

CONTROL NO. SD0768

PRINT AND RETURN TO THE OFFICE WHERE SIGNATURE IS REQUIRED

OFFICIAL USE ONLY (2001.01.06)

CERTIFICATE OF PROOF OF CHAIN OF PHYSICAL CUSTODY OR CONTROL

(Initial Custody)

09-16-2004 0035

5
11/18/04
11/18/04
11/18/04

This is to certify that I KENTH PEARSON am employed by
(Name)

SCSO and that as
(Name of Agency or Department)

6/23 seized from WHAHUEL GREEN
(Date) (Year) (Name)

pursuant to u/c Buy
(State Whether Subject to Warrant, Lawful Arrest or Otherwise)

at or near BURGER KING - ASHEVILLE HWY
(Place Where Seized)

the following substance(s) or container(s):
(Describe substance or container with sufficient particularity to distinguish it.)

BAGS W/ OFF WHITE ROCK

On 6/23, 04, I made delivery of the above described
(Date) (Year)

substance(s) or container(s) to C. RAYMOND of
(Name)

SCSO in substantially the same condition
(Law Enforcement Agency)

as when I received it.

Place: _____

Date: _____

Kenth Pearson
(Signature)

Sworn to me on this 23 day of JUNE, 2004

Notary Public for South Carolina
My Commission expires: 2 DEC 2004

FORM C (RULE 6)

**CERTIFICATE OF PROOF OF CHAIN OF PHYSICAL CUSTODY OR CONTROL
(Subsequent Change of Custody)**

Handwritten: 11M 2004
10-1-0572

This is to certify that I JANE MILLWOOD am employed by
(Name) 09-16-2004 0037

SPARTANBURG CO SHERIFF'S OFFICE as EVIDENCE OFFICER and that on
(Name of Agency or Department) (Capacity of Employment)

6-24, 04, I received IN PERSON
(Date) (Year) (Specify Whether by Mail or in Person)

from drop box of SPTBG CO SHERIFF'S OFFICE
(Name of Person) (Law Enforcement Agency)

the following substance(s) or container(s) which were originally seized by

K. PEARSON
(Name of Person making Original Seizure)

(Describe substance or container with sufficient particularity to distinguish it.)

ONE SEALED BEST BAG

On 6-24, 04, I made delivery of the above described
(Date) (Year)

substance(s) or container(s) to DRUG VAULT of
(Name)

SPARTANBURG CO SHERIFF'S OFFICE in substantially the same condition
(Law Enforcement Agency)

as when I received it.

Handwritten Signature: Jane W. Millwood
(Signature)

Place: SPTBG CO S.O.

Date: 6-24-04

Sworn to me on this 24 day of 6, 04

Robert Rosenberg

Notary Public for South Carolina

My Commission expires: 12 08 07

PRINT ALL INFORMATION EXCEPT WHERE SIGNATURE IS REQUIRED

②

FORM C (RULE 6)
CERTIFICATE OF PROOF OF CHAIN OF PHYSICAL
CUSTODY OR CONTROL
(Subsequent Change of Custody)

J Kelly

10-07-2004 10/07/04

This is to certify that I JANE MILLWOOD am employed by _____
(Name)

SPARTANBURG CO SHERIFF'S OFFICE as EVIDENCE OFFICER and that on
(Name of Agency or Department) (Capacity of Employment)

8-16, 04, I received IN PERSON
(Date) (Year) (Specify Whether by Mail or in Person)

from drop box of SPTBG CO SHERIFF'S OFFICE
(Name of Person) (Law Enforcement Agency)

the following substance(s) or container(s) which were originally seized by
J Kelly
(Name of Person making Original Seizure)
(Describe substance or container with sufficient particularity to distinguish it.)

ONE SEALED BEST BAG

On 8-16, 04, I made delivery of the above described
(Date) (Year)

substance(s) or container(s) to DRUG VAULT of
(Name)

SPARTANBURG CO SHERIFF'S OFFICE in substantially the same condition
(Law Enforcement Agency)

as when I received it.

Jane Millwood
(Signature)

Place: SPTBG CO S.O.
Date: 8-16-04

Sworn to me on this 16 day of 8, 04

Robert Rosenberg
Notary Public for South Carolina
My Commission expires: 12 08 07

847
ALL INFORMATION EXCEPT WHERE SIGNATURE IS REQUIRED

FORM C (RULE 6)

CERTIFICATE OF PROOF OF CHAIN OF PHYSICAL CUSTODY OR CONTROL (Subsequent Change of Custody)

MEW
201-0381

This is to certify that I JANE MILLWOOD am employed by
(Name) 09-16-2004 0042

SPARTANBURG CO SHERIFF'S OFFICE as EVIDENCE OFFICER and that on
(Name of Agency or Department) (Capacity of Employment)

7-1, 04, I received IN PERSON
(Date) (Year) (Specify Whether by Mail or in Person)

from drop box of SPTBG CO SHERIFF'S OFFICE
(Name of Person) (Law Enforcement Agency)

the following substance(s) or container(s) which were originally seized by

C. Raymond
(Name of Person making Original Seizure)

(Describe substance or container with sufficient particularity to distinguish it.)

ONE SEALED BEST BAG

On 7-1, 04, I made delivery of the above described
(Date) (Year)

substance(s) or container(s) to DRUG VAULT of
(Name)

SPARTANBURG CO SHERIFF'S OFFICE in substantially the same condition
(Law Enforcement Agency)

as when I received it.

Jane W. Millwood
(Signature)

Place: SPTBG CO S.O.
Date: 7-1-04

Sworn to me on this 1 day of 7, 04

Robert Rosenberg
Notary Public for South Carolina
My Commission expires: 12-03-07

FORM C (RULE 6)
CERTIFICATE OF PROOF OF CHAIN OF PHYSICAL
CUSTODY OR CONTROL
(Subsequent Change of Custody)

(Handwritten)
11-22-04
101-056

11-22-2004 0027

This is to certify that I JANE MILLWOOD am employed by _____
(Name)

SPARTANBURG CO SHERIFF'S OFFICE as EVIDENCE OFFICER and that on
(Name of Agency or Department) (Capacity of Employment)

10-1, 04, I received IN PERSON
(Date) (Year) (Specify Whether by Mail or in Person)

from DROP BOX of SPTBG CO SHERIFF'S OFFICE
(Name of Person) (Law Enforcement Agency)

the following substance(s) or container(s) which were originally seized by

Brian Duncan
(Name of Person making Original Seizure)

(Describe substance or container with sufficient particularity to distinguish it.)

ONE SEALED BEST BAG

On 10-1, 04, I made delivery of the above described
(Date) (Year)

substance(s) or container(s) to DRUG VAULT of
(Name)

SPARTANBURG CO SHERIFF'S OFFICE in substantially the same condition
(Law Enforcement Agency)

as when I received it.

(Handwritten Signature)

(Signature)

Place: SPTBG CO S.O.
Date: 10-1-04

Sworn to me on this 1 day of 10, 04

Robert Rosenberg
Notary Public for South Carolina
My Commission expires: 12 08 07

PRINT ALL INFORMATION EXCEPT WHERE SIGNATURE IS REQUIRED

FORM C (RULE 6)

CERTIFICATE OF PROOF OF CHAIN OF PHYSICAL CUSTODY OR CONTROL

(Subsequent Change of Custody)

12-13-2004 181-0560 0049

This is to certify that I JANE MILLWOOD am employed by
(Name)

SPARTANBURG CO SHERIFF'S OFFICE as EVIDENCE OFFICER and that on
(Name of Agency or Department) (Capacity of Employment)

10-1, 04, I received IN PERSON
(Date) (Year) (Specify Whether by Mail or in Person)

from DROP BOX of SPTBG CO SHERIFF'S OFFICE
(Name of Person) (Law Enforcement Agency)

the following substance(s) or container(s) which were originally seized by

D. Glenn
(Name of Person making Original Seizure)

(Describe substance or container with sufficient particularity to distinguish it.)

ONE SEALED BEST BAG

On 10-1, 04, I made delivery of the above described
(Date) (Year)

substance(s) or container(s) to DRUG VAULT of
(Name)

SPARTANBURG CO SHERIFF'S OFFICE in substantially the same condition
(Law Enforcement Agency)

as when I received it.

Jane W. Millwood
(Signature)

Place: SPTBG CO S.O.

Date: 10-1-04

Sworn to me on this 1 day of 10, 04

Robert Rosenberg
Notary Public for South Carolina
My Commission expires: 12 08 07

PRINT ALL INFORMATION EXCEPT WHERE SIGNATURE IS REQUIRED

FORM C (RULE 6)
CERTIFICATE OF PROOF OF CHAIN OF PHYSICAL
CUSTODY OR CONTROL
(Subsequent Change of Custody)

12-13-2004 0053
Handwritten initials and date

This is to certify that I JANE MILLWOOD am employed by
(Name)

SPARTANBURG CO SHERIFF'S OFFICE as EVIDENCE OFFICER and that on
(Name of Agency or Department) (Capacity of Employment)

10-1, 04, I received IN PERSON
(Date) (Year) (Specify Whether by Mail or in Person)

from DROP BOX of SPTBG CO SHERIFF'S OFFICE
(Name of Person) (Law Enforcement Agency)

the following substance(s) or container(s) which were originally seized by

R MILLWOOD
(Name of Person making Original Seizure)

(Describe substance or container with sufficient particularity to distinguish it.)

ONE SEALED BEST BAG

On 10-1, 04, I made delivery of the above described
(Date) (Year)

substance(s) or container(s) to DRUG VAULT of
(Name)

SPARTANBURG CO SHERIFF'S OFFICE in substantially the same condition
(Law Enforcement Agency)

as when I received it.

Jane W. Millwood
(Signature)

Place: SPTBG CO S.O.
Date: 10-1-04

Sworn to me on this 1 day of 10, 04

Robert Rosenberg
Notary Public for South Carolina
My Commission expires: 12 05 07

PRINT ALL INFORMATION EXCEPT WHERE SIGNATURE IS REQUIRED

FORM C (RULE 6)

CERTIFICATE OF PROOF OF CHAIN OF PHYSICAL CUSTODY OR CONTROL

(Subsequent Change of Custody)

7/11/11

10-07-2004 10-07-2004

This is to certify that I ROBERT ROSENBERG am employed by (Name)

SPARTANBURG COUNTY SHERIFF'S OFFICE as EVIDENCE and that on (Name of Agency or Department) (Capacity of Employment)

Aug 13, 2004, I received IN PERSON (Date) (Year) (Specify Whether by Mail or in Person)

from DROP BOX of SPARTANBURG COUNTY SHERIFF'S OFFICE (Name of Person) (Law Enforcement Agency)

the following substance(s) or container(s) which were originally seized by Glean (Name of Person making Original Seizure)

(Describe substance or container with sufficient particularity to distinguish it.)

1-BEST BAG

On Aug 13, 2004, I made delivery of the above described (Date) (Year)

substance(s) or container(s) to THE DRUG VAULT of (Name)

SPARTANBURG COUNTY SHERIFF'S OFFICE in substantially the same condition (Law Enforcement Agency)

as when I received it.

Robert Rosenberg (Signature)

Place: SPARTANBURG COUNTY

Date: _____

Sworn to me on this 13 day of Aug, 2004

James W. Millwood

Notary Public for South Carolina

My Commission expires: 10-27-2013

PROCEEDINGS

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MRS. KELLEY: Your Honor, this case is Nathaniel Green, 2008-CP-42-3298. Mr. Green was indicted in November of 2004 in Spartanburg County for trafficking in crack cocaine. He was represented by Mr. Boggs. On February 14th, 2005, a bench trial was held before Judge Cole. Judge Cole found the applicant guilty and sentenced him to 25 years. An appeal was filed and an Anders brief was submitted on his behalf. The Court of Appeals dismissed the appeal on July 11th, 2007, and issued the remittitur on July 27th, 2007.

THE COURT: Is the applicant ready to proceed?

MS. CASON: Yes, Your Honor.

MR. GREEN: Excuse me, Your Honor.

Could I have a minute with my attorney?

THE COURT: Uh-huh. (Affirmative).

(Pause.)

