999), which found that counsel was not ineffective for failing to interview victim where she made a statement unfavorable to petitioner at time of crime and her testimony at the PCR hearing did not establish she would have been favorable to petitioner at the time of trial. (See also; Glover v. State, 318 S.C. 496, 498-99, 458 S.E.2d 538, 540 (1995) (holding Applicant was required to present the witness he alleges Counsel did not properly investigate or subpoena).

Accordingly, Respondent lacks sufficient information to admit or deny these allegations at this time. Respondent requests an evidentiary hearing on this ground for relief. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

Failure to Examine Relevant Evidence, Pursuant to Rule 402

South Carolina Rules of Evidence Rule 402 establishes:

> All relevant evidence is admissible, except as otherwise provided by the Constitution of the United States, the Constitution of the State of South Carolina, statutes, these rules, or by other rules promulgated by the Supreme Court of South Carolina. Evidence which is not relevant is not admissible.

(S.C. R. Evid. 402). Here, Applicant has failed to establish what relevant evidence he wishes Trial Counsel had reviewed or how a review of that evidence would have changed the outcome of his trial.

In an action for post-conviction relief in order to prove prejudice from failure to review discovery, a PCR applicant must present some new evidence or defenses that could have been discovered by counsel's further review of the discovery. Harris v. State, 377 S.C. 66, 75-76, 659 S.E.2d 140, 145-46 (2008) (citing Jackson v. State, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998)), abrogated on other grounds by Smalls, 422 S.C. 174, 810 S.E.2d 836. Furthermore, an applicant must also show how the new evidence or defenses would have resulted in a different

outcome. Id. (citing David v. State, 326 S.C. 283, 288, 486 S.E.2d 747, 749 (1997); Skeen v. State, 325 S.C. 210, 214, 481 S.E.2d 129, 132 (1997)). Mere speculation as to how the alleged lack of preparation prejudiced an applicant is not sufficient to support a grant of relief. Id., 377 S.C. at 75, 659 S.E.2d at 145 (citing Glover v. State, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995)). Here, Applicant did not present any new evidence or defenses that purportedly could have been discovered by further review of the discovery.

Accordingly, Respondent lacks sufficient information to admit or deny these allegations at this time. Respondent requests an evidentiary hearing on this ground for relief. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

Failure to Establish Date of the Letter

Applicant Contends Trial Counsel was ineffective for failing to establish the letter found on the premises (State's Exhibit 42) was from 2017, well before the date of the search. State's Exhibit 42 was a picture of a piece of mail found in Applicant's room at his mother's home that listed his name and address.

Respondent submits it is impossible for Respondent to adequately respond to Applicant's vague claim because Applicant has failed to set forth facts to "support each ground" or to explain with specificity the facts upon which his claim is based. See S.C. Code Ann. § 17-27-50 (requiring an applicant to "specifically set forth the grounds upon which the application is based"); see also Welch v. MacDougall, 246 S.C. 258, 260, 143 S.E.2d 455, 456 (1965) (stating it is incumbent upon an applicant to make at least a *prima facie* showing entitling him to relief before an evidentiary hearing will be scheduled and held); Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (providing an evidentiary hearing shall be held when a PCR application "alleges specific instances of ineffective assistance of counsel which are not conclusively refuted

by the record before the lower court"); Rule 8(a)(2), SCRCP (requiring all civil pleadings to include "a short and plain statement of the facts showing that the pleader is entitled to relief"); Rule 71.1(d), SCRCP ("Counsel shall insure that all available grounds for relief are included in the application and shall amend the application if necessary.").

RESPONSE TO ALLEGATION TRIAL COUNSEL VIOLATED RULE 407 1.1, 1.3, 2.1, AND 3.2

Applicant alleges Trial Counsel provided was ineffective for violating Rule 407, SCACR, Rules of Prof. Conduct, Rules 1.1 Competence,[7] 1.3 Diligence,[8] 2.1 Advisor,[9] and 3.2 Expediting Litigation.[10] However, the Rules of Professional Conduct, whose purpose is to regulate and guide the legal profession in ethical conduct, do not have any bearing on assessing a claim of ineffective assistance of counsel, and "[n]othing in the Rules should be deemed to augment any substantive legal duty of lawyers or the extra-disciplinary consequences of violating such duty." Langford v. State, 310 S.C. 357, 426 S.E.2d 793 (1993) (citing Rule 407, SCACR).

Respondent, therefore, construes this allegation as a general allegation of ineffective assistance of counsel, which Respondent has already addressed. As Respondent lacks sufficient information to admit or deny these allegations at this time, Respondent requests an evidentiary hearing on this ground for relief. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

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[7] "A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation." SCACR Rule 407 RPC 1.1.

[8] "A lawyer shall act with reasonable diligence and promptness in representing a client." SCACR Rule 407 RPC 1.3.

[9] "In representing a client, a lawyer shall exercise independent professional judgment and render candid advice. In rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social and political factors, that may be relevant to the client's situation." SCACR Rule 407 RPC 2.1.

[10] "A lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client." SCACR Rule 407 RPC 3.2.

RESPONSE TO ALLEGATION TRIAL COUNSEL FAILED TO RESPOND TO REQUESTS FOR CASE FILE

Applicant alleges Trial Counsel was ineffective for failing to respond to requests made by Applicant for his client file to be turned over to him. Respondent lacks sufficient information to admit or deny these allegations at this time. Respondent requests an evidentiary hearing on this ground for relief. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

RESPONSE TO ALLEGATION TRIAL COUNSEL HAD A CONFLICT OF INTEREST

Applicant alleges Trial Counsel was ineffective where he had a conflicting interest in Applicant's case. Applicant contends his allegation is based upon "what the State told [Trial Counsel], but presented no physical evidence as proof," and for "failing to challenge the State" on that information. To establish a violation of the Sixth Amendment right to effective counsel due to a conflict of interest arising from multiple representations, a defendant who did not object at trial must show an actual conflict of interest adversely affected his attorney's performance. Jackson v. State, 329 S.C. 345, 495 S.E.2d 768 (1998). (citing Cuyler v. Sullivan, 446 U.S. 335, 100 S.Ct. 1708, (1980); Duncan v. State, 281 S.C. 435, 315 S.E.2d 809 (1984)); Padgett v. State, 324 S.C. 22, 484 S.E.2d 101 (1997).

