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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Edgefield County

Honorable Kristi F. Curtis, Circuit Court Judge

TIMOTHY W. WHEELER,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2025-001996

APPENDIX

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13 January 17 - 18, 2017
Edgefield, South Carolina

14 B E F O R E:

15 The Honorable Eugene C. Griffith, Jr., Judge; and a jury

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

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19 Douglas W. Fender, II, Assistant Solicitor
Attorneys for the State
20 Robert R. Thuss, Esquire
21 Attorney for the Defendant

24 Stacy S. Johnson, RPR
25 Circuit Court Reporter

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1 (Whereupon, the following proceedings were held
2 January 17, 2017, beginning at 11:02 AM.)

3 **THE COURT:** All right. Give me a thumbnail.

4 **MR. MAYE:** So on December the 22nd of 2015, officers
5 from the Edgefield County Sheriff's Office, SLED, Alcohol,
6 Tobacco and Firearms and other agencies, executed a search
7 warrant here in Edgefield County. At the residence were
8 the two co-defendants in this case, Mr. Wheeler and
9 Ms. Hall. There were actually -- there was a third person
10 there, a cooperating witness named, Jennifer Dewitt,
11 who's not -- the State would not intend to call her case
12 for trial today. We would -- we would intend to call
13 Ms. Hall's or Mr. Wheeler's unless the Court determines
14 there's a conflict, and if it is, we would call
15 Mr. Wheeler's case because we believe he would be the
16 most culpable.

17 Your Honor, when the -- based on the confidential
18 informant that was arrested over in Aiken County, he
19 provided the information that he had been provided -- had
20 been on an ongoing basis provided methamphetamine out of
21 this residence; that he had been dealing with Mr. Coon,
22 who was tried last week, Your Honor, and had eventually
23 pleaded guilty and got a twenty-five year sentence for
24 trafficking methamphetamine and a variety of other charges.
25 But he provided information to law enforcement that there

1 was an ongoing operation there; that Ms. Hall and
2 Mr. Wheeler and Mr. Coon were all involved in it; that
3 they were taking stolen vehicles and guns and trading them
4 for drugs of various types. He described methamphetamine,
5 pills, marijuana, a variety of different drugs there.

6 Law enforcement corroborated the information of the
7 confidential informant. He had given information to the
8 State Law Enforcement Division about his own stolen vehicle
9 ring, assisted them in recovering stolen vehicles. The
10 officer was able to vet his information with the deputies
11 who had noticed this same traffic and knew, in fact, that
12 these individuals were residing at the residence.

13 Based on that a search warrant was issued by summary
14 court judge Brenda Carpenter. The search warrant was
15 executed on December the 22nd of 2015 when these officers
16 raided the residence. These two co-defendants, Ms. Hall
17 and Mr. Wheeler, were actually there at the residence
18 when they raided it. They discovered some 717 grams of
19 methamphetamine, pills, among them Xanax, PWID marijuana.
20 There were a number of sawed-off shotguns there, Your
21 Honor. They recovered three of the sawed-off shotguns.

22 **THE COURT:** All right. So the gist of it is it's a
23 search warrant case with a bunch of meth found?

24 **MR. MAYE:** Meth, guns and stolen vehicles. And each
25 face the same charges. We were told that we needed to try

1 this case this term of court by Judge Hayes at the last
2 term of court, Your Honor. They have continually moved
3 to be released on bond. Some of the other people in this
4 ring were tried over in Aiken County in federal court.
5 When the -- we received information before the last term
6 of court that the Feds were not gonna adopt these
7 co-defendants and we have immediately been in a posture
8 to proceed to trial.

9 We had some exchange of discovery with Mr. Thuss.
10 I made sure by December the 16th before we got into the
11 Christmas holidays that we had absolutely all of the
12 information that we had at time to Mr. Thuss. We got a
13 full exchange of discovery. The only new discovery is
14 last week Ms. Dewitt gave a statement just prior to coming
15 in and testifying. Mr. Thuss was present here for the
16 entire trial last week. He was provided a copy of that
17 statement within an hour or so of it being generated.