MS. CASON: The applicant is ready, Your Honor.

THE COURT: Yes, ma'am, are you ready to call your first witness?

MS. CASON: Yes, I call Nathaniel Green to the stand.

THE COURT: Mr. Green, if you would, come on around up to the stand.

MR. GREEN: All right.

THE COURT: You can lay your papers up there on the

Nathaniel Green - Direct examination
by Ms. Cason

1 counter and place your left-hand on the Bible and raise your
2 right-hand.

3 NATHANIEL GREEN, being first duly
4 sworn, testified as follows:

5 THE COURT: Thank you, sir. Please have a seat in that
6 chair.

7 DIRECT EXAMINATION

8 BY MS. CASON:

9 Q Mr. Green, you have filed a petition for
10 post-conviction relief, is that correct?

11 A Yes.

12 Q And in your petition, your application, would you state
13 your issues?

14 A well, one being trial counsel really ineffective
15 assistance of counsel by failing to investigate and/or
16 challenge the use of fraudulent, falsified, and/or perjured
17 chain of custody documents utilized in the evidence.

18 Q Okay. Okay. Are there any other issues?

19 A And -- yes, my next issue I have marked, my Ground,
20 Ground B, it says trial counsel really ineffective
21 assistance of counsel by failing to object to the admission
22 of faulty chain of custody and to evidence without
23 clarification of error.

24 Q Okay. And your next issue?

25 A The next issue is, issue two, trial counsel was

Nathaniel G n - Direct examination
by Ms. Cason

1 ineffective for failing to investigate critical evidence or
2 defense when preparing for trial regarding application,
3 applicant's prior convictions relative to recent
4 imprisonment.

5 Q Okay. Now, those were stated or were those outlined in
6 your application?

7 A Yes.

8 Q Okay. And what, what exactly are you looking at in
9 front of you?

10 A You talking about the issue I just read off to you?

11 Q Yes.

12 A This right here is -- it's dealing with the
13 enhancement, the enhancement issue of my, my sentence.

14 Q Are you looking at a brief?

15 A Yes.

16 Q Okay. So, you're not actually looking at your
17 application?

18 A Yes, I know it's got -- I did this brief around my
19 application.

20 Q Okay. So, those are the issues that you would like the
21 court to consider today?

22 A Yes, I also have one more of the issue.

23 Q Okay. And your, your other issues?

24 A Yeah, my other issue. I had it here. I think I might
25 of left it at the table.

Nathaniel Green - Direct examination
by Ms. Cason

1 Q Okay. Can you state for the Court what your final
2 issue is?

3 A Just give me a second. Okay. I have it right here.

4 All right. It's a discovery violation, petition due
5 process rights. Rights were violated due to counsel
6 ineffective in recognized and challenging the solicitor on
7 Brady violation and/or not correcting false, misleading
8 testimony for, of confidential informant.

9 Q Okay. All right. Now, with respect to your first
10 issue, and that is regarding ineffective assistance of
11 counsel, you believe that your trial attorney made an error
12 because he did not challenge the chain of custody?

13 Is that your---

14 A Yes.

15 Q Is that your issue?

16 A Yes.

17 Q Can you explain that?

18 A The reason being is the first issue, the first issue on
19 it, my trial counsel, he wrote me on one occasion and on
20 that occasion it had a case in it addressing the chain of
21 custody issue. Based on that, based on that knowledge -- I
22 have a copy of that letter, but I don't think I have it with
23 me, and it states, and I'm pretty sure he can testify to
24 this as well, that case was dealing with a chain of custody
25 issue. But during the fact, due to the fact that I have two

Nathaniel Cason - Direct examination
by Ms. Cason

1 chain of custody issues, I'm not really sure on what issue
2 he was referring to when he wrote me and gave me, gave me
3 the case. That case would help me in further proceedings.

4 But I got two chain of custody issues. I got them
5 marked Issue A and Issue B. But both of them, both of them
6 as a whole issue is Issue one, and one is dealing with --
7 the other issue was dealing with the documents in the chain
8 of custody was, was already signed. The, the State was
9 using the forms that was already signed and notarized by
10 Evidence Officer Jane Millwood and evidence, and notary
11 public, Mr. Rosenberg, Mr. Rosenberg, excuse me.

12 They used those forms in there as evidence. I also
13 have other forms on unrelated cases that has the same exact
14 form, and these forms right here is, is being used by the
15 State in evidence.

16 Q Okay. You -- do you have those documents with you?

17 A Yes, I have those documents. I have them marked in, in
18 as exhibits, as exhibits, and I would like to make them as
19 evidence.

20 Also I like to point out both forms, all forms dealing
21 with Jane Millwood is the form that I like to bring to the
22 Court's attention. It's the form right there, the other
23 forms. You got the form on the unrelated case, unrelated
24 case. Okay.

25 Q Okay. Now, you're saying that there were Rule 6 forms,

Nathaniel Green - Direct examination
by Ms. Cason

1 two forms C's?

2 A Yeah, Rule 6 Form C forms. All of them, they marked
3 Jane Millwood, and those forms that marked with Jane
4 Millwood, all forms have identical, identical signatures on
5 them, and they wasn't personally signed by Jane Millwood on
6 the days indicated on the forms.

7 Q well, let's, let's just go back for a moment.

8 The first form that I'm looking at is a Form C, Rule 6,
9 is that correct?

10 A Yes.

11 Q Is this a form that was completed in your case?

12 A well, that's one, that's one form that was completed in
13 my case, but they dismissed that, that particular form
14 because it was a lack of evidence. That was one case.

15 That, that's one form they dismissed.

16 But the reason why I have this form right here because
17 that form, that particular form has this exact same
18 signature and notary's signature and commission expire date
19 identical as the form that I'm, that I'm convicted on. The
20 form that I'm convicted on is dated 7/1/04 with control
21 Number 5007684.

22 Q Okay. So, is it your testimony that they're two
23 different forms?

24 A Two different forms. well, identical hand,
25 handwritten, handwritten signature from Jane Millwood and

Nathaniel () n - Direct examination
by Ms. Cas6.

1 from Robert Rosenberg.

2 Q Okay. Two different Form C's?

3 A Two different Form C's.

4 Q Both belonging?

5 A Both belonging to Jane Millwood. Both of them bearing
6 the exact same signature both in the, in the exact same
7 alignment.

8 Q Okay.

9 A Both those forms were not signed on no particular day
10 by Jane Millwood nor was it personally signed by a notary
11 public.

12 Q And the third form?

13 A The third form, Form C was, involved an unrelated case
14 from a guy, an unrelated defendant, and it has the, also the
15 same exact signature from Jane Millwood and I, also Mr.
16 Rosenberg.

17 Q So, what is your, what is your contention or what is
18 your issue with these documents?

19 A Okay. My, my contention with these documents, each --
20 up under South Carolina Rules of Criminal Procedure, Rule
21 6(b), all forms have to be personally signed each time by
22 every person, every person that come in contact with those
23 forms.

24 Q Okay. And---

25 A They also have to be notarized each time.

Nathaniel Gr...n - Direct examination
by Ms. Cason

1 Q Okay. And what are the dates on these documents, all
2 three documents?

3 A All three documents, the unrelated form is dated
4 8/16/04. The form that I'm currently incarcerated on is
5 7/1/04, and the, the form that was dismissed on my case is
6 six, is dated 6/24/04.

7 MS. CASON: Your Honor, at this time I'd like to have
8 these---

9 A Also, also I want to, I want to point, point out, make
10 one more -- also I want to point out right -- I want to
11 demonstrate, I want to demonstrate with the Court that if
12 you, if you take both forms, if you take all three forms,
13 excuse me, take all three forms and you will hold all three
14 forms up to the light, you can see, you can clearly see that
15 both, all, both, all the forms have the signatures as
16 identical as each other, and it's, it's impossible for her
17 to write characteristics and signatures in the same exact
18 spot each time they sign a form.

19 There would be eerily similar, but it would never be,
20 they would never be exact, and, in this case, all forms got
21 the exact same signatures from Mr. Robert Rosenberg and Jane
22 Millwood. If this practice is allowed by the Court, as I
23 have been, as I have, I'm demonstrating here today, if it's
24 allowed by the Court, then you might as well allow
25 narcotic's agent to have forms, blank forms that the Court

Nathaniel Cason - Direct examination
by MS. CASON

1 is using, that the State is using, excuse me, and you might
2 allow them to sign the form, have them notarized, and ride
3 around in their patrol cars with these, these particular
4 forms and fill in the dates on later dates. That's what I'm
5 claiming that the State did in this particular case.

6 They're using fraud and they're using tamper, tamper
7 documents. In this case, that will create an issue of
8 admissibility.

9 MS. CASON: Your Honor, at this time I'd like to have
10 these three documents, Form C's, marked as Petitioner's 1.

11 THE COURT: You want them as a group?

12 MS. CASON: Yes, Your Honor.

13 WITNESS: Before, before you admit them into evidence,
14 I got some on the Issue B that I would want to point out.

15 THE COURT: She's just admitting them into evidence,
16 and allow -- if you will, sir, allow your lawyer to do her
17 job.

18 okay?

19 WITNESS: All right.

20 THE COURT: Thank you.

21 Now, are you just admitting them for identification or
22 are you---

23 MS. CASON: For identification before I actually---

24 THE COURT: All right.

25 MS. CASON: ---try to move them into evidence.

Nathaniel Green - Direct examination
by Ms. Cason

1 (whereupon, the Form C's were marked as Applicant's
2 Exhibit No. 1 for identification purposes only at this
3 time.)

4 Q Now, Mr. Green, now you have what's been marked as
5 Applicant's 1, these three documents---

6 THE COURT: How many -- I apologize for interrupting.
7 Let's mark them 1, 2, and 3.

8 MS. CASON: 1, 2, and 3.

9 (whereupon, the Form C's were marked as Applicant's
10 Exhibit Nos. 1 through 3 for identification purposes only at
11 this time.)

12 Q Okay. Mr. Green, so, you're looking at what's been
13 marked as Applicant's 1, 2, and 3.

14 Now, again, would you identify which documents are your
15 documents related to any case that you've had?

16 A Okay. The documents that's related to the case that I
17 have is, it bares control number -- the first one -- there
18 was one that was dismissed dated 6/24/04. It bares control
19 Number 5007682.

20 Q Is that marked Applicants 1, 2, or 3?

21 A It's marked one.

22 Q Applicant's 1.

23 what about Applicant's 2?

24 A Applicant's 2 is marked Control Number -- well, the
25 control number's off the sheet right here. Different

Nathaniel Cason - Direct examination
by Ms. Cason

1 control number, you know what I'm saying, I can't speak to
2 the control number.

3 Q Okay. There's no control number, but this is a Form C,
4 is that correct?

5 A It's a control number, but due to the fact that it's
6 not -- the run off copy didn't copy. I guess another copy.
7 It should be another copy with the control number on it.

8 THE COURT: All right, sir. If you would, I'm gonna
9 instruct you, please listen to the question your lawyer is
10 asking and answer the question, and if you can not answer
11 the question, then you may state that as well.

12 Okay?

13 WITNESS: Okay. Well, I can answer the question, but
14 what I would -- the issue I'm---

15 THE COURT: Then, then, if you would, please do so
16 cause she may have a strategy in mind as to how she's asking
17 the questions. I, I do not know.

18 WITNESS: I wish to point out the reason why I can't
19 answer the question is because the copies, this one is on---

20 THE COURT: All right. Sir?

21 WITNESS: It's ineffective copy.

22 THE COURT: Sir, then listen to the question your
23 lawyer's asking you. If you can not answer her question,
24 then let her know so. She is the who controls the asking of
25 the question.

Nathaniel Green - Direct examination
by Ms. Cason

1 okay?

2 WITNESS: All right.

3 THE COURT: Thank you.

4 Q Do -- you have in front of you what's been marked as
5 Applicant's 2, is that correct?

6 A Yes.

7 Q Okay. And is that a Form C?

8 A Yes, it's a Form C.

9 Q Okay. And the information contained in this exhibit,
10 was -- were items collected from or substances collected
11 form whom?