An actual conflict of interest occurs where an attorney owes a duty to a party whose interests are adverse to the defendant's. Staggs v. State, 372 S.C. 549, 551, 643 S.E.2d 690, 692 (2007); Fuller v. State, 347 S.C. 630, 557 S.E.2d 664 (2001). The South Carolina Supreme Court has further stated that a conflict of interest occurs when "a defense attorney places himself in a situation inherently conducive to divided loyalties." Lomax v. State, 379 S.C. 93, 101, 665 S.E.2d 164, 168 (2008).

Until a defendant shows that his counsel actively represented conflicting interests, he has not established the constitutional predicate for a claim of ineffective assistance of counsel arising

from multiple representation. Langford v. State, 310 S.C. 357, 359, 426 S.E.2d 793, 795 (1993) (citing Cuyler v. Sullivan, 446 U.S. 335, 350 (1980); also see Burger v. Kemp, 483 U.S. 776, 783 (1987))." The mere possibility defense counsel may have a conflict of interest is insufficient to impugn a criminal conviction." State v. Gregory, 364 S.C. 150, 152-53, 612 S.E.2d 449, 450 (2005). Once an actual conflict of interest is shown, applicant does not have to demonstrate prejudice. Thomas v. State, 346 S.C. 140, 551 S.E.2d 254 (2001). Additionally, where defendant waives *potential* conflict, once actual conflict arises, counsel must withdraw from representing one or both clients or acquire another waiver covering the specific conflict. Thomas v. State, 346 S.C. 140, 551 S.E.2d 254 (2001).

Here, Applicant has not stated specifically what the alleged conflict was. Therefore, Respondent lacks sufficient information to admit or deny these allegations at this time. Respondent requests an evidentiary hearing on this ground for relief. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

RESPONSE TO ALLEGATION TRIAL COUNSEL FAILED TO MOVE FOR A MISTRIAL

Applicant alleges Trial Counsel was ineffective for failing to move for a mistrial where he "was seen by some jurors while he was in chains and handcuffs." Specifically, Applicant alleges he informed Trial Counsel of this occurrence, and Trial Counsel failed to move for a mistrial or address the court on this issue. "To prove prejudice resulting from counsel's failure to move for a mistrial, an applicant must demonstrate that, had counsel moved for a mistrial, the trial court's denial of the motion would have amounted to an abuse of discretion." Earley v. State, 418 S.C. 255, 792 S.E.2d 226 (2016) (Citing Morris v. State, 371 S.C. 278, 283, 639 S.E.2d 53, 56 (2006)) (finding PCR applicant met his burden of proving he suffered prejudice under Strickland as a result of counsel's failure to request a continuance where the applicant

demonstrated the trial court's refusal of the continuance would have amounted to an abuse of discretion); accord Weinn v. State, 281 S.W.3d 633, 641 (Tex. Ct. App. 2009) ("The failure of appellant's counsel to request a mistrial could only be termed an act of ineffective assistance of counsel if a mistrial should have been granted.").

The question of whether a mistrial is warranted "is determined by (1) the cumulative effect of such misconduct; (2) the strength of the properly admitted evidence of the defendant's guilt; and (3) the curative actions taken by the court." State v. Inman, 395 S.C. 539, 565, 720 S.E.2d 31, 45 (2011) (quoting United States v. Anwar, 428 F.3d 1102, 1112 (8th Cir. 2005)). "The power of the court to declare a mistrial should be used with the greatest caution and for plain and obvious causes." State v. Johnson, 334 S.C. 78, 89, 512 S.E.2d 795, 801 (1999) (citing State v. Crim, 327 S.C. 254, 257, 489 S.E.2d 478, 479 (1997)). "The granting of [a] motion for a mistrial is an extreme measure which should be taken only where an incident is so grievous that prejudicial effect can be removed in no other way." State v. Patterson, 337 S.C. 215, 227, 522 S.E.2d 845, 851 (Ct. App. 1999). "Instead, the trial judge should exhaust other methods to cure possible prejudice before aborting a trial." Id.

Whether a defendant is tried in shackles is within the trial court's discretion. See Deck v. Missouri, 544 U.S. 622, 629, (2005) (holding the use of physical restraints visible to the jury are prohibited absent a trial court determination, in the exercise of its discretion, that they are justified by a state interest specific to a particular trial); State v. Tucker, 320 S.C. 206, 209, 464 S.E.2d 105, 107 (1995) (providing that the trial judge is to balance the prejudicial effect of shackling with the considerations of courtroom decorum and security; whether a defendant is restrained during trial is within the trial judge's discretion; and the trial judge is the best equipped

to decide the extent to which security measures should be adopted to prevent disruption of the trial, harm to those in the courtroom, escape of the accused, and prevention of other crimes).

Notably, no evidence of the occurrence of the alleged incident exists within the record. However, where the event occurred in line with Applicant's statements, Trial Counsel's failure to move for a mistrial based on jurors seeing Applicant detained would not have prejudiced Applicant. Further, Applicant has offered no argument in support of his belief that a mistrial should have been granted, outside of vague speculations not sufficient to cast doubt on the jury's verdict. Green v. State, 351 S.C. 184, 569 S.E.2d 318 (2002).

While Respondent maintains the record refutes this allegation, the State requests an evidentiary hearing to fully resolve the issues. Accordingly, Respondent requests an evidentiary hearing to resolve this issue fully. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983) ("Where an application for post-conviction relief alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the lower court, a question of fact is raised which can only be resolved by an evidentiary hearing.").

INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL

Just as a defendant is entitled to effective representation during his general sessions proceeding, a defendant is also entitled to effective assistance of appellate counsel. Tisdale v. State, 357 S.C. 474, 476, 594 S.E.2d 166, 167 (2004) (citing Southerland v. State, 337 S.C. 610, 615, 524 S.E.2d 833, 836 (1999)). To prevail on a claim of ineffective assistance of appellate counsel, an applicant must establish both deficiency and prejudice as outlined above. Southerland, 337 S.C. at 616, 524 S.E.2d at 836. If an applicant can establish both deficiency according to professional norms and prejudice to the extent that he would have been successful on appeal, he is entitled to a new trial. Ezell v. State, 345 S.C. 312, 316, 548 S.E.2d 852, 854

(2001); Southerland, 337 S.C. 615-16, 524 S.E.2d at 836; see also Simpkins v. State, 303 S.C. 364, 401 S.E.2d 142 (1991) (post-conviction relief of a new trial granted based on appellate counsel's failure to raise an issue on appeal that constituted reversible error).

Although ineffective assistance of appellate counsel claims for failure to raise a particular issue on direct appeal can be successful, the United States Supreme Court has reiterated that it is "difficult to demonstrate that counsel was incompetent." Smith v. Robbins, 528 U.S. 259, 288 (2000). While appellate counsel is required to provide effective assistance of counsel, "appellate counsel is not required to raise every non-frivolous issue that is presented by the record." Thrift v. State, 302 S.C. 535, 539, 397 S.E.2d 523, 526 (1990) (citing Jones v. Barnes, 463 U.S. 745 (1983)). "For judges to second-guess reasonable professional judgments and impose on . . . counsel a duty to raise every 'colorable' claim suggested by a client would disserve the very goal of vigorous and effective advocacy . . ." Jones, 463 U.S. at 754. Additionally, our South Carolina Supreme Court has expressly rejected the notion that appellate counsel has an obligation to raise all meritorious issues on appeal. Tisdale, 357 S.C. at 476, 594 S.E.2d at 167. "'Generally, only when ignored issues are clearly stronger than those presented, will the presumption of effective assistance of counsel be overcome.'" Smith, 528 U.S. at 288 (quoting Gray v. Greer, 800 F.2d 644, 646 (7th Cir. 1986)).

Accordingly, in order to meet his burden of proof, Applicant must establish a reasonable probability that, but for appellate counsel's failure to raise a specific issue on appeal, he would have prevailed on his appeal. Smith, 528 U.S. at 285-86. Based on this standard set forth above, Respondent submits Applicant cannot meet his requisite burden of establishing any constitutional ineffectiveness of counsel as to any of his various allegations against appellate counsel.

RESPONSE TO ALLEGATION APPELLATE COUNSEL FAILED TO INVESTIGATE

Applicant alleges Appellate Counsel was ineffective for failing to investigate his case, and subsequently filing an Ander's Brief "stating that there were no merits." The South Carolina Court of Appeals has held under Anders, ... [t]he court ... is obligated to conduct a "full examination" of the record to determine whether the appeal is "wholly frivolous." Id. According to Anders, the reviewing court is obligated to make a full examination of the proceedings on its own. See State v. Williams, 305 S.C. 116, 406 S.E. 357 (1991).

After such an examination, if the reviewing court agrees with the attorney, it may dismiss the appeal or proceed to a decision on the merits. See Anders. On the other hand, if the court disagrees with the attorney's analysis of the appeal, it must afford the defendant 'the assistance of counsel to argue the appeal.' Id. at 744. The purpose of filing a brief under Anders is to ensure the merits of the appeal are not overlooked. The court has to conclude independently, regardless of counsel's conclusion, whether or not the appeal has merit before it can dismiss the appeal. State v. McKennedy, 348 S.C. 270, 559 S.E.2d 850, 854-855 (2002). Therefore, when the appellate court dismisses the applicant's direct appeal having been filed under Anders, the merits of the appeal were reached. Id.

Applicant had his appeal handled pursuant to Anders v. California, 386 U.S. 738 (1967). Therefore, Respondent submits, even assuming the PCR court concludes that Appellate Counsel's performance was deficient, Applicant cannot show the necessary prejudice to succeed on this claim. See Thrift v. State, 302 S.C. 535, 397 S.E.2d 537 (1990) (establishing that in order to show ineffective assistance of appellate counsel "The applicant must show that appellate counsel's performance was deficient and that he was prejudiced by the deficiency."); Gray v. Greer, 800 F.2d 644, 646 (7th Cir. 1986) (holding when a claim of ineffective assistance of

counsel is based upon failure to raise viable issues, the court must examine the record to determine "whether appellate counsel failed to present significant and obvious issues on appeal."). Generally, the presumption of effective assistance of counsel will be overcome only when the alleged ignored issues are clearly stronger than those actually raised on appeal. Id.

In this case, to establish prejudice, Applicant would have to show that the South Carolina Supreme Court would have found prejudicial error warranting reversal of his conviction and/or sentence if appellate counsel had not filed an Ander's brief. While Respondent maintains the record refutes this allegation, the State requests an evidentiary hearing to fully resolve the issues. Accordingly, Respondent requests an evidentiary hearing to resolve this issue fully. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983) ("Where an application for post-conviction relief alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the lower court, a question of fact is raised which can only be resolved by an evidentiary hearing.").

RESPONSE TO ALLEGATION APPELLATE COUNSEL HAD CONFLICT OF INTEREST

Applicant alleges Appellate Counsel was ineffective where they had a conflicting interest in Applicant's case. An actual conflict of interest occurs where an attorney owes a duty to a party whose interests are adverse to the defendant's. Staggs v. State, 372 S.C. 549, 551, 643 S.E.2d 690, 692 (2007); Fuller v. State, 347 S.C. 630, 557 S.E.2d 664 (2001). The South Carolina Supreme Court has further stated that a conflict of interest occurs when "a defense attorney places himself in a situation inherently conducive to divided loyalties." Lomax v. State, 379 S.C. 93, 101, 665 S.E.2d 164, 168 (2008).

Until a defendant shows that his counsel actively represented conflicting interests, he has not established the constitutional predicate for a claim of ineffective assistance of counsel arising

from multiple representation. Langford v. State, 310 S.C. 357, 359, 426 S.E.2d 793, 795 (1993) (citing Cuyler v. Sullivan, 446 U.S. 335, 350 (1980); also see Burger v. Kemp, 483 U.S. 776, 783 (1987))." The mere possibility defense counsel may have a conflict of interest is insufficient to impugn a criminal conviction." State v. Gregory, 364 S.C. 150, 152-53, 612 S.E.2d 449, 450 (2005). Once an actual conflict of interest is shown, applicant does not have to demonstrate prejudice. Thomas v. State, 346 S.C. 140, 551 S.E.2d 254 (2001). Additionally, where defendant waives *potential* conflict, once actual conflict arises, counsel must withdraw from representing one or both clients or acquire another waiver covering the specific conflict. Thomas v. State, 346 S.C. 140, 551 S.E.2d 254 (2001).