18 **THE COURT:** All right. I got that. I got that.

19 **MR. MAYE:** Yes, sir.

20 **THE COURT:** Quit trying the case in here now. I'm
21 trying to see where we're gonna go. What offer has been
22 made? The guy pled last week to trafficking and got the
23 minimum. What offer -- I mean, is there any offer out
24 there?

25 **MR. MAYE:** I made an offer of twenty-two and the girl

1 five.

2 **THE COURT:** And that's off? You don't want that?

3 **MR. THUSS:** He doesn't want it. She wants it, but
4 they're tied.

5 **THE COURT:** Yeah. Okay.

6 **MR. THUSS:** They're -- they're tied.

7 **MR. MAYE:** And I would not extend the five to her,
8 you know, on a split deal unless she was gonna testify
9 against him, which I don't think she'll do. And if you
10 determine there's a conflict, Your Honor, I'm ready to try
11 Mr. Wheeler and we can certainly do that.

12 **THE COURT:** Can you go with Wheeler and let the girl
13 -- find her alternate counsel?

14 **MR. THUSS:** I don't know. I have to -- I mean, I
15 would have to sit down with them and talk through it.
16 All this has happened -- they're out there kind of
17 communicating some, but they're still in the dark.

18 **THE COURT:** I know, but how did --

19 **MR. THUSS:** I -- they --

20 **THE COURT:** How did you not talk about it over the
21 weekend after last week?

22 **MR. THUSS:** I talked with Wheeler about it on -- I
23 came down and talked to Wheeler -- I talked to Wheeler
24 Thursday and Friday and I tried to talk to Wheeler about
25 it -- I mean, to Hall about it, but my ability to speak

1 with her, she's out on bond, is -- is not the same.
2 I'm a little more concerned about her because of her
3 youthfulness and -- and emotional ties. She just saw her
4 dad convicted and now she's got this other fellow, who's
5 her boyfriend, who they're in a relationship that's sort
6 of being maintained, but I don't know how -- how well she
7 can exercise judgment at her age.

8 **THE COURT:** All right. Well, if I relieve you on
9 her and go forward on Wheeler, will she -- what decision
10 does that make for her?

11 **MR. THUSS:** Well, I don't know that she's gonna have
12 an opportunity to decide whether or not she would testify
13 against Wheeler.

14 **THE COURT:** All right. So what? He don't need her.

15 **MR. MAYE:** I don't need her.

16 **THE COURT:** He didn't say he wanted her to testify.

17 **MR. MAYE:** No, I don't need her. Your Honor, the
18 only thing I would ask given the fact that Ms. Hall --
19 I've got Ms. Dewitt, the co-defendant, in jail. She's
20 been threatened and so I've basically got her in
21 protective custody. I have information from Ms. Dewitt
22 that Ms. Hall has been contacting her, been trying to
23 intimidate her, and I would move to revoke her bond,
24 Your Honor. That's all I'm asking.

25 **THE COURT:** All right. Well, I'm not worried about

1 her right now. Say we go forward on Wheeler, what's --
2 what's the downside for her other than she loses her
3 opportunity to cooperate, but he don't want it now. I
4 mean, from what he says they don't want her help. It's
5 too late. I don't care. I mean, what's the downside for
6 her other than she's already missed an opportunity really,
7 but, like you say, her daddy and her boyfriend, she wasn't
8 really gonna jump on that opportunity anyway.

9 **MR. THUSS:** Well, I mean, I don't know. It's just
10 -- it's been hard for her to make a decision whether --
11 whether she would. But, I mean, it's -- that's kind of
12 the ambiguities I've been dealing with knowing what it is
13 she could do or not do. I mean, this last offer was
14 contingent upon what he did, but I just heard that, you
15 know, they'd give her five if she would testify against
16 Wheeler. I don't know.

17 **THE COURT:** Who had the guy last week, Drylie?

18 **MR. MAYE:** The public defender.