12 A This, this substance was collected from unrelated --
13 it's from an unrelated case dealing with unrelated narcotic
14 agent, and it defectively. It has a control number on it,
15 but it's not clear on the form.

16 Q Okay. Who was it collected from?

17 A It was collected from I think it was Mark, Mark
18 Kitchens, Jay Kelly.

19 Q Okay. And is that someone who was a part of your case?

20 A No, it wasn't.

21 Q Okay. And with this exhibit, you are -- it was your
22 testimony earlier that it was signed by the same person who
23 signed Applicant's 1?

24 A Yeah, correct.

25 Q And Applicant's 1 is that exhibit, is your exhibit from

Nathaniel Green - Direct examination
by Ms. Cason

1 your case?

2 A Yes, it's, it's my exhibit from my case.

3 Q Okay. And Applicant's 2 is not, not an item from your
4 case, is that correct?

5 A No, it's not an item from my case.

6 Q What about Applicant's 3?

7 A Applicant's 3 is -- it's an item from my case. It's
8 the one that was a result of my incarceration.

9 Q Okay. And is it your contention that the signatures on
10 each of the exhibits is exactly the same?

11 A Yes, they are photocopy signatures.

12 Q And is it also your contention that the affidavit is
13 exactly the same?

14 A Yes, all affidavits are the same.

15 Q Okay. So, you have Exhibits 1, 2, and 3?

16 A Yes.

17 Q Applicant's 1, 2, and 3?

18 A Yes.

19 Q Do you have anything else that you would like to
20 indicate about these forms?

21 A Yes, I would like have something -- I have something
22 else I like, something else I'd like to indicate.

23 Where's the brief?

24 Here's -- yeah, give me a second.

25 Q Well, Mr. Green, while, while you're looking, let's

Nathaniel Green - Direct examination
by Ms. Cason

1 just---

2 A Huh?

3 Q ---talk about---

4 A Go ahead.

5 Q ---your, your problem with the form is what?

6 A Those forms, each, each one of those forms is, what the
7 state, what I'm alleging the state is doing with those, with
8 those forms right there. The state, the state is taking
9 blank documents, blank chain of custody forms, C forms, and
10 signing the blank forms, and notary public is signing the
11 blank form, signing commission expire date on it, on that
12 blank form, making copies, and using those forms on later
13 dates when you, when needed.

14 Q okay. Thank you.

15 Your Honor, I'd like to have these moved into evidence,
16 Exhibits 1, 2, and 3.

17 THE COURT: Any objection from the State?

18 MRS. KELLEY: Your Honor, are these originals?

19 MS. CASON: They are not originals. They are
20 photocopies. All of which -- well, two of which, Nos. 1 and
21 3, came from Mr. Green's---

22 WITNESS: Those are, those are the documents that I,
23 that I received from my trial attorney.

24 THE COURT: All right. Mr. Green, thank you for the
25 information. Please allow your attorney to make the

Nathaniel (an - Direct examination
by Ms. Cason

1 arguments.

2 All right?

3 WITNESS: All right.

4 MRS. KELLEY: Your Honor?

5 THE COURT: She said they're photocopies.

6 MRS. KELLEY: I would object being these photocopies
7 could of been tampered with.

8 THE COURT: All right. I'll allow it, allow them into
9 evidence. You may cross-examine as to those, to that issue.

10 MRS. KELLEY: Your Honor, can I see those again?

11 THE COURT: Uh-huh. (Affirmative).

12 (Whereupon, Applicant's Exhibit Nos. 1 through 3 were
13 received into evidence at this time.)

14 Q Okay. Now, Mr. Green, your -- that was your fourth
15 issue. Now, let's go back to your first issue.

16 Your first issue dealt with ineffective assistance of,
17 of trial counsel with respect to the chain of custody, is
18 that correct?

19 A Yes.

20 Q Okay. What exactly happened with respect to the chain
21 of custody that was not followed?

22 A Well, on that chain of custody, on that same chain of
23 custody that was just previously, previously admitted into
24 evidence, the one that was dated 7/1/04, on that form right
25 there, it's -- Mrs. Millwood have on that form the original

Nathaniel Green - Direct examination
by Ms. Cason

1 seizure on that form is, excuse me, Chris Raymond on that
 2 form, and the person on that form, according to that, in
 3 that, in that chain of custody, on that chain of custody,
 4 and throughout the chain, the first person coming into
 5 contact on that form, on the Form B, is the person is Keith
 6 Pearson. That's the person that make the original seizure
 7 on the drugs, and Mrs. Millwood had on another chain of
 8 custody, Form C form, that the drugs were originally seized
 9 by Chris Raymond, and I never -- it was never alleged that I
 10 sold any drugs to Chris Raymond. That's the mistake that
 11 Mrs. Millwood made on the forms.

12 And, also, I want to point out that Mrs. Millwood also
 13 didn't come to trial to testify. My trial attorney did not
 14 also -- she didn't -- he didn't, due to the error, he did
 15 not also request Mrs. Millwood present to come testify, and
 16 the reason it was required that Mrs. Millwood come to trial
 17 to testify is for, to state what mistakes she made on the
 18 form.

19 Now, it's two errors -- it's, it's an error clearly
 20 made on the form by -- if you look at the form, you can see
 21 it's clearly error made on the form. She either made a
 22 mistake of putting the wrong control number on the form or
 23 the person making the original seizure. But I don't
 24 think -- well, excuse me, let me take back -- let me, let me
 25 back up. Anyone that can't answer that question to the

Nathaniel Cason - Direct examination
by Ms. Cason

1 mistake Mrs. Millwood made on the form. It's clearly a
2 mistake made on the form because the person making the
3 original seizure is Keith Pearson. He is the person alleged
4 made the original seizure. If you look at Officer Raymond,
5 Officer Raymond, on form, Form C Rule 6, he would of had on
6 his form indicating that the person making the original
7 seizure is Keith Pearson as well as by Keith Pearson Form B
8 form. It's indicating that he is the one making the
9 original seizure, and Mrs. Millwood has on her form the
10 person making the original seizure is Officer, Detective
11 Raymond.

12 Q All right.

13 A So---

14 THE COURT: Let me interrupt you again. If he's gonna
15 testify so methodically I'm gonna need to have the forms in
16 my hand so I can be sure I'm understanding his testimony.

17 Q Okay. So, is it your claim that the, your, your trial
18 counsel was ineffective because he, he failed to object to
19 these documents?

20 A Yes.

21 Q Okay. And particularly documents, Exhibits 1 and 3, is
22 that correct?

23 A Yes, correct.

24 Q Okay. All right. So, now, let's go to your issue two.
25 You stated that you believe your trial counsel is

Nathaniel Green - Direct examination
by Ms. Cason

1 ineffective for failing to investigate evidence in this
2 case, is that correct?

3 A Correct.

4 Q Specifically what do you believe your trial counsel
5 failed to investigate?

6 A During, during the sentencing phase at my trial, he
7 failed to investigate in reviewing other cases that related
8 to enhancement, and the Penal Statutes 17-25-50. Those,
9 statutes -- those -- the penal statute deals with
10 enhancements of prior, prior convictions, and those cases
11 that he failed to raise during, during my sentencing phase
12 was State versus Gordon, 588 S.E.2d 105 and also State
13 versus Benjamin, 579 S.E.2d 289.

14 Q Okay. So, so, you believe that your trial counsel
15 should have known about those cases---

16 A Yeah.

17 Q ---or should have---

18 A Yes, because those cases already ruled on during the
19 time of my sentencing.

20 Q Okay. And, and in those cases, what exactly are you
21 claiming?

22 A Well, in particularly, in State versus Gordon, in that
23 case he had multiple charges, and he, he didn't have any
24 arrests when he had committed all of those charges, and in
25 that case, all, all the charges was drove as, as one charge

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STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG) COURT OF COMMON PLEAS NONJURY

BOBBY GIBSON, JR.,) TRANSCRIPT
APPLICANT,) OF
vs.) RECORD
STATE OF SOUTH CAROLINA,) 08-CP-42-6126
RESPONDENT.)

September 14th, 2010
Spartanburg, South Carolina

B E F O R E:

THE HONORABLE ROGER L. COUCH, Judge.

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

J. FALKNER WILKES
ESQ.
Attorney for the Applicant

SUZANNE H. WHITE
ESQ.
Attorney for the Respondent

PAMELA E. GREEN
Circuit Court Reporter
Seventh Judicial Circuit

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E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
	<u>Applicant's Exhibits</u>		
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1 PROCEEDINGS

2
3 THE COURT: Now, are we ready to proceed with the
4 Gibson case I believe?

5 MS. WHITE: Yes, Your Honor.

6 THE COURT: All right. Yes, ma'am.

7 MS. WHITE: Hold on one moment, Your Honor.

8 THE COURT: Yes, ma'am.

9 (Pause.)

10 MS. WHITE: Your Honor, I just want to note, Mr. Boggs,
11 you know, yesterday had informed us that he had something
12 this morning, but he was gonna be here a little bit after
13 9:30. So, he should be here soon.

14 THE COURT: All right.

15 MS. WHITE: This is the case of Bobby Gibson, Junior
16 versus The State of South Carolina. It's Case Number
17 2008-CP-42-6126. Mr. Gibson's represented today by Mr. Jeff
18 Wilkes. He was originally indicted in November of '04 on a
19 possession of crack cocaine charge, and then in January of
20 '05 on two trafficking cocaine charges, proceeded to trial,
21 was represented by Mr. Tam Boggs, and was found guilty and
22 convicted on April 8th of 2005, received a total sentence
23 of 30 years and a fine of \$265,000. There was an appeal,
24 which his conviction was affirmed.

25 He filed his post-conviction relief alleging

1 ineffective assistance of counsel, ineffective assistance of
2 appellate counsel, and a Brady violation with several, if I
3 can find the amendment, it was numerous detailed attachments
4 for ineffective assistance and Your Honor has a copy of that
5 on the back of his actual application. It's where it
6 details probably about ten different ineffective assistance
7 of trial counsel allegations and the ones with discovery and
8 appellate counsel related to discovery, effectively
9 challenging the State's expert witnesses, failure to argue
10 and preserve legal issues, failure to call witnesses,
11 failure to investigate, present evidence, cross-examine, and
12 make motions to suppress, failure to move for a mistrial
13 when jurors saw the defendant in a prison jumpsuit and
14 shackled during a break, failure to challenge introduction
15 of prejudicial evidence of funds, failure to move for a
16 continuance based on accident and admission of appellate or
17 the applicant to the ER on the day of the trial, and I
18 believe we have filed, after talking with Mr. Wilkes, we
19 have filed a motion for a more definite statement as to some
20 allegations that, that they were proceeding on that were not
21 included in that list.

22 So, I will turn it over to him at this point.

23 MR. WILKES: Thank you, Your Honor.

24 THE COURT: Yes, sir.

25 MR. WILKES: I have communicated with the attorney

1 general, and I think we have, both have copies of the
2 material that we're going to use today. The major had
3 delivered them. So, I don't think there's any objections
4 as, as to chain and authenticity.

5 THE COURT: There is no objection to the chain you
6 said?

7 MR. WILKES: To the chain or authenticity of these
8 documents. The major brought them over yesterday and we
9 didn't---

10 THE COURT: Okay.

11 MR. WILKES: ---think he needed to stay to testify to
12 them.

13 THE COURT: Thank you.

14 MR. WILKES: So, the majority of this will be going
15 from the sheriff's own records.

16 THE COURT: All right.

17 MR. WILKES: And I'll, I'll narrow things down. We've,
18 we've put a lot of stuff in the application when we amended.
19 There will be some obviously we will not proceed on, but
20 we'll, we'll begin with our challenge to the chain of
21 custody under the ineffective and discovery issues.