Here, Applicant has not stated specifically what the alleged conflict was. Therefore, Respondent lacks sufficient information to admit or deny this allegation at this time. Respondent requests an evidentiary hearing on this ground for relief. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

ANY FUTURE AMENDMENTS AND INVOCATION OF DISCOVERY PROCESS

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. All claims should be made well in advance of the evidentiary hearing. Because Applicant has retained an attorney, the attorney, not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRCP. *Pro se* filings will not be considered at the PCR hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to the State pursuant to Love v. State, 428 S.C. 231, 834 S.E.2d 196 (2019), or, alternatively, the State will request a continuance in the matter. Id., 428 S.C. at 245, 834 S.E.2d at 203 (Kittredge, J., dissenting) ("If, however, the proposed amendment . . . would truly prejudice the State, the better course of action would be to

continue the matter and thus remove any possibility of prejudice resulting from the belated amendments.").

Pursuant to S.C. Code Ann. § 17-27-150, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless granted leave from the Court upon a showing of good cause. Furthermore, the State requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to the State well in advance of the evidentiary hearing. As noted above, the State reserves the right to request a continuance and oppose witness testimony and exhibits that are withheld until the last minute, resulting in undue prejudice to the State. See Love, 428 S.C. 231, 834 S.E.2d 196.

|CONCLUSION PAGE FOLLOWS|

CONCLUSION

WHEREFORE, Respondent respectfully requests an evidentiary hearing be held on the claims of ineffective assistance of Trial and Appellate Counsels.

Respectfully submitted,

ALAN WILSON
Attorney General

DONALD J. ZELENKA
Deputy Attorney General

SHAYLA J. FLORES
Assistant Attorney General

By: _____
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June 27, 2024

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.
2024 JUL -1 A 8:53
BRANDY W. MCBEE

STATE OF SOUTH CAROLINA COUNTY OF CHEROKEE	)	IN THE COURT OF COMMON PLEAS FOR THE SEVENTH JUDICIAL CIRCUIT
Bryson Smith, SCDC #366967, Applicant, v. State of South Carolina, Respondent.	)	Case No. 2023-CP-11-00145 **ORDER OF DISMISSAL**

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.
2025 APR 16 A 11:09
BRANDY W. ROBERTS

This matter is before the Court pursuant to an application for post-conviction relief ("PCR") filed by Bryson Smith ("Applicant") on February 27, 2023. On February 20, 2025, an evidentiary hearing was convened before the Honorable R. Scott Sprouse. Applicant was present and represented by James W. Boyd, Esquire. Assistant Attorney General Bryan T. Hall represented Respondent. At the hearing, Applicant testified on his own behalf and called as a witness Traci Smith (Applicant's mother). Respondent called as a witness E. Joshua Schultz, Esquire. Following a thorough review of the trial transcript and the testimony and evidence presented at the evidentiary hearing, this Court finds Applicant did not meet his burden of proof. Thus, this Court denies relief and dismisses this application with prejudice.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections ("SCDC") serving a forty (40) year sentence. In September 2020, the Cherokee County Grand Jury indicted Applicant for trafficking methamphetamine, 10g-28g (2020-GS-11-01149); trafficking heroin (2020-GS-11-01151); possession with intent to distribute ("PWID") fentanyl (2020-GS-11-01150); PWID marijuana (2020-GS-11-01147); and PWID cocaine, 3rd offense (2020-GS-11-01148).

These charges arose from an incident in which law enforcement, after receiving consent to search the home from Applicant's mother, observed marijuana in Applicant's room at his mother's house. Officers were at the premises to serve arrest warrants on Applicant for unrelated offenses. After observing the marijuana in plain view, officers obtained and executed a search warrant. Officers found drugs, drug paraphernalia, digital scales, and other items in the room containing Applicant's belongings and personal mail.

On November 3, 2020, Applicant proceeded to a jury trial before the Honorable R. Keith Kelly. Assistant Solicitors Matthew Kendall and Kim Leskanic prosecuted the case. E. Joshua Schultz, Esquire, ("Counsel") represented Applicant. Upon conviction, Judge Kelly sentenced Applicant to a concurrent sentence of twenty-five (25) years for trafficking meth; twenty-five (25) years for PWID cocaine; twenty (20) years for PWID marijuana; and twenty-five (25) years for trafficking heroin to run *consecutive* to a fifteen (15) year sentence for trafficking fentanyl.

On November 12, 2020, a notice of appeal was filed on Applicant's behalf. On appeal, Applicant was represented by Appellate Defender Adam Ruffin, who filed an *Anders*[1] brief. On June 15, 2022, the Court of Appeals dismissed Applicant's appeal after review pursuant to *Anders*. *State v. Smith*, Op. No. 2022-UP-263 (S.C. Ct. App. filed June 15, 2022). The Remittitur was sent on July 5, 2022.

CURRENT APPLICATION

Applicant timely commenced this PCR action on February 27, 2023, alleging he is being held in custody unlawfully based on the following:[2]

Ineffective Assistance of Counsel

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BRANDY W. MCBEE

[1] *Anders v. California*, 386 U.S. 738 (1967).

[2] The allegations listed are the allegations that Applicant chose to proceed on at the evidentiary hearing. These allegations are before this Court. Applicant did not proceed on other allegations contained in his original application including an allegation of ineffective assistance of appellate counsel.

2025-001051 Smith v. State Petition for a Writ of Certiorari Appendix Page 697

1. Failure to object to the court's jury instruction on possession and constructive possession.

2. Failure to move for directed verdict on grounds that the State failed to present sufficient evidence that applicant had dominion and control over the area where the drugs were found.