19 **MR. THUSS:** And Coon's here. I haven't been able to
20 talk to Coon. I've subpoenaed him, but I haven't been
21 able to talk to him to determine whether or not I would
22 want to put him up because gave a statement at the end of
23 the last trial saying that --

24 **MR. MAYE:** He's here. You have time.

25 **MR. THUSS:** -- that he was -- that all the charges

1 were his and the other people weren't culpable.

2 **THE COURT:** Well, I mean, he -- you can call him.
3 He's gonna tell you either way.

4 **MR. THUSS:** He's the loose gun on the deck. I don't
5 know what he's gonna say.

6 **THE COURT:** I guarantee he's gonna be a loose cannon.

7 **MR. THUSS:** And I don't know if I want to -- you
8 know, want to do that.

9 **THE COURT:** Well, I'll tell you what we'll do. Let's
10 go forward with Wheeler. If you need time to talk to Coon,
11 we've got a lunch break, we've got this afternoon. We've
12 got some built-in breaks in there. I'll give you time to
13 talk to him, that won't be a problem, to see where you're
14 gonna go.

15 **MR. THUSS:** Okay.

16 **THE COURT:** And we'll just -- we'll put the next
17 person on the 408 list. 408, is that the rule? The
18 conflict list? Whatever that rule is, the conflict list,
19 we'll pick up the next attorney down the list, whoever's
20 picking up those things. The PD had one, she'll get
21 someone else. Do you know who it is, Mr. Reel, who's the
22 next up in line?

23 **THE CLERK:** No, sir.

24 **THE COURT:** All right.

25 **MR. MAYE:** Your Honor, that's the only thing I would

1 ask. I'm very concerned about that one witness. I might
2 want to keep her in jail until the next term. I don't want
3 to keep the cooperating witness in jail and leave her out,
4 so we'd like before the term is over if she gets somebody
5 else appointed, I'd like to take up the issue of her bond.

6 **MR. THUSS:** Well, before I -- I ask before that
7 happens if I go tell Hall that she's gonna be revoked --

8 **THE COURT:** No, I'm not saying revoked. He's asking
9 for that. I didn't say that. I'm kind of inclined not to
10 because she's here, but --

11 **MR. THUSS:** But she's gonna say I want to go forward
12 with Wheeler, but -

13 **THE COURT:** She can't. I mean, there's no way.
14 We're gonna remove that conflict. She's not gonna get an
15 opportunity. She can say what she wants to, but I'm not
16 gonna -- I'm gonna get you out of that box.

17 **MR. THUSS:** Okay.

18 **THE COURT:** You've got him, she's gonna have somebody
19 else. If she's getting offered five years, she's not very
20 culpable anyway. They make something -- once they get
21 these two big guys, they're gonna -- they'll work with the
22 girls. They're gonna come up with something different. I
23 mean, something reasonable, nonviolent -- some nonviolent
24 time I would guess. It seems to me their focus is on the
25 guys.

1 **MR. MAYE:** Well, either -- you know, she is -- her --
2 the daddy's lieutenant in the biker gang's is dating his
3 daughter, so she's there. And, you know, they -- there's
4 certainly -- from the information last week, there's enough
5 to tie her to trafficking. I don't know that we'll go
6 forward on that or not.

7 **THE COURT:** But, you know, the thing is, is if her
8 daddy was convicted last week, she's not -- she's gonna be
9 protected by her daddy.

10 **MR. THUSS:** Right. Yeah.

11 **MR. MAYE:** He's gonna try to. He's already said that.
12 He's gonna try to.

13 **MR. THUSS:** You know, there's -- but then it's still
14 an issue of believability.

15 **THE COURT:** Okay. That's fine.

16 **MR. THUSS:** You know, I was just -- you know, my duty
17 is to be loyal to both and to try to protect both and I
18 just can't --

19 **THE COURT:** All right. We've got a record here. I'm
20 gonna cut you loose on Ms. --

21 **MR. MAYE:** Hall. Heather Hall.