22 THE COURT: All right, sir. Are you ready to call your
23 first witness?

24 MR. WILKES: Thank you, Your Honor.

25 We'll call Deputy Rosenberg to the stand please.

Robert Rosenberg - Direct examination
By Mr. Wilkes

1 THE COURT: Come forward, sir, to my left to be sworn.

2 ROBERT ROSENBURG, having been first duly
3 sworn, testified as follows:

4 THE COURT: Have a seat please and state your name
5 please.

6 WITNESS: I'm Robert Rosenberg.

7 THE COURT: Mr. Wilkes, your witness.

8 MR. WILKES: Thank you, Your Honor.

9 DIRECT EXAMINATION

10 BY MR. WILKES:

11 Q Mr. Rosenberg, where are you employed?

12 A At the Spartanburg County Sheriff's Office.

13 Q And what is your duty there?

14 What is your job there?

15 A Currently I'm assigned as the evidence custodian.

16 Q And as the evidence custodian what do you do?

17 A I take in evidence that's brought in, catalog it, and
18 store it in a secure area.

19 Q And what type of evidence would be stored in the
20 evidence room?

21 A It could -- it's a wide range of numerous things. I
22 don't know how to -- it's a broad -- anything could be
23 brought in except for vehicles. We don't do vehicles.

24 Q Okay. And in this case in particular, are you aware of
25 being in the chain of custody -- may I approach, Your Honor?

Robert Rosenberg - Direct examination
By Mr. Wilkes

1 THE COURT: You may.

2 Q Are you aware of being -- let me mark this if I can.
3 I'll ask to mark this as our exhibit.

4 THE COURT: Any objection to those documents?

5 MS. WHITE: I just want to glance at them and see
6 exactly what---

7 THE COURT: Yes, ma'am.

8 MS. WHITE: ---which ones cause I know we had so many.

9 (Pause.)

10 MS. WHITE: No objection, Your Honor.

11 THE COURT: Without objections they'll be marked as
12 Applicant's Exhibits.

13 (Whereupon, the chain of custody document was marked as
14 Applicant's Exhibit No. 1 and received into evidence at this
15 time.)

16 Q If you'll look at Applicant Exhibit No. 1, which appear
17 to be Mr. Gibson's chain of custody documents for his
18 convictions.

19 Can you look through there and tell me if you're
20 involved in any of that, if you're on an evidence sheet?

21 A My notary is on I believe four of the sheets.

22 Q Okay. And what does it indicate -- what does the
23 evidence sheet indicate, intend to indicate?

24 Just in general, what are those sheets for?

25 A The chain of process when it comes in.

Robert Rosenberg - Direct examination
By Mr. Wilkes

1 Q Okay. The chain of custody?

2 A Yes, sir.

3 Q And what is the purpose of the chain of custody
4 documents?

5 A To show that the, it went through a proper procedure.

6 Q Okay. Now, will you look carefully at those documents
7 and you see that your name appears on those documents?

8 A Yes, sir.

9 Q Do you know whether or not you signed those documents?

10 A They're photocopies of my signature.

11 Q So, you did not sign those documents?

12 A I signed an initial document verifying Jane Millwood's
13 signature.

14 Q Okay. And when did you do that initial document.

15 A I do not know what the precise date would be.

16 Q Okay. Let me show you what we would ask to mark as
17 exhibit, Applicant Exhibit No. 2.

18 (Whereupon, the documents were marked as Applicant's
19 Exhibit No. 2 for identification purposes only at this
20 time.)

21 Q Will you look through those approximately 20, 30, 50,
22 however many documents, and tell me if your signature
23 appears on any of those?

24 MS. WHITE: And, Your Honor, I'm gonna object if he's
25 planning on entering these into evidence based on relevance

Robert Rosenberg - Direct examination
By Mr. Wilkes

1 grounds.

2 MR. WILKES: I'll get to the relevance real quick, Your
3 Honor, if you'll let---

4 THE COURT: He hasn't asked to have them admitted yet.
5 He just asked if he saw his signature on any of them.

6 MS. WHITE: Okay.

7 A Yes.

8 THE COURT: I'll allow him to ask that question.
9 You may proceed.

10 MR. WILKES: Thank you, Your Honor.

11 A Yes, sir.

12 Q Okay. would that be the same signature that appears on
13 Mr. Gibson's and---

14 A ... Probably, yes, sir.

15 Q Okay.

16 A With the procedure we use, yes, sir, it would be.

17 Q Okay. Now, when I say the same signature, that is not
18 an original signature on any of those documents, is it?

19 A No, sir.

20 Q So---

21 MS. WHITE: Your Honor, I would object. He's
22 testifying essentially to that as this evidence, and if he
23 hasn't entered that into evidence I'll still object on
24 relevance grounds to his testimony.

25 MR. WILKES: I'm laying the groundwork for the

Robert Rosenberg - Direct examination
By Mr. Wilkes

1 relevance to---

2 THE COURT: I'm gonna allow him to continue to go
3 forward.

4 Q Now, tell me about this, the photocopy.

5 Are those documents, in Exhibit No. 2, the same exact
6 photocopied signature that we see in Mr. Gibson's?

7 A No.

8 Q They're not?

9 A No.

10 Q Look carefully at them.

11 A Mr. Gibson's, I didn't take any evidence on Mr.
12 Gibson's trial---

13 Q Okay.

14 A ---of the case. I only notarized it. You've got
15 Officer Millwood's and mine in here. Mine, I didn't
16 notarize -- I mean I notarized Officer Millwood's.

17 Q Okay. Tell me -- when you say you notarized Mr.
18 Gibson's document---

19 A Yes.

20 Q ---when Mrs. -- explain how that works.

21 A Okay.

22 Q Did Mrs. Millwood sign it in front of you?

23 A What the procedure was---

24 Q Wait, wait, let me ask a question first.

25 A Okay.

Robert Rosenberg - Direct examination
By Mr. Wilkes

1 Q Did Mrs. Millwood sign that document in front of you?

2 A In front of me, yes, sir.

3 Q The document with Mr. Gibson's name on it?

4 A In front of me, no, probably not. I don't know. I
5 couldn't say if I was there or not.

6 Q Okay. But you notarized it?

7 A I notarized, yes, sir.

8 Q Okay.

9 A But not the date that it came in.

10 Q When did you place your signature on Mr. Gibson's
11 document?

12 A When I placed it Officer Millwood---

13 THE COURT: Just one second.

14 Are you asking about Exhibit 1 or Exhibit 2?

15 MR. WILKES: Exhibit 1. I'm sorry.

16 THE COURT: Thank you.

17 MR. WILKES: I apologize.

18 A Okay. Our procedures were, at that time, we'd take a
19 form, a blank form. We'd fill in our name, but not the
20 dates, not any pertinent information. Only information
21 saying like Spartanburg County Sheriff's Office, my, my or
22 Jane's signature, whoever it was, and then we would notarize
23 it without putting a date on it that -- none of the
24 pertinent information involving Mr. Gibson would be filled
25 in. We'd make a photocopy of that and then use those forms.

Robert Rosenberg - Direct examination
By Mr. Wilkes

1 Q Are you saying that you had a stack of forms with both
2 signature and notary signature on it that you filled out?

3 A I had a stack of my forms with my signature on it
4 notarized by Officer Millwood. Those are my -- the ones I
5 notarized, those are her signatures as proper representation
6 of the chain.

7 Q Are you telling me that the signature -- you're telling
8 me that there was not a stack of photocopies with both
9 signatures already placed on them?

10 A I had my -- yes, I had mine, yes, sir.

11 Q You had a stack of notary's with your signature already
12 on it and Mrs. Millwood's signature on it and---

13 A No.

14 Q ---she has---

15 A No, I had, I had a stack of mine, of mine. Not Jane
16 Millwood's. I didn't have her paperwork.

17 Q What, what are you saying you had a stack of yours?
18 What was on---

19 A There's a difference here. She signed some of these.
20 well, what I would do -- let's see. This is mine. She
21 would notarize it but not put any of the pertinent
22 information in.

23 Q When would she notarize it?

24 A At a, at a time earlier when we, when I'd run out of
25 them.

Robert Rosenberg - Direct examination
By Mr. Wilkes

1 Q Okay. So, you would have -- you're, you're telling me
2 that you took a blank form with her notary already on it and
3 signed it or are you---

4 A No, no, I took my form, signed it, and she would
5 notarize it without putting the date that anything,
6 pertinent information came in on.

7 Q So, you're telling me that she was -- when, when were
8 you both in the room to, to do this.

9 Tell me -- I mean---

10 A We worked together during the day.

11 Q So, every form there you're telling me that you would
12 have a stack of forms already signed by you?

13 A Yes, sir.

14 MS. WHITE: Your Honor, I was just trying to clarify
15 and object to the continued line of questions. I feel like
16 we have a set of forms that's been introduced into evidence
17 for Bobby Gibson's case as relevant, and then we have an
18 entire stack of forms that we seem to be referencing at
19 times, and, again, that keeps kind of winking up, and we
20 don't, we don't really know -- I don't think those have been
21 entered into evidence, and I don't think he can really
22 testify.

23 MR. WILKES: I, I think, Your Honor, his signature
24 appears on all of the documents from the period that we have
25 subpoenaed as examples to try to explain what's going on.

Robert Rosenberg - Direct examination
By Mr. Wilkes

1 MS. WHITE: But, Your Honor, his signature does not
2 appear on any of the forms in Bobby Gibson's case as the
3 evidence custodian that received the evidence. His
4 signature, in Bobby Gibson's case, is purely as the notary.

5 MR. WILKES: Let, let -- I'll explain where I'm going
6 with this.

7 THE COURT: Yes, sir.

8 MR. WILKES: Your Honor, it may be a good -- let me
9 make a motion to sequester Mrs. Millwood cause we're gonna
10 ask her the same questions. It might be appropriate to have
11 these two witnesses sequestered if we could cause this is
12 gonna get confusing.

13 THE COURT: Any objection?

14 MS. WHITE: Well, Your Honor, I would object just
15 because we've been discussing this and I believe he
16 subpoenaed the same documents, they worked together in the
17 same situation, and have the same procedures. I don't
18 really see any necessary, necessity to sequester anybody
19 from this case.

20 THE COURT: Well, I generally grant motions to
21 sequester.

22 Is she in the courtroom?

23 MS. WHITE: Yes, she's right here.

24 THE COURT: All right, ma'am. I'm gonna ask you to
25 step outside and part of the sequestration order is for you

Robert Rosenberg - Direct examination
By Mr. Wilkes

1 not to discuss your future testimony with anyone.

2 And, Mr. Rosenberg, I will instruct you not to discuss
3 your testimony with anyone either.

4 WITNESS: Yes, sir.

5 MS. WHITE: Thank you.

6 THE COURT: You may step outside. Thank you, ma'am.

7 Now, let's get back to the basic question here. The
8 documents that are in Exhibit 2, which is not yet in
9 evidence?

10 MR. WILKES: Right.

11 THE COURT: Are, are those being used as exemplars?

12 MR. WILKES: Yes, sir.

13 THE COURT: Okay.

14 MR. WILKES: They, they will be---

15 THE COURT: Then I'll overrule the objection.

16 You may proceed.

17 MR. WILKES: Thank you, Your Honor.

18 Q Now, Mr. Rosenberg, you have -- you're, you're saying
19 that you have a stack of documents, they're blank documents
20 except for your notary signature's on it?

21 A I would have a stack. What, what we would do is I take
22 a form and I'd type in Spartanburg County Sheriff's Office,
23 my name, Spartanburg County Sheriff's Office evidence, and
24 I'd write it in or type in what year, and, and it says I
25 received in person from the drop box, and I'd put

Robert Rosenberg - Direct examination
By Mr. Wilkes

1 Spartanburg County Sheriff's Office.

2 Q All right.

3 A Then down here I would enter where we would go to the
4 drug vault as a representative of the Spartanburg County
5 Sheriff's Office. What I would do, with Jane present, I
6 would sign my name, she would notarize it, and put her
7 expiration date. No information about anything, any
8 pertinent information about anybody else would be entered on
9 that form. I'd keep those forms. I'd keep them in a secure
10 area where nobody has access to them.

11 Q Okay. Let me, let me stop you right there.

12 A Okay.

13 Q I think I understand.

14 So, at, at some point you took a form, a original---

15 A Yes, sir.

16 Q ---she signed it, you notarized it, and it---

17 A Yes, sir.

18 Q ---had Sheriff's Office information on it---

19 A Yes, sir.

20 Q ---and, and blank information for who, whose name it
21 would be in and what the evidence was?

22 A Yes.

23 Q And then you photocopied that?

24 A Yes.

25 Q And then you used that with chain documents for the

Robert Rosenberg - Direct examination
By Mr. Wilkes

1 chain of custody in various cases?