On July 1, 2024, Respondent filed its Return. On July 10, 2023, Applicant amended his application to raise the following additional allegations:

Ineffective Assistance of Counsel

3. Failure to object to the court's jury instruction on possession and constructive possession because the court did not include "knowledge" in the possession charge and did not charge that mere presence is not enough to prove possession.
4. Failure to move for directed verdict on grounds that the State failed to present sufficient evidence that applicant had dominion and control over the area where the drugs were found.
5. Failure to address the court and move for a mistrial when Applicant told counsel that he was seen by jurors while he was in chains and handcuffs.
6. Failure to strike juror 66, who was related to a witness for the state.
7. Failure to object to the search warrant for the premises.
8. Failure to establish that the letter found on the premises was from 2017, before the date of the search.

In November 2024, Applicant amended his application a second time to raise the following allegation:

Ineffective Assistance of Counsel

9. Failure to object to State's Exhibits 10 and 20 on grounds that the probative value was substantially outweighed by danger of unfair prejudice under Rule 403, SCRE, and inadmissible as evidence of prior bad acts under Rule 404(b), SCRE.

On February 19, 2025, Respondent filed a memorandum of law in opposition to Applicant's PCR application.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Before this Court are the Cherokee County Clerk of Court records of the subject conviction; Applicant's records from SCDC; the appellate records; the trial transcript; and the records of the current PCR action. This Court has had the opportunity to review the trial transcript in its entirety

and has heard the testimony at the PCR hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility, and weigh their testimony. After a careful review based on the *Strickland* standard set forth below, this Court finds Applicant has failed to carry his burden of proof. Below are this Court's findings of facts and conclusions of law as required by section 17-27-80 of the South Carolina Code (2017).

Ineffective Assistance of Counsel

In a PCR action, an applicant bears the burden of proving the allegations. Rule 71.1(e), SCRCP; *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). An applicant alleging ineffective assistance of counsel must prove "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." *Strickland v. Washington*, 466 U.S. 668 (1984); *Butler*, 286 S.C. at 441, 334 S.E.2d at 813. "The test for effective assistance of counsel is whether the representation was within the range of competence demanded of attorneys in criminal cases." *Watson v. State*, 287 S.C. 356, 357, 338 S.E.2d 636, 637 (1985). Courts presume counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. *Butler*, 286 S.C. at 441, 334 S.E.2d at 813. An applicant must overcome this presumption to receive relief. *Cherry v. State*, 300 S.C. 115, 386 S.E.2d 624 (1989).

To establish ineffective assistance of counsel, a PCR applicant must prove (1) counsel's performance fell below an objective standard of reasonableness, and (2) the applicant sustained prejudice as a result of counsel's deficient performance. *Strickland*, 466 U.S. at 687–88; *Cherry*, 300 S.C. at 117–18, 386 S.E.2d at 625. Applicant must prove prejudice by showing "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Cherry*, 300 S.C. at 117-18, 386 S.E.2d at 625.

Strickland requires that trial counsel be given leeway to make reasonable strategic decisions. *Strickland*, 466 U.S. at 688-89 (stating "[n]o particular set of detailed rules for counsel's conduct can satisfactorily take account of the variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how to best represent a criminal defendant."). Judicial scrutiny of counsel's performance must be highly deferential. *Id.* at 689.

Failure to Object

Failing to object does not automatically constitute ineffective assistance of counsel. *See Millidge v. State*, 422 S.C. 366, 374, 811 S.E.2d 769, 800-01 (2018) (stating an applicant must prove both deficiency and prejudice to establish ineffective assistance of counsel for failing to preserve an issue). In an examination of counsel's decision not to make an objection, the court must consider whether there was any law to support the objection. *Winkler v. State*, 418 S.C. 643, 654, 795 S.E.2d 686, 692 (2016).

Failure to Object to the Court's Jury Instructions on Possession and Constructive Possession

Applicant alleges Counsel was ineffective for failing to object to the trial court's jury instructions on possession and constructive possession because the court did not include the "knowledge" in the possession charge and did not charge that mere presence is not enough to prove possession. This Court finds Applicant failed to prove Counsel was ineffective in this regard.

Applicant cites *State v. Stewart*, 433 S.C. 382, 858 S.E.2d 808 (2021). In *Stewart*, the Supreme Court overruled *State v. Adams* and held that trial courts cannot charge the jury that it may infer constructive possession from the mere fact that the defendant had control over the property. *Id.* However, *Stewart* was *decided* in May 2021, after Applicant's trial in November 2020. Under *Strickland*, this Court must evaluate Counsel's performance under the law available at the time of trial. *Edwards v. State*, 392 S.C. 449, 456, 710 S.E.2d 60, 64 (2011) (citing

Strickland, 466 U.S. at 689).

Although *Stewart* was being litigated in the appellate courts around the time of Applicant's trial, Counsel could not have known at the time of trial that the Court would issue a ruling to change the law. Counsel is not required to be clairvoyant or anticipate changes in the law. *Harden v. State*, 360 S.C. 405, 408, 602 S.E.2d 48, 49 (2004) (stating counsel is not required to anticipate changes in the law that did not exist at the time of the conviction).

Since the law existing at the time of Applicant's trial was *State v. Adams*, 291 S.C. 132, 352 S.E.2d 483 (1987), this Court evaluates Counsel's performance under that precedent. In *Adams*, the Court held that the jury could be charged that the defendant's knowledge and possession may be inferred if the substance was found on premises under his control, but the trial court should explain to the jury that it is free to accept or reject the permissive inference of knowledge and possession depending on its view of the evidence. *Id.* at 486, 352 S.E.2d at 136.

In Applicant's trial, the trial court gave the *Adams* charge to the jury as follows:

> Constructive possession means that the defendant had dominion and control or the right to exercise dominion and control over either the marijuana or the property on which the marijuana was found.
>
> The defendant's knowledge and possession may be inferred when a substance is found on a property under his control. However, this inference is simply an evidentiary fact to be taken into consideration along with other evidence and to be given the weight you decide it should have.

(R. 480:10-20).

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This Court finds the trial court charged the jury in accordance with *Adams*. Since the jury charge was proper under the law at the time, this Court finds Applicant failed to prove Counsel was deficient for failing to object. Thus, Applicant failed to meet his burden.