22 **THE COURT:** -- Ms. Heather Leighann Hall and we'll go
23 forward on Timothy Wayne Wheeler. Go talk to him and see
24 what he wants to do, if he wants to go forward. The jury's
25 at break for another few minutes. We'll -- I'll give you

1 another ten minutes to talk to him and let's start picking
2 a jury here and get them seated before lunch and then we
3 can work with the other gentleman.

4 **MR. MAYE:** And, Judge, I'll try to bring every one of
5 my witnesses today. I'll try to get everybody up here so
6 we can run as long as you want to.

7 **THE COURT:** All right.

8 (Pause in proceedings.)

9 (Recess taken.)

10 **BAILIFF:** All rise.

11 **THE COURT:** Be seated, please.

12 All right. Solicitor, are we ready to go?

13 **MR. MAYE:** The State's ready, Your Honor.

14 **THE COURT:** All right. Call your first case.

15 **MR. MAYE:** Thank you, Your Honor. May it please the
16 Court, Your Honor, the State now calls for trial Indictment
17 2016-GS-19-251, the State versus Timothy Wayne Wheeler, an
18 indictment for trafficking methamphetamine. It's been
19 true-billed by the grand jury of Edgefield County. The
20 State now calls it for trial.

21 Also Indictment 2016-GS-19-244, the State versus
22 Timothy Wayne Wheeler, an indictment for possession with
23 intent to distribute a Schedule IV controlled substance,
24 also true-billed by the grand jury.

25 Indictment 2016-GS-19-250, an indictment for

1 possession with intent to distribute marijuana against
2 Timothy Wayne Wheeler, true-billed by the grand jury.

3 Indictment 2016-GS-19-245, the State versus Timothy
4 Wayne Wheeler, an indictment for possession of a sawed-off
5 shotgun, Your Honor, true-billed by the grand jury.

6 Indictment 2016-GS-19-246, the State versus Timothy
7 Wayne Wheeler, an indictment for possession of a sawed-off
8 shotgun. It's been true-billed by the grand jury.

9 Indictment 2016-GS-19-247, the State versus Timothy
10 Wayne Wheeler, an indictment for possession of a sawed-off
11 shotgun, Your Honor, true-billed by the grand jury.

12 Indictment 2017-GS-19-075, an indictment for receiving
13 stolen goods. Indictment 2017-GS-19-074, the State versus
14 Timothy Wayne Wheeler, an indictment for possession or
15 receiving stolen goods.

16 Indictment 2016-GS-19-258, the State versus Timothy
17 Wayne Wheeler, an indictment for possession or receiving
18 stolen goods.

19 Indictment 2016-GS-19-256, the State versus Timothy
20 Wayne Wheeler, an indictment for receiving stolen goods.

21 Indictment 2016-GS-19-255, the State versus Timothy
22 Wayne Wheeler, an indictment for possession of receiving
23 stolen goods.

24 All these cases have been true-billed by the grand
25 jury. The State's prepared for trial on each of these

1 indictments, Your Honor. Thank you.

2 **THE COURT:** All right. Thank you.

3 All right. Mr. Thuss, are you and Mr. Wheeler ready?

4 **MR. THUSS:** Yes, Your Honor.

5 **THE COURT:** All right. Ladies and gentlemen of the
6 jury, just so y'all understand, the indictments being
7 called, as the lawyers have explained to me in chambers
8 when we had that break, that these indictments allege
9 crimes by Edgefield County through the solicitor's office
10 against Mr. Timothy Wayne Wheeler and that these -- the
11 facts and situation which gave right to these allegations
12 occurred December 22nd of 2015.

13 Now Mr. Wheeler has pled not guilty to all of these
14 indictments. So y'all understand, an indictment is a mere
15 allegation in writing made by the State of South Carolina
16 by each of the respective counties to a person accused of
17 a crime. It's a formal accusation that the State believes
18 it can prove. Mr. Wheeler has pled not guilty.

19 These indictments provide him more or less notice on
20 what to be prepared to come to court and defend himself
21 against. That's all they are. They aren't proof of
22 anything. There's twelve