2 A Yes.

3 Q Okay. So---

4 A Only in drug cases.

5 Q Okay.

6 A That's the only thing we used it for.

7 Q Okay.

8 MS. WHITE: And, Your Honor, I do just want to clarify.
9 I believe Mr. Rosenberg has just testified to his signature
10 and Mrs. Millwood's notary, and Mr. Wilkes was testifying as
11 to forms that were signed by Mrs., Mrs. Millwood and
12 notarized by Mr. Rosenberg. So, I do want to clarify that
13 they're two separate.

14 THE COURT: All right.

15 MS. WHITE: And if he's discussing one, then I want to
16 make sure that he's not mistaking what Mr. Rosenberg---

17 THE COURT: I take it---

18 MS. WHITE: ---has testified to.

19 THE COURT: I have not seen the documents yet, but I
20 take it, in this case, that Mrs. Millwood signed as the
21 custodian?

22 MS. WHITE: In these -- in this case, yes.

23 THE COURT: In this case.

24 MS. WHITE: Yes, Your Honor.

25 THE COURT: Okay.

Robert Rosenberg - Direct examination
By Mr. Wilkes

1 MR. WILKES: Now---

2 THE COURT: I think I've gotten it clear.

3 MS. WHITE: Okay.

4 MR. WILKES: I apologize cause I got a little confused
5 for a second.

6 THE COURT: Okay. All right.

7 MR. WILKES: I know what they are.

8 THE COURT: All right.

9 Q All right. Mr. Rosenberg---

10 A Yes, sir.

11 Q ---will you look -- because now I would like to ask --
12 I'm gonna ask you about the time period that this occurred
13 over.

14 Did you use this procedure over a long period of time?

15 A Yes, sir, that was the established procedure we used at
16 the Sheriff's Office when I came into the evidence office.

17 Q Okay.

18 A That's how I was trained to do it. That's how I did
19 it.

20 Q Okay. If you look, Exhibit 2, are those documents all
21 using that same photocopy procedure that you used with Mr.
22 Gibson's case either---

23 A Yeah.

24 Q ---either---

25 A Basically.

Robert Rosenberg - Direct examination
By Mr. Wilkes

1 Q Okay. Those are all the same procedure?

2 A Yes, sir.

3 Q Okay. Look on there at the front and the back and, and
4 tell me the dates.

5 Just roughly the dates that those documents cover.

6 A Of which exhibit?

7 Q The---

8 A Two?

9 Q Are those documents from 2004?

10 A Yes, sir.

11 Q Okay. And, so, those would be the same forms, blank
12 forms that you used as your chain documents as was used in
13 Mr. Gibson's case with the addition that some are reversed
14 with Mrs. Millwood being the---

15 A She would have her set of forms.

16 Q She had her set of forms.

17 Now -- and, Your Honor, at this time I'd move to
18 introduce those. Those are the same format, the same
19 procedure, and the same forms used in Mr. Gibson's.
20 They're, therefore, relevant.

21 MS. WHITE: Your Honor, I would just -- I would renew
22 my objection to relevance say from the fact that these forms
23 have nothing to do with Mr. Gibson's case. We do have the
24 relevant forms for Mr. Gibson's chain of custody, and I
25 would move to strike any testimony having to do with those

Robert Rosenberg - Direct examination
By Mr. Wilkes

1 forms.

2 THE COURT: What, what new information do they provide
3 other than the ones that are used in his case?

4 MR. WILKES: They establish the fact that they are
5 indeed photocopies, that it is the longstanding policy or
6 that's what they do there.

7 THE COURT: Well, he's testified to that.

8 MR. WILKES: He has and, therefore, they're relevant to
9 that testimony to show that testimony is accurate.

10 THE COURT: All right. I find it somewhat tenuous, but
11 I'll allow it in.

12 MR. WILKES: Thank you, Your Honor.

13 MS. WHITE: Thank you, Your Honor.

14 (Whereupon, Applicant's Exhibit No. 2 was received into
15 evidence at this time.)

16 Q Now, Mr. Rosenberg, you execute these or you fill in
17 these documents, would -- when you execute these documents,
18 would both of you be in the evidence room that day?

19 A Possibly. Maybe not.

20 Q Very good. I would like -- I'd like to show you the
21 attendance calendar and some chain of custody documents that
22 we'll mark as Applicant's 3.

23 MS. WHITE: Your Honor, I just want to ask for a little
24 bit of clarification if I could on the, the last question
25 and answer. I believe Mr. Wilkes asked when you complete

Robert Rosenberg - Direct examination
By Mr. Wilkes

1 these documents. One is gonna be an evidence custodian and
2 one is a notary, and I think it needs to be defined as to
3 when he's asking if the documents are completed, if both are
4 there, a little clarification as to whether or not he's
5 discussing the person who received the evidence or the
6 notary in that situation.

7 MR. WILKES: Your Honor, may I respond?

8 THE COURT: Sure.

9 MR. WILKES: Can she ask that on cross-examination and
10 let me just---

11 THE COURT: I'll allow -- I think that's proper
12 cross-examination. I'll allow you to go into that at that
13 time.

14 MS. WHITE: Thank you, sir.

15 MR. WILKES: Thank you judge.

16 (Whereupon, the documents were marked as Applicant's
17 Exhibit No. 3 for identification purposes only at this
18 time.)

19 Q I ask you to look at what's marked as Applicant's 3.

20 Do you recognize that as your attendance calendar for
21 the Year of 2004?

22 A Yes, sir.

23 Q And Mrs. Millwood's as well right behind it?

24 A Yes, sir.

25 Q Now, would you agree with me that the documents that

Robert Rosenberg - Direct examination
By Mr. Wilkes

1 follow would be chain of custody documents?

2 A Yes, sir.

3 Q And each of those documents has you as either a
4 signatory, as the recipient of the evidence, or as a notary?

5 A Yes, sir.

6 Q And Mrs. Millwood in the other role?

7 A Yes, sir.

8 Q And if you would like to take a minute to look at it,
9 but I would like for you to tell me are those documents or
10 following the attendance calendars---

11 A Yes.

12 Q ---those documents that you got---

13 A That represents Jane Millwood's signature. I notarized
14 it. It does represent Jane Millwood's signature.

15 Q And those are on dates where either one of you, at
16 least one of you was not working?

17 A Yes.

18 Q So, it is true that it is, it was not necessary for
19 both of you to be there for one of you to submit a document
20 in the chain of custody with both signatures?

21 A That's true.

22 Q Okay. Now---

23 A But the law doesn't require notarization.

24 Q Well, who told you that?

25 who told you that and when did they tell you?

Robert Rosenberg - Direct examination
By Mr. Wilkes

1 A That's what I've always -- around a week ago.

2 Q Okay. Who told you that?

3 A A SLED, a SLED agent.

4 Q And were you talking to the SLED agent to prepare for
5 your testimony?

6 A No, sir.

7 Q How did it come up with the SLED agent?

8 A What they did is conducted -- when I was subpoenaed for
9 this there was a concern about it and they wanted to be
10 examined by SLED, make sure if any violation of the law has
11 occurred.

12 Q All right. As a notary public, what does the notary
13 public, when you sign a chain of custody and notarize
14 something, what does a notary represent to you?

15 Are you a notary?

16 A Yes, sir.

17 Q Current notary?

18 A Yes, sir.

19 Q And you were current at the time that you notarized
20 those documents---

21 A Yes, sir.

22 Q ---or that they were submitted?

23 What does the -- does the notary not require that you
24 be present or the person be present and sign before you?

25 A Yes, and she was.

Robert Rosenberg - Direct examination
By Mr. Wilkes

1 Q How could she be present if she wasn't there that day
2 or you weren't there?

3 A Like I explained, the -- we took a form, a blank form
4 and I would observe her signing her name and I'd notarize
5 it. We'd make a copy of that. No pertinent information
6 about the, the client. I mean --.

7 Q Okay. I understand. Let me ask this question.

8 A Yes.

9 Q You say that because -- and, and this went on for
10 years, didn't it?

11 A Yes, sir.

12 Q Okay. So, this document -- all of these documents
13 could be off of the same form or---

14 A No.

15 Q ---or one of two forms, right, hers and yours?

16 A All documents, B or C, for years be off -- yes, sir.

17 Q A pile of yours and a pile of hers.

18 So, you're, you're saying that you, at some point maybe
19 in 2003 or whenever, she signed it, you signed the notary,
20 and it was blank---

21 A I would do it every year.

22 Q Every year.

23 So, for a year you'd use the same form. So, you -- the
24 form was not completed as the information relevant to the
25 chain of custody when you both signed it?

Robert Rosenberg - Direct examination
By Mr. Wilkes

1 A No.

2 Q Okay. All right. Now, you, your understanding of the
3 form is that it is a Rule 6 form. It says that on it,
4 correct?

5 I mean look at the top of it and tell me what it says.

6 A Yes, sir.

7 Q And it says -- well, this was -- you agree that this
8 was not certified or sworn to at the time that the form was
9 completed?

10 A It's completed?

11 Q At the time---

12 A Yes.

13 Q ---it was filled in---

14 A It was a proper representation.

15 Q Was it sworn to and signed at the time the information
16 was put on it as to the chain of custody?

17 A It was sworn and signed as a proper chain, yes, sir.

18 Q A year before?

19 A Not a year -- what do you mean a year before?

20 Q You would sign and swear or whatever you did on a blank
21 form.

22 A Yes, sir.

23 Q And then use that for a whole year?

24 A Yes, sir.

25 Q Okay. You agree that you would use that form even

Robert Rosenberg - Direct examination
By Mr. Wilkes

1 though both of you weren't present on that day?

2 A We were -- only two of us were in the evidence
3 department, yes, sir.

4 Q I understand that.

5 But you, you agree with me that you would use those
6 forms even if the other person was not present?

7 A Yes, sir, I would use my forms.

8 Q Okay. Now, at the time or shortly before this were you
9 on probation with the Sheriff's Department?

10 A At the time, in 2004?

11 Q In 2004, had you been placed on probation for something
12 to do with the distribution of, of money from the evidence
13 room, the way it was distributed?

14 A No.

15 Q Let, let me show you an exhibit.

16 A I've only been on probation I think once or twice and
17 it has nothing to do with money.

18 MR. WILKES: May I approach, Your Honor?

19 THE COURT: Yes, you may.

20 MR. WILKES: If I can mark this as 4 for identification
21 please.

22 (Whereupon, a document was marked as Applicant's
23 Exhibit No. 4 for identification purposes only at this
24 time.)

25 Q I'm gonna show you a document, I'm gonna show you a

Robert Rosenberg - Direct examination
By Mr. Wilkes

1 document marked for identification only as Exhibit 4.

2 Can you take a look at, there's two pages, and see if
3 that refreshes your, your memory?

4 A It wasn't in reference to money.

5 Q I'm sorry then. I didn't mean to misstate it.

6 What, what would that---

7 A Officer Foster is incorrect on that. I was charged, I
8 mean not charged, but I was accused of being disrespectful
9 to a supervisor.

10 Q Okay. Well, you, you put on -- but probation?

11 A Probation, yes, sir. But it didn't have anything to do
12 with money.

13 Q Okay. That's just what the document said. That's the
14 reason I said that.

15 A Yes, sir.

16 Q Okay. We'll give that back to the clerk.

17 But you---

18 A Okay.

19 Q Do you recall being placed on---

20 A Probation, yes, sir.

21 Q ---probation---

22 A Yes, sir.

23 Q ---for a period of time in 2004 for something occurring
24 in the evidence room in the course of your duties?

25 A Do what, sir?

Robert Rosenberg - Direct examination
By Mr. Wilkes

1 Q Something happening in the evidence room?

2 A Yes, sir.

3 MR. WILKES: Okay. Now, if I can have one second, Your
4 Honor?

5 THE COURT: Yes, sir.

6 (Pause.)