Failure to Object to the Admission of Applicant's Facebook Messages Under Rules 403 and 404(b), SCRE

This Court finds Applicant failed to prove Counsel was ineffective for failing to object to the admission of Applicant's Facebook messages (St.'s Ex. 10, 20; R. 507-14) under Rules 403 and 404(b), SCRE.[3] An ineffective assistance claim based on failure to object is tied to the admissibility of the underlying evidence. *Hough v. Anderson*, 272 F.3d 878, 898 (7th Cir. 2001). "If evidence admitted without objection was admissible, then the complained of action fails both prongs of *Strickland*: failing to object to admissible evidence cannot be professionally unreasonable, nor can it prejudice the defendant against whom the evidence was admitted." *Id.*

Under Rule 403, relevant evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice… Rule 403, SCRE. This Court finds Applicant failed to prove the probative value of the messages was substantially outweighed by the danger of unfair prejudice. This Court finds there was sufficient evidence in the record for the trial court and appellate courts to find that the Facebook messages were relevant, and the probative value was not outweighed by the danger of unfair prejudice. *Millidge*, 422 S.C. at 380, 811 S.E.2d at 804 (stating the prejudice inquiry for failing to object is whether there is evidence to support the trial court's finding, such that an appellate court would have affirmed the trial court's ruling). This Court finds Applicant failed to prove prejudice by failing to prove there's a reasonable probability that an objection under Rule 403 would have been either sustained at trial or successful on appeal.

Under Rule 404(b), evidence of other crimes, wrong, or acts may be admissible to show motive, identity, common plan or scheme, absence of mistake, or *intent*. Rule 404(b), SCRE (emphasis added). As a matter of law, this Court finds the Facebook messages were admissible under Rule 404(b). This Court finds the State admitted the Facebook messages to prove Applicant's knowledge and *intent* to control the disposition of the drugs by offering to sell them

[3] The record reflects Counsel made both a pre-trial and contemporaneous trial objection to the admission of the Facebook records but on authentication and hearsay grounds. (R. 101-02; 146).

to others. This Court finds Applicant failed to prove prejudice by failing to prove there's reasonable probability that an objection under Rule 404(b) would have been either sustained at trial or successful on appeal. Thus, Applicant failed to meet his burden.

Failure to Object to the Search Warrant of the Premises

This Court finds Applicant failed to prove Counsel was ineffective for failing to object to the search warrant of the premises. At trial, Counsel moved to challenge the search conducted. (R. 43). The solicitor argued Applicant must show that he has standing to challenge the warrant by showing he had a reasonable expectation of privacy on the premises searched, which required Applicant to admit that the room belonged to him. (R. 43-45). Alternatively, if the room did not belong to Applicant, then he had no reasonable expectation of privacy in it and no standing to challenge it. (R. 44-45). The trial court informed Counsel that the court was unaware of any case that a mere visitor has standing to challenge a search warrant and asked Counsel for Applicant's assertion [regarding whether Applicant claimed the room and thus, had standing to challenge the search]. (R. 48). *After consulting with Applicant*, Counsel withdrew his motion to contest the validity of the warrant. (R. 48) (emphasis added).

Based on his testimony at the PCR hearing, this Court finds Counsel articulated a reasonable strategic decision for failing to challenge the search warrant in question by not wanting to concede that the room where the drugs were found was Applicant's. This Court finds ***credible*** Counsel's testimony that he was preparing to make a motion [to challenge the search] based on lack of probable cause. This Court finds ***credible*** Counsel's testimony that he believed the situation was a double-edged sword: if he argued that the search warrant was invalid, then Applicant would assert standing by admitting he had possession and control over the room. This Court finds ***credible*** Counsel's testimony that he did not believe a motion to suppress the search would have been

successful. In accordance with *Strickland*, this Court gives deference to Counsel's reasonable judgment in deciding not to challenge the search warrant. Thus, Applicant failed to meet his burden.

Failure to Move for Directed Verdict on Grounds that the State Failed to Present Sufficient Evidence that Applicant had Dominion and Control Over the Area Where the Drugs were Found

This Court finds Applicant failed to prove Counsel was ineffective for failing to move for a directed verdict on grounds that the State failed to present sufficient evidence that Applicant had dominion and control over the area where the drugs were found. This Court finds the State presented evidence of Applicant's knowledge and constructive possession of the drugs through statements by Applicant in his Facebook messages, and statements made by Applicant's to law enforcement.

Possession of a drug requires proof of (1) either actual or constructive possession of the drug and (2) "knowledge" of its presence. *State v. Lane*, 271 S.C. 68, 72, 245 S.E.2d 114, 116 (1978). "Knowledge" means the accused has an "intent to control the drug's disposition or use." *Id.* at 73, 245 S.E.2d at 116. For constructive possession, mere presence is insufficient; the state must show the defendant had dominion and control or the *right to exercise dominion and control* over the drug. *State v. Heath*, 370 S.C. 326, 329, 635 S.E.2d 18, 19 (2006).

Applicant cites *Heath*. In *Heath*, the Court held the State failed to present evidence that the defendant could exercise dominion and control over the area where the drugs were found. *Id.* at 330, 635 S.E.2d at 19. The defendant lived in the home with his mother and the drugs were found on the property. *Id.* at 329, 635 S.E.2d at 18-19. However, although the defendant had a right to access the property, the State failed to present evidence linking the defendant to the drugs found

on the property to show the defendant had dominion and control over the area where the drugs were found. *Id.* at 330, 635 S.E.2d at 19.

Respondent cites *Lane*. In *Lane*, the Court held a business owner (defendant) had constructive possession and knowledge of drugs found on the business premises where the state presented evidence through statements the defendant made to police that he could get more marijuana and set up a buy. *Lane*, 271 S.C. at 71-73, 245 S.E.2d at 115-117. The Court held that based on his statements to police, the evidence was sufficient to infer that the defendant had dominion and control over the premises (constructive possession) and intended to control the use or disposition of the drugs (knowledge). *Id.* at 73, 245 S.E.2d at 117.

At trial, the State presented evidence from Applicant's Facebook messages to others in which Applicant stated that he could get drugs for them. (St.'s Ex. 10, 20; R. 507-514). When asked by the persons in the messages if he had drugs ("beans"), Applicant stated that he could "get" the drugs requested and "can get percs too" (Percocets). (St.'s Ex. 10, 20; R. 507). At trial, when Applicant's mother denied making statements to law enforcement that the room was Applicant's, the State presented body camera footage in which Applicant's mother identified the room as belonging to Applicant and told officers that Applicant had a key to her house. (R. 371-72).

This Court finds Applicant's case is comparable to the facts of *Lane*. Similar to the defendant in *Lane*, Applicant made statements that he could get the drugs requested, evidencing his knowledge and intended to control the disposition of the drugs. Since the drugs were found in Applicant's room in his mother's house with his other belongings, and Applicant had a key to the house, this Court finds that there was evidence was sufficient to infer that Applicant had

constructive possession of the drugs because he had a *right to exercise dominion and control* over the room in which the drugs were found.

Thus, this Court finds Counsel was not ineffective for failing to move for directed verdict on this ground where the State presented evidence of (1) Applicant's knowledge of the drugs, and (2) constructive possession based on his right to exercise dominion and control over the room. *Cf. Brown v. State*, 307 S.C. 465, 415 S.E.2d 811 (1992) (holding counsel was not ineffective for moving for directed verdict on grounds that the evidence did not establish a criminal act causing death where the state presented evidence of strangulation). Thus, Applicant failed to meet his burden.

Failure to Address the Trial Court or Move for a Mistrial when Applicant told Counsel that Some Jurors saw him in Chains and Handcuffs

This Court finds Applicant failed to prove Counsel was ineffective for failing to address with the court or move for a mistrial when Applicant allegedly told Counsel that jurors saw him in chains and handcuffs. In *Foye*, the Supreme Court determined a PCR applicant failed to prove prejudice by failing to present evidence to support his claim that any of the jurors saw him in chains. *Foye v. State*, 335 S.C. 586, 518 S.E.2d 265 (1999). The Court determined the PCR applicant's claim was based on pure speculation and not supported by any probative evidence since the applicant did not offer the testimony or affidavits of any of the seated jurors to prove they saw him in chains. *Id.* at 590, 518 S.E.2d at 267.

Similar to the Court's ruling in *Foye*, this Court finds Applicant failed to prove prejudice by failing to substantiate or present probative evidence to support his claim that members of the jury saw him in chains and handcuffs. This Court finds ***credible*** Counsel's testimony that he does not recall discussions with Applicant at trial about jurors seeing him in handcuffs and chains. This Court finds ***credible*** Counsel's testimony that he does not recall Applicant being in chains in the

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courthouse in which he was tried. This Court finds ***credible*** Counsel's testimony that if Applicant had told him, Counsel would have raised it to the trial court. Thus, Applicant failed to meet his burden.

Failure to Strike Juror 66 for Being Related to a Witness for the State

This Court finds Applicant failed to prove Counsel was ineffective for failing to strike juror 66 for being related to a witness for the State. There is no common law rule or statute disqualifying a juror on account of his relationship to a witness, either by affinity or consanguinity, within any degree. *State v. Hilton*, 87 S.C. 434, 69 S.E. 1077 (1911). The fact that a juror has a relationship with a witness does not automatically disqualify a juror. *See State v. Burgess*, 391 S.C. 15, 18, 703 S.E.2d 512, 514 (Ct. App. 2010) (finding no error in a trial judge's decision not to remove a juror that had some relationship with the victim after finding the juror could be fair and impartial).

This Court finds Applicant failed to prove he was prejudiced by Counsel's failure to strike the juror. At trial, juror 66 informed the court that she had a family member that works for the Cherokee County Sheriff's Office. (R. 13-15). The trial court questioned the juror about whether her relationship with the family member would interfere with her ability to be fair and impartial. (R. 15). The juror indicated the relationship would not interfere with her ability to be fair and impartial. (R. 15). Juror 66 was seated on the jury and subsequently selected as the jury's forewoman. (R. 22; 28-29).

Although Counsel testified that he cannot remember if he had a strategic reason for seating juror 66 and looking back, agrees that he should have struck her, this Court is to evaluate Counsel's conduct at the time of trial without the distorting effects of hindsight. *Edwards*, 392 S.C. at 456, 710 S.E.2d at 64 ("every effort [must] be made to eliminate the distorting effects of hindsight." (quoting *Strickland*, 466 at 689). This Court finds Applicant failed to prove he was prejudiced by

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Counsel's failure to strike the juror since the trial court questioned the juror about her ability to be fair and impartial and found the juror qualified to serve. Due to the evidence of guilt presented, this Court also finds Applicant failed to prove there's a reasonable probability that the result of trial would have been different but for Counsel's failure to strike juror 66. Thus, Applicant failed to meet his burden.

Failure to Establish that the Letter Found on the Premises was from 2017, Before the Date of the Search

The Court finds Applicant failed to prove Counsel was ineffective for failing to establish that a letter found on the premises was from 2017, before the date of the search. At trial, the state presented evidence of an undated letter bearing Applicant's name, found by law enforcement in the room. (St.'s Ex. 42; R. 323-24). Applicant asserts the letter in question was from 2017, before the date of the August 2019 search. This Court has had the opportunity to review the letter in question (admitted as Appl.'s Ex. 1). Since the letter is undated, and this Court finds Applicant failed to present evidence to substantiate his claim that the letter was from 2017. Additionally, even if Applicant's assertion is true, this Court finds Applicant failed to prove there's a reasonable probability that the result of trial would have been different but for Counsel's failure to establish that the letter was from 2017. Thus, Applicant failed to meet his burden.

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CONCLUSION

Based on the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant relief. Thus, this application is denied and dismissed with prejudice.

Should Applicant wish to secure appellate review, he must file and serve a notice of appeal within thirty (30) days of receipt by counsel of written notice of entry of judgment. *See* Rule 203, SCACR. Applicant has the right to an appellate counsel's assistance in seeking review of the denial of PCR. *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991). If an applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on applicant's behalf. Rule 71.1(g), SCRCP. Attention is directed to Rule 243, SCACR, for appropriate procedures for appeal.