7 Q Mr. Rosenberg, thank you. The attorney general has
8 some questions.

9 A Okay.

10 THE COURT: Ms. White, your witness.

11 MS. WHITE: Thank you, Your Honor.

12 CROSS-EXAMINATION

13 BY MS. WHITE:

14 Q I want to start off with what I believe Mr. Wilkes has
15 up there as the Applicant's Exhibit 1, which is a packet of
16 forms specifically relating to Bobbie Gibson's case.

17 A Yes, sir. Yes, ma'am.

18 Q That's all right.

19 A Excuse me.

20 Q Can you tell me if you ever were involved in the intake
21 of evidence in Mr. Gibson's case?

22 A No, ma'am.

23 Q And, in fact, your signature is on that in the form of
24 a notary, is that correct?

25 A Yes, ma'am.

Robert Rosenberg - Cross-examination
By Ms. White

1 Q Okay. So, you were not directly involved with any of
2 the drug evidence that was received from Mr. Gibson during
3 this case?

4 A No, ma'am.

5 Q Okay. In the situations where you have intake forms
6 that are an, in Exhibit 2 that Mr. Wilkes has presented, and
7 you have signed those as the officer, I guess the intake
8 officer or the evidence officer in charge of the evidence in
9 that situation, were you present on the day that you took
10 that evidence in?

11 If there is a form with your signature on it as the
12 evidence intake officer, would you have been present on that
13 day?

14 A On October 1st, yes, I would of been present.

15 Q Okay. And I'll just go with you over your attendance
16 calendar that he's put up into evidence I believe. He's got
17 several forms listed beneath there. I think first in my
18 packet is August 12th of 2004.

19 Do you see that or --?

20 A I, I have August 16th.

21 Q Okay. Is that one where you have signed as the
22 evidence intake officer or as a notary?

23 A As a notary.

24 Q Okay. I want to -- may I approach, Your Honor?

25 THE COURT: You may.

Robert Rosenberg - Cross-examination
By Ms. White

1 Q I want to get, get you to the place where your
2 signature is as the -- he's got -- we've got them all as
3 Jane's intake signatures and then we've got Robert's intake
4 signatures.

5 Okay. And that's -- if you'll compare for me your
6 attendance calendar.

7 Were you present on the day of August 12th, 2004?

8 A Yes, I was.

9 Q And that form that is, we're looking at involves a
10 case, I guess the best way to acknowledge it, a control
11 number at the top, S0007414?

12 A Yes, ma'am.

13 Q Okay. Now, there's another form beneath that,
14 August 13th, 2004, where some drugs were received from
15 Officer Glen.

16 You signed as the evidence custodian?

17 A Yes.

18 Q Were you present that day?

19 A Yes, ma'am.

20 Q And you were at work in the evidence room?

21 A Yes, ma'am.

22 Q And did you, in fact, receive the drugs and process
23 them in person that day?

24 A Yes, ma'am.

25 Q Okay. August 9th of 2004 is the next page?

Robert Rosenberg - Cross-examination
By Ms. White

1 A Uh-huh. (Affirmative).

2 Q And were you present that day when you received the
3 drugs and processed them?

4 A Yes, ma'am.

5 Q And, in fact, as you go through the rest of these,
6 August 9th, 11th, 13th, are the following dates, 9th,
7 11th, and 13th are the, the rest of the forms.

8 Were you present on those days---

9 A Yes, ma'am.

10 Q ---at work?

11 And were you processing evidence in the evidence room
12 in person?

13 A Yes, ma'am.

14 Q -- Okay. And you said that you would keep the forms in a
15 secure area where no one could access that.

16 Can you explain a little more about that?

17 A We have a, our evidence room is secure. It's like --
18 the public's not allowed. The officers are not allowed in.
19 They have the -- we bring them in and they can sign in by a
20 book that meets CALEA standards, and we have to stay with
21 them and --.

22 Q And who had keys to the evidence room?

23 A At that time probably Officer Millwood, myself. I
24 don't know who the captain would of been. It would have
25 been the captain of the detective's division, technically

Robert Rosenberg - Cross-examination
By Ms. White

1 he's over us, and the sheriff.

2 Q Okay. Now, you testified that the forms were filled in
3 partially when they had been signed and notarized, is that
4 right?

5 A Yes, ma'am.

6 Q What additional information would be filled in on days
7 when you would receive evidence?

8 A The day I would receive evidence would be the pertinent
9 information about the case itself. An example would be this
10 one right here on this exhibit. I entered it -- as the
11 B.E.S.T. Bag came in I would enter the B.E.S.T. Bag number,
12 what date it came in, what officer obtained the B.E.S.T.
13 Bag, and, like I said, it lists the B.E.S.T. Bag as what we
14 received and on what date I received it.

15 Q And, in fact, in most of these that information is
16 handwritten, is that correct?

17 A Yes, ma'am.

18 Q And is that in your handwriting?

19 A Yes, ma'am.

20 Q Okay. Now, just to touch on this probation that
21 Mr. Wilkes has raised. I want to clarify.

22 You, you testified that it was involving disrespect
23 with a supervisor?

24 A Yes, ma'am.

25 Q Okay. So, that, that supervisor -- that temporary

Robert Rosenberg - Cross-examination
By Ms. White

1 probation had nothing to do with how you handled evidence in
2 the evidence room?

3 A No, ma'am.

4 MS. WHITE: Okay. That's all the questions I have at
5 this time, Your Honor.

6 THE COURT: Any other questions for this witness, Mr.
7 Wilkes?

8 MR. WILKES: Just a few if I may.

9 THE COURT: Yes, sir.

10 MR. WILKES: Thank you, Your Honor.

11 REDIRECT EXAMINATION

12 BY MR. WILKES:

13 Q Now, when you say you kept these forms in a secured
14 place, there's two stacks of forms?

15 A They're in my desk.

16 Q They're in your desk?

17 A Mine is.

18 Q Okay.

19 A Mine are.

20 Q where, where was Mrs. Millwood's?

21 A I believe in her desk.

22 Q Okay. And those desks are?

23 A In the evidence room.

24 Q Okay. Is it locked?

25 A Not open to the public.

Robert Rosenberg - Redirect examination
By Mr. Wilkes

1 Q Are they locked?

2 A The desk?

3 Q Yes.

4 A Sometimes. Not all the time.

5 Q Not all the time.

6 If I could ask you -- if I give you a highlighter, can
7 you highlight for me on Mr. Gibson's form, which I believe
8 is No. 1, Applicant's 1, can you highlight on that chain
9 document the signatures and the information that was already
10 on it before that day?

11 Can you do that for me?

12 A I mean this is Officer Millwood's.

13 Q Okay.

14 A I mean I can. I suppose.

15 Q Are you familiar with it?

16 A Oh, yes.

17 Q Okay. Put -- how about the portion that you're aware
18 of?

19 THE COURT: Now, Mr. Wilkes, my understanding is that
20 the person who would probably have filled that in was
21 Mrs. Millwood.

22 MR. WILKES: That's correct, Your Honor. Let me
23 follow-up with a relevant question.

24 THE COURT: All right.

25 Q Mr. Rosenberg---

Robert Rosenberg - Redirect examination
By Mr. Wilkes

1 THE COURT: So, you're gonna have to establish the
2 basis that he participated in the filling out of them
3 cause---

4 MR. WILKES: You're correct.

5 THE COURT: ---you've created the inference that---

6 MR. WILKES: That, that is my case.

7 THE COURT: Okay.

8 Q You don't have any idea of, of what's on that document,
9 do you?

10 You're not familiar with that document, Mr. Gibson's in
11 particular?

12 A Not his personal information. I'm familiar with the
13 document, the document.

14 Q All right. So, you're telling me that I really
15 couldn't have you highlight any of it because you, you can't
16 say what was on it that day?

17 A I can say my signature was on there and Jane Millwood's
18 signature.

19 Q Highlight that for me then.

20 THE COURT: All right.

21 Q And just do that on each of those documents that you
22 see.

23 A Do I need to highlight her signature?

24 Q If you know that it was already on there you can.

25 A (Witness complies.)

Robert Rosenberg - Redirect examination
By Mr. Wilkes

1 Q Done with that?

2 A (Witness nods affirmatively.)

3 Q Thank you.

4 Now, you have not highlighted that portion involving
5 Mr. Gibson's information---

6 A No, sir.

7 Q ---cause you have no way of knowing anything about
8 that?

9 A No, sir.

10 Q And yet your notary is on that page?

11 A Yes, sir.

12 Q Now, when you say you were present on October 1st,
13 are each of you confined to that room all day long?

14 A No, sir.

15 Q So, is it possible that each of you may enter and exit
16 that room as necessary throughout the day?

17 A Yes, sir.

18 MR. WILKES: That's all I have of this witness, Your
19 Honor.

20 THE COURT: Any recross?

21 MS. WHITE: Nothing, Your Honor.

22 THE COURT: You may step down, sir. Again will caution
23 you not to discuss your testimony with anyone.

24 WITNESS: Yes, sir.

25 THE COURT: Thank you.

Jane Millwood - Direct examination
By Mr. Wilkes

1 You may call your next witness, Mr. Wilkes.

2 MR. WILKES: Thank you, Your Honor.

3 We would call Mrs. Jane Millwood at this time.

4 THE COURT: Yes, he should leave the courtroom.

5 (Pause.)

6 THE COURT: All right. Now, Mr. Wilkes, call your next
7 witness.

8 MR. WILKES: Thank you, Your Honor.

9 We'll call Mrs. Jane Millwood.

10 THE COURT: All right. The bailiff will get her.

11 Mrs. Millwood, come forward please. Right over here to
12 my left to be sworn.

13 JANE MILLWOOD, having been first duly
14 sworn, testified as follows:

15 THE COURT: Have a seat please. And, ma'am, once
16 you're seated, state your name.

17 WITNESS: Jane Millwood.

18 THE COURT: All right. Mr. Wilkes, your witness.

19 MR. WILKES: Thank you, Your Honor.

20 THE COURT: Yes, sir.

21 DIRECT EXAMINATION

22 BY MR. WILKES:

23 Q Mrs. Mill, Millwood, where do you work?

24 A I'm not employed. I'm just a homemaker.

25 Q Were you employed with the Spartanburg County Sheriff's

Jane Millwood - Direct examination
By Mr. Wilkes

1 Office in 2004?

2 A Yes, sir, I was.

3 Q What was your capacity there?

4 A Evidence officer.

5 Q And as the evidence officer what did you do?

6 A Well, we picked up drugs and evidence from the drop
7 box, what we called a drop box, which is, primarily was a
8 mailbox that was converted to make it into a drop box, and
9 also I, excuse me, I picked up evidence, whether it be drugs
10 or whatever, from a little cabinet that was in the I.D.
11 Division at that time.

12 Q That would be when it comes back from forensics?

13 A No, this was like in the mornings when or during the
14 night when officers would bring evidence in --

15 Q Uh-huh. (Affirmative).

16 A -- they would leave it in there, and, and then I would
17 or either Officer Rosenberg would go in there in the
18 mornings and pick it up, take it back to our office, log it
19 into the computer, do the paperwork, whatever, and then
20 place it wherever it needed to be, whether it be---

21 Q Okay.

22 A ---drugs or other evidence.

23 Q Okay. Now, when you would pick up items from the drop
24 box, would there be more than one item in the drop box at
25 times?

Jane Millwood - Direct examination
By Mr. Wilkes

1 A Oh yes.

2 Q What is the purpose of filling out the paperwork when
3 you pick those items up and log them in?

4 A Well, it's to show who picked it up and who put it in
5 there, and then it may show -- it just shows the contents of
6 the bag or whatever it was in.

7 Q And would you agree that this is to keep all of the
8 evidence that you pick up from getting mixed up?

9 A Yes, sir.

10 Q Now, when you -- part of the paperwork that you fill
11 out or I guess the essential paperwork you fill out would be
12 the Form C, is that correct?

13 A As well as I can recollect. It's been four years
14 now---

15 Q Yes, ma'am.

16 A ---and---

17 Q Will you take a look at the thing, the pile of
18 documents on your right?

19 I believe that says Applicant's Exhibit No. 1.

20 Do you recognize those?

21 A Okay. Bryan Duncan brought it in and dropped the
22 container into the drop box, and then I would have picked it
23 up by the Form C.

24 Q Right.

25 A And then I just -- well, most of the time I typed mine

Jane Millwood - Direct examination
By Mr. Wilkes

1 and I typed it up. He dropped it and I didn't -- he dropped
2 it in 9/30 and I picked it up on October the 1st of '04, and
3 it was one sealed B.E.S.T. Bag, and on October, October the
4 1st I put it in the drug vault---

5 Q Uh-huh. (Affirmative).

6 A ---that we have.

7 Q And when you put it in the drug vault, when it passes
8 through your hands, the paperwork, the Form C that you fill
9 out goes with it, correct?

10 A Yes, sir.

11 Q All right. And if -- the Form C ensures the identity
12 of what you're transferring from the one box to the other
13 box?

14 A Well, when -- this is a sealed B.E.S.T. Bag. See when
15 these officers like---

16 Q Well, I understand.

17 A ---Bryan---

18 Q Let me ask that question again cause I'm asking, I'm
19 trying to ask a specific question, and if you need to
20 explain you, you can.

21 The paperwork is intended to go with the evidence from
22 one place to the other?

23 A Yes, sir.

24 Q And it identifies that evidence---

25 A Yes, sir.

Jane Millwood - Direct examination
By Mr. Wilkes

1 Q ---correct?

2 All right. Now, are there -- do you see your name on
3 three different Form C's in Exhibit 1?

4 The -- there's, there's three Form C's. There's a lot
5 of other papers too. But if you'll look for the Form C's.

6 A Yes, sir.

7 Q Now, how many Form C's do you believe you might deal
8 with in the course of a day, just a typical day?

9 A Well, okay. I'm gonna say on a typical day it might of
10 been ten to fifteen.

11 Q All right. Okay. And there could be higher days,
12 lower days, but---

13 A Yes, sir.

14 Q ---but over the course of a week or a month or extended
15 to a year it would be a whole lot?

16 A Yes, sir.

17 Q Would it be possible for you to remember any particular
18 evidence one from the other?

19 Could you distinguish one from the other six months
20 late without your paperwork?

21 A No, sir.

22 Q Okay. Would your paperwork then be critical to your
23 testimony if you testified at trial to identify something?

24 A Yes, sir, cause I can't, if I don't have paperwork, I,
25 I don't know what I'm testifying to.

Jane Millwood - Direct examination
By Mr. Wilkes

1 Q Okay. Now, tell me the, the, the procedure that y'all
2 had at the time, as I understand it, was that Mr. Rosenberg
3 had a set of forms photocopied, and you had a set of forms
4 photocopied?

5 A Yes, sir.

6 Q Okay. And those forms, y'all might do those once a
7 year and make a new form and have a stack?

8 A Well, not really. A little bit more than once a year,
9 you know, cause we didn't have that much room in our files
10 to---

11 Q But you, you would make a big stack photocopies?

12 A Yes, sir.

13 Q Okay. Those photocopies, tell, tell me what you would
14 put on those photocopies.

15 A Well, you couldn't put a whole lot if you were just --
16 it was just basically where you might -- it would just have
17 the, the notary stamp---

18 Q Uh-huh. (Affirmative).

19 A ---on it. But I meant, you know, no date filled in or
20 anything.

21 Q Right.

22 Are you saying that the notary, that the, that each
23 stack of photocopies would contain a signature of both you
24 and Mr. Rosenberg either as notary or recipient?

25 A Yes, sir, we did it for each other.

Jane Millwood - Direct examination
By Mr. Wilkes

1 Q Okay. Now, there were days when you might not be
2 present or he might not be present.

3 Is it possible that on a day that say Mr. Rosenberg was
4 not present that you would use one of the forms with his
5 notary already on it?

6 A Yes, sir.

7 Q Okay. Now, let me ask you this. Are there times
8 during the day when you would leave the evidence room for
9 any reason?

10 A Yes, sir, when I would go to the restroom or I went to
11 lunch, but I still locked it.

12 Q Uh-huh. (Affirmative).

13 A The door was locked---

14 Q Right.

15 A ---and it had an alarm on it.

16 Q Right.

17 And only you and Mr. Rosenberg and maybe a higher
18 officer would have access, correct?

19 Definitely you and Mr. Rosenberg?

20 A Yes, sir.

21 Q Okay.

22 A Cause I really -- I'll, I'll have to testify to the
23 fact I honestly don't know if the major could get in back
24 there.

25 Q Okay. Now, there's nothing keeping you, if, if Mr.

Jane Millwood - Direct examination
By Mr. Wilkes

1 Rosenberg had to go somewhere or you had to go somewhere and
2 you're receiving evidence, there would be nothing to prevent
3 the use of the form during that time, is there?

4 In other words, during any particular day if you---

5 A You mean someone else coming in?

6 Q No, no, no, I'm sorry. Let me, let me try again.

7 Let's say during an average day or any day Mr.

8 Rosenberg asked to, to go somewhere. He goes to lunch. He
9 goes to the bathroom. He goes on a mission for the sheriff
10 or whatever.

11 A Right.

12 Q If you're there, just like any other day that he might
13 be gone, is it possible that you would use one of your forms
14 and process all that evidence as usual?

15 A Yeah, if, if it's my day to collect it then I processed
16 it.

17 Q Okay. And he would go about his business and you're
18 doing your processing?

19 A Uh-huh. (Affirmative).

20 MR. WILKES: Okay. If I can have just one second,
21 judge.

22 THE COURT: Yes, sir.

23 MR. WILKES: Thank you.

24 (Pause.)

25 Q If I can, can you please look at Exhibit No. 2, which I

Jane Millwood - Direct examination
By Mr. Wilkes

1 think is the smaller -- yes, ma'am, that one there without
2 the big clip. Just the one on top. Yes, ma'am.

3 Does that, does that say Exhibit 2?

4 Let me see.

5 If I may approach, Your Honor?

6 THE COURT: You may.

7 MR. WILKES: Thank you.

8 Q I'm sorry. They had been separated. It's No. 3.

9 will you take a look at that document I laid down on
10 the left there, Applicant's No. 3, and tell me if you
11 recognize that to be your calendar from 2004, attendance
12 calendar. Yours may be the first or second sheet. I'm not
13 sure which one. I think it says it on the top.

14 A I guess it's showing, you know, when I was off taking
15 vacation or---

16 Q Right.

17 A I mean that's all I can testify to.

18 Q Okay. Well, if I, I told you that the major gave us
19 that, you, you wouldn't dispute that that would be your
20 calendar?

21 A No, sir.

22 Q If you'll look in the back. There's some Form C's in
23 the back.

24 will you take a look at those briefly and see if you
25 can identify each of those as having your signature in one

Jane Millwood - Direct examination
By Mr. Wilkes

1 place or another?

2 A Oh, I dropped it.

3 Q Oh, that's okay. You want me to get -- I'll get it for
4 you.

5 A Yeah, they's several pages with my Form C's, and then
6 it starts with Robert.

7 Q Yes, ma'am.

8 Mrs. Millwood, if you -- would you, without having to
9 go through each one, would you agree that those documents,
10 some of those with your signatures on them as notary public,
11 would be from days that you were on vacation or holidays and
12 not present at the Sheriff's Office?

13 A Probably so.

14 Q Okay. Now, just when I asked you you indicated that
15 there was a whole lot of these things that you deal with in,
16 in a week or a month overtime, that the volume is very big.

17 A It was when, before I retired.

18 Q Yes, ma'am.

19 Will you look at the middle one, the big pack there,
20 and just kind of flip through that.

21 Over approximately a month or so, does that indicate
22 kind of the volume that you would have to deal with in
23 filling out these Form C's?

24 A Well, now, this looks like it's running from not a
25 months time cause it's, some of it's June.

Jane Millwood - Direct examination
By Mr. Wilkes

1 Q Uh-huh. (Affirmative).

2 A Some of it's in---

3 Q A couple, a couple of months.

4 whatever dates are on there, a couple of months or so?

5 A Uh-huh. (Affirmative).

6 Q But those, those are the forms, same forms that y'all
7 photocopied that y'all used?

8 A Yes, sir.

9 Q Okay. And that would be representative of a pretty
10 short period of time, a few months time?

11 A Uh-huh. (Affirmative).

12 Q You deal with a lot of things?

13 A Yes, sir.

14 MR. WILKES: Your Honor, at this time I would like to
15 introduce the Exhibit -- those exhibits up here that I have
16 not offered, already had introduced. I think one or two
17 might be still for identification, 1 through 3, whichever
18 has not been, those documents.

19 THE COURT: Any objection?

20 MS. WHITE: Just same objections to 2 and 3 involving
21 relevance, Your Honor.

22 THE COURT: All right. I'll allow them in.

23 MR. WILKES: Thank you, Your Honor.

24 (Whereupon, Applicant's Exhibit Nos. 3 and 4 were
25 received into evidence at this time.)

Jane Millwood - Cross-examination
By Ms. White

1 Q Thank you, Mrs. Millwood. The attorney general will
2 have some questions.

3 CROSS-EXAMINATION

4 BY MS. WHITE:

5 Q Mrs. Millwood, I want to start off with a couple of
6 things. One of the first things you talked with, with
7 Mr. Wilkes was about picking up evidence from a, from a drop
8 box.

9 A Uh-huh. (Affirmative).

10 Q Where was the drop box located in relation to I guess
11 maybe where you worked or where the Sheriff's Office was?

12 A As well as I can remember, I -- in the, what we
13 referred to as the squad room.

14 Q Okay. So, this wasn't -- you mentioned it was
15 essentially a former mailbox.

16 A Yeah.

17 Q This wasn't out on the side of the road somewhere?

18 A Oh, no, no, no, no.

19 Q Okay.

20 A No, it was just something they had converted and made
21 for us cause once you drop that package in there---

22 Q Uh-huh. (Affirmative).

23 A ---no one except someone that had a key could get it
24 out.

25 Q And who had keys to the lock, the drop box at that time

Jane Millwood - Cross-examination
By Ms. White

1 in 2004?

2 A Myself and Officer Rosenberg.

3 Q Okay. Now, same question about the cabinet. You said
4 there was a cabinet maybe in the I.D. Division that you
5 got---

6 A Uh-huh. (Affirmative).

7 Q ---evidence from.

8 How was that secured in that location?

9 A It -- we had the key to that too.

10 Q Okay. And when you say we, that's you and Mr.
11 Rosenberg?

12 A Yes, sir.

13 Q Okay.

14 A Yes, ma'am.

15 Q Now, when you picked up evidence from there, you've
16 testified and we've gone through testimony that there were
17 forms that were pre-signed by you and pre-notarized by Mr.
18 Rosenberg.

19 A Yes.

20 Q What other information would you complete on those
21 forms when you processed the evidence?

22 A Well -- okay. Just say, for instance, on a B.E.S.T.
23 Bag, what we referred to that would have like crack cocaine
24 or whatever, and the narcotic officer would put that down in
25 a plastic bag that had a control number on it, which is at

Jane Millwood - Cross-examination
By Ms. White

1 the top of the page. And, so, when he brought it in, we
2 didn't have our hands on the actual drug, you know, or rocks
3 or whatever. We didn't have our hands on them cause they
4 were in this plastic bag, and then that bag went down into
5 like a manila colored folder, and it had information on the
6 front of what was inside. Plus it had that same control
7 number on it.

8 And, so, when I picked it up, then I had to match this
9 control number up with what this officer had written, put my
10 Form C in there, but still I did not open that plastic bag.
11 That was a seal -- that's why I signed for like a sealed
12 B.E.S.T. Bag.

13 Q Okay.

14 A And then -- so, I filled in the, the date that I picked
15 it up and the, also the date that I would put it in our drug
16 vault, and the only time it was -- when it was moved from
17 there was when the technician would come and want to pick up
18 the drugs to test them.

19 Q Okay. Now, on these, on the drugs, I know you talked
20 with Mr. Wilkes about using the Form C and how the Form C
21 would go with the drugs and that helped you identify it.

22 A Uh-huh. (Affirmative).

23 Q Were there other ways that the drugs were identified
24 other than just your form that you could kind of link up
25 together?