THEREFORE, IT IS ORDERED:

1. This application for PCR is denied and dismissed with prejudice; and

2. Applicant must be remanded to and remain in the custody of the State.

AND IT IS SO ORDERED THIS 7 **day of** April **, 2025.**

R. SCOTT SPROUSE
Presiding Judge
Seventh Judicial Circuit

Walhalla, South Carolina

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STATE OF SOUTH CAROLINA COUNTY OF CHEROKEE BRYSON JAMAR SMITH #366967, APPLICANT, v. STATE OF SOUTH CAROLINA, RESPONDENT.	IN THE COURT OF COMMON PLEAS SEVENTH JUDICIAL CIRCUIT 2023CP1100145 Motion to Amend or Reconsider Order of Dismissal Pursuant to Rule 59(e)

The Applicant, through his undersigned attorney, moves the Court to alter or amend the Order of Dismissal of Post Conviction Relief of the Honorable R. Scott Sprouse dated April 7, 2025. The Applicant received written notice of the Order on April 22, 2025. This motion is made on the following grounds:

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FAILURE TO OBJECT TO THE COURT'S JURY INSTRUCTIONS

The Court failed to rule on all of Applicant's arguments on the jury instructions. The trial Court left out the word "knowledge" in the charge on possession. This is law that was in effect at the time of trial and was not new law created by State v. Stewart, 433 S.C. 382, 858 S.E.2d 808 (2021). In defining "constructive possession", the Trial Court instructed the jury a charge that the Stewart decision found to be "problematic". In Stewart, the Court ultimately approved the instruction because a mere presence charge was given. In this case the Applicant's trial attorney failed to request a mere presence charge. This was law in effect at the time of trial that did not depend on overruling State v. Adams, 291 S.C. 132, 135, 352 S.E.2d 483, 486 (1987). The arguments are more fully set forth by the Applicant in Applicant's Amended Grounds for Post Conviction Relief.

The Court found that trial counsel was not ineffective for failing to object to the trial court's instruction that "the defendant's knowledge and possession may be inferred when a substance is found on property under his control." While it is correct that in Harden v. State, 602 S.E.2d 48,360 S.C. 405, the Supreme Court ruled that counsel is not required to anticipate changes in the law that did not exist at the time of conviction, this case differs from Harden in that trial counsel knew that Stewart was on appeal to the South Carolina Supreme Court. Trial counsel testified he knew Stewart was on appeal. Counsel could have protected Applicant's rights simply by making an objection to the charge.

FAILURE TO OBJECT TO FACEBOOK MESSAGES UNDER RULES 403 and 404, SCRE

The Court found the Facebook messages were properly admitted under Rule 404(b) because they were admitted to prove Applicant's knowledge and intent to control the disposition of the drugs by offering to sell them to others. The problem with the Court's logic is that the drugs mentioned in the Facebook messages were a different kind of drugs than those which were allegedly found in the Applicant's possession. Therefore, the only purpose of admitting the Facebook messages were to show Applicant had the propensity to be a drug dealer.

FAILURE TO MOVE FOR A DIRECTED VERDICT

The Court found that trial counsel was not ineffective for failing to move for a directed verdict because the facts of this case was more similar to State v. Lane 271 S.C. 68, 245 S.E.2d 114 (1978) than State v. Heath 370 S.C. 326, 329, 635 S.E.2d 18, 19 (2006). A large part of the Court's ruling is that the Facebook messages showed Applicant's knowledge and his intent to

control the disposition of the drugs. For the reasons stated above the Facebook messages should not have been admitted. Without the Facebook messages, this case is more similar to State v. Heath.

FAILURE TO STRIKE JUROR 66 FOR BEING RELATED TO A WITNESS FOR THE STATE

Juror 66 was related to one of the police officers who was a witness for the State. Trial Counsel at first testified he did not strike juror 66 because he was out of strikes. When shown on cross examination that he had several strikes left when the juror was called, he admitted that he should have struck the juror. The Order states that the Court is to "evaluate Counsel's conduct at the time of trial without the distorting effects of hindsight." Trial Counsel knew at the time of trial that he should strike the juror. Counsel either did not correctly keep up with the number of strikes he had left or he neglected the information he had on the juror. The failure to strike the juror was not a strategic decision but was a mistake that should have been avoided.

FAILURE TO PRESENT EVIDENCE AS TO THE AGE OF THE MAIL FOUND ON THE PREMISES

The Court found in its' Order that the Applicant failed to present evidence of the age of the mail. To the contrary, Applicant's mother testified as to the age of the mail. Although Applicant's attorney does not have the benefit of a transcript at this time, Applicant believes the record will show that she testified the mail had been there for years prior to the search of the premises. She testified at trial but was not asked about the mail. She testified at this hearing the Applicant's trial attorney did not discuss anything about the mail with her before calling her

as a witness in the trial. This testimony was uncontradicted by the Respondent at the hearing. The mail was an important piece of evidence in the State's case at trial. There is a reasonable probability that the result would have been different had trial counsel presented this testimony at trial.

For all of the foregoing reasons, the Applicant requests the Court to reconsider its Order dated April 7, 2025.

s/James W. Boyd
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April 23, 2025
Rock Hill, South Carolina

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STATE OF SOUTH CAROLINA COUNTY OF CHEROKEE BRYSON JAMAR SMITH, SCDC #366967 Applicant, v. STATE OF SOUTH CAROLINA, Respondent.	)	IN THE COURT OF COMMON PLEAS FOR THE SEVENTH JUDICIAL CIRCUIT Case No: 2023-CP-11-00145 **ORDER**

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After careful consideration of the able argument and filings of Counsel and review of the record, the Court is unable to discover any material fact or principle of law that either has been overlooked or disregarded and further finds no error of law or fact not appropriately considered. Accordingly, Applicant's Motion to Amend or Reconsider Order of Dismissal Pursuant to Rule 59(e) is DENIED.

AND IT IS SO ORDERED.

R. SCOTT SPROUSE
Presiding Judge
Seventh Judicial Circuit

Walhalla, South Carolina
April 24, 2025