Jane Millwood - Cross-examination
By Ms. White

1 I know you just testified as to the control number.

2 A Other than -- nothing -- you know, everything was
3 sealed in that plastic bag. I made a label and put on mine
4 and I typed it in and -- because I actually did more typing
5 than I did anything. Robert wrote his labels and put on
6 this glass bag.

7 Q when you say glass bag, you mean the bag -- is that the
8 B.E.S.T. Bag you're talking about?

9 A B.E.S.T. Bag.

10 Q Okay.

11 A I'm, I'm sorry.

12 Q No, that's fine. I just wanted to make sure we're---

13 A But other than that, and then putting all the
14 paperwork, every piece of paperwork I filled out or Robert
15 filled out, I'm sorry, Officer Rosenberg, we slid down in
16 that outer bag that I said looked like a manila folder.

17 Q Okay.

18 A Now, also on it would be information that a narcotic
19 officer would write. Now, I didn't have to write on the
20 outside of this bag. Only the narcotic officer that picked
21 it up did.

22 Q Okay.

23 A But that -- he got the control number there, and it
24 matched the little, the B.E.S.T. Bag on the inside. These
25 bags came like this and I don't know where the bags came

Jane Millwood - Cross-examination
By Ms. White

1 from. I don't have any idea.

2 Q Okay.

3 A Unless they came from Columbia or, you know, prior to
4 us getting them.

5 Q Okay. So, once you processed the evidence, did you
6 process the evidence at the same time as you completed the
7 form, the Form C that we're discussing?

8 A Yeah.

9 Q Was that done at a different time?

10 A All of your -- all of this paperwork and everything
11 that you were doing to it had to be processed all at one
12 time. You didn't walk off and leave it. You had to do it
13 at one time, and, and I'm almost sure, as good as I can
14 remember, Robert did his basically the same way I did. We
15 processed, processed our drug -- anything we picked up in
16 the drug line we processed that first and got it out of the
17 office, and then we did our other evidence that we had
18 picked up.

19 Q Okay. And the same thing, you said you processed the
20 evidence at the same time you filled in the form. You
21 mentioned a label that you put on the B.E.S.T. Bag.

22 When was that done?

23 A When I finished, you know, looking at it and seeing
24 that everything was right. You had to kindly watch to see
25 that an officer that picked it up, that all his information

Jane Millwood - Cross-examination
By Ms. White

1 was on, on there right and also you had to look and see if
2 it, the little seal that was on this glass bag or some of
3 them called it a glassen, I called it a B.E.S.T. Bag, if a
4 seal was broken, we got on the phone right then and called
5 that officer and told him to come and pick it up cause we
6 could not handle it. We could not, you know, we didn't have
7 anything to do with it at all.

8 Q So, you wouldn't process evidence that appeared to have
9 been tampered with?

10 A No, sir.

11 Q Okay. I want to just kind of touch base with you on or
12 talk with you a little bit about the Applicant's Exhibit 3,
13 which is the attendance calendar that Mr.---

14 A -- Uh-huh. --(Affirmative).

15 Q ---Wilkes went over with you.

16 A Uh-huh. (Affirmative).

17 Q Now, they're groups of forms in there where you're the
18 signature and Robert's the, the notary.

19 A Uh-huh. (Affirmative).

20 Q And then times when Robert's the signatory and you're
21 the notary.

22 A Uh-huh. (Affirmative).

23 Q If you can, take a look at your attendance calendar for
24 me, and I don't know if that's the first one.

25 A That's Robert's. Let's see. Okay.

Jane Millwood - Cross-examination
By Ms. White

1 Q All right. And I'm just gonna read you a few dates
2 that are the forms that followed, and, if you could, these
3 are forms that are in that packet that you have signed as
4 the evidence technician. If you'll just tell if you were
5 working that day in the evidence room on October 16th, I
6 mean, excuse me, August 16th.

7 A Yes.

8 Q Okay. August 18th?

9 A Yes.

10 Q How about August 26th?

11 A Yes.

12 Q August 25th?

13 A Yes.

14 Q The 23rd of August?

15 A Yes.

16 Q The 24th of August?

17 A Yes.

18 Q The 20th of August?

19 A Yes.

20 Q And the 19th of August?

21 A Yes.

22 Q So, did you ever complete any forms to go along with
23 the evidence perhaps after a day of vacation you'd actually
24 come back and Robert had taken the evidence in and you
25 actually---

Jane Millwood - Cross-examination
By Ms. White

1 MR. WILKES: I object. That's a leading question.

2 MS. WHITE: I'm on cross-examination, Your Honor.

3 THE COURT: She's on cross-examination. I'll allow her
4 to ask it.

5 Q Would there ever be any days when you would come in and
6 Robert would of taken evidence in and then you, the next
7 day, came in and filled the form in with your signature as
8 the person that received the evidence?

9 A Okay. Maybe I'm not -- are you saying he got the
10 evidence out of the lockers and the drop box?

11 Q So maybe on a Monday you were on vacation.

12 A Uh-huh. (Affirmative).

13 Q Robert came in, got the evidence, but you came in on
14 Tuesday, filled in the form---

15 MR. WILKES: I---

16 Q ---and processed it.

17 MR. WILKES: Your Honor, I object. Cross or not cross,
18 that's not a question. That's a narrative.

19 THE COURT: Well, she never finished. So, I'm gonna
20 allow her to finish her statement.

21 MS. WHITE: I'm trying to clarify for her the way I was
22 trying to ask the question.

23 Q Would there ever be anytime when you would fill in
24 these forms when you were not the one who received the
25 evidence from the drop box or the cabinet as the evidence

Jane Millwood - Cross-examination
By Ms. White

1 custodian?

2 A Excuse me. If, if I'm understanding it, I, I would not
3 fill out anything if, if I didn't pick it up, you know. I
4 mean I, I feel like my writing, and as I say, I typed just
5 about everything I did in there cause we got so tired of
6 writing, you know. I just -- my hand wouldn't hold out to
7 it.

8 Q All right. And in regards to that, you said your hand,
9 it was just, it was just tired and that's why you typed a
10 lot of information?

11 A Uh-huh. (Affirmative).

12 But are you asking me would I finish a job like maybe I
13 just left it on Monday and came back and finished it on
14 Tuesday?

15 Was that what---

16 Q No, I was asking if you would of ever signed a,
17 completed a form, one of these Form C's---

18 A Uh-huh. (Affirmative).

19 Q ---if you were not the person who had actually received
20 the evidence---

21 A No.

22 Q ---from the locker?

23 A No.

24 MS. WHITE: Okay. One moment please, Your Honor.

25 THE COURT: Yes, ma'am.

Jane Millwood - Cross-examination
By Ms. White

1 (Pause.)

2 Q All right. Now, I want to ask you just real quick
3 about Bobby's Gibson's case.

4 Do you recall testifying in this case?

5 A No, I don't.

6 Q And have you had a chance to review the transcript of
7 your testimony from the case?

8 A I looked over it some yesterday when I was here.

9 Q And did that help refresh your memory at all as to
10 the---

11 A No, to be honest it didn't.

12 Q And you've testified a lot of times in Court---

13 A Yes.

14 Q ---involving evidence, is that right?

15 A That's what I was fixing to say.

16 Q Yeah.

17 A I've testified so many times that it didn't -- one, one
18 name didn't stand out anymore than another one.

19 Q How many years did you work as an evidence custodian
20 for the Sheriff's Office?

21 A Thirteen and I, I was an officer for 25 years.

22 Q Okay. Now, when you testified in any case, Mr.
23 Gibson's or not, did you testify truthfully and honestly?

24 A Yes, I did.

25 Q And you testified as to your process and, and how you

Jane Millwood - Cross-examination
By Ms. White

1 handled or processed the drugs or any evidence as required?

2 A Yes, I did.

3 Q Okay. And, and just to follow-up, you said you
4 reviewed your testimony, you didn't remember it, but you did
5 note that you testified in Mr. Gibson's trial as to the
6 chain of custody?

7 A Yes.

8 Q Okay. Okay. In regards to these forms, just one final
9 question, the forms that were already filled out with the
10 signature, the notary, the stack of forms that were
11 photocopied, where did you keep those?

12 A Well, I kept them -- I don't remember. I had a file
13 cabinet behind me. But I believe mine was kept -- I think
14 we both -- now, here again, I'm having to think back. It's
15 been a lot, a lot's happened in four years. In a file right
16 here beside of us because most of our personal things stayed
17 right where we could have access to them. You know, no one
18 else could get to them and---

19 Q And this is in like a file cabinet or---

20 A Yeah.

21 Q ---or a drawer or something?

22 A On, on our desk. Our desk---

23 Q Uh-huh. (Affirmative).

24 A ---had drawers in them.

25 Q Okay. And did you keep yours together with Robert's?

Jane Millwood - Cross-examination
By Ms. White

1 A No, hu huh. (Negative).

2 Q Okay.

3 A He kept his. I kept mine.

4 MS. WHITE: Okay. That's all the questions I have at
5 this time, Your Honor.

6 THE COURT: Re, redirect.

7 MR. WILKES: I believe one, Your Honor.

8 THE COURT: Yes, sir.

9 REDIRECT EXAMINATION

10 BY MR. WILKES:

11 Q Mrs. Millwood, you had been asked a question and your,
12 your response was you, part of your filling out your
13 paperwork and your job was to make sure everything was right
14 if the officer put all the information on the documents that
15 you were receiving, correct?

16 A (Witness nods affirmatively.)

17 Q Will you look at Applicant's Exhibit No. 1 please.

18 It's the one on the far right of you. Yes, ma'am.

19 Will you flip through that and look at the Form B
20 that's got Demetric Glen's signature on it?

21 Do you see that?

22 A Maybe I need to go back a little bit. Okay. I see
23 Form B.

24 Q Is that the form that you received -- that's the
25 paperwork you're talking about as receiving it, and checking

Jane Millwood - Redirect examination
By Mr. Wilkes

1 it making sure it's right?

2 Is the Form B the form you were talking about in
3 general as far as checking?

4 It comes in with the evidence.

5 A Uh-huh. (Affirmative.)

6 And making sure it, it matches, you know, what he --.

7 Q Yes, ma'am.

8 And you do that by the control number?

9 A Yes, sir.

10 Q That form does not have a control number, does it?

11 A No, sir. Wait a minute. Let's see. No, sir, it
12 doesn't.

13 Q And the control number is the identifier for the
14 evidence coming in---

15 A Uh-huh. (Affirmative).

16 Q ---is that correct?

17 Thank you. No further questions.

18 MS. WHITE: Just one briefly, Your Honor.

19 THE COURT: Yes, ma'am.

20 RE CROSS EXAMINATION

21 BY MS. WHITE:

22 Q When you received the B.E.S.T. bags or the evidence
23 that you're talking about with these forms, is there any
24 identification on the actual bag or the evidence itself from
25 the officer?

Jane Millwood - Recross examination
By Ms. White

1 A Okay. The actual B.E.S.T. Bag is inside -- the
2 B.E.S.T. Bag is inside of a manila like envelope that has
3 the control number on both of them.

4 Q Okay. And do the officers initial anything on the
5 B.E.S.T. bags on the forms, I mean, excuse me, on the, the
6 manila envelopes or do you recall that or---

7 A No, I'm gonna have to say I can't remember.

8 Q Okay. All right. Thank you, Mrs. Millwood.

9 MR. WILKES: No further questions.

10 THE COURT: You may step down, ma'am.

11 Applicant may call its next witness.

12 MR. WILKES: Thank you, Your Honor.

13 MS. WHITE: Your Honor, does Mrs. Millwood need to go
14 back outside now at this point or---

15 THE COURT: It was your motion.

16 Do you wish for her to be sequestered outside?

17 MR. WILKES: It would -- well, we've got one --

18 Mr. Rosenberg's outside. So, I guess it would be more
19 appropriate.

20 THE COURT: Well, I can instruct her not to discuss her
21 testimony.

22 MR. WILKES: Well, that would be fine.

23 THE COURT: Ma'am, if you'll step outside. Do not
24 discuss your testimony with anyone while you're outside.

25 Thank you very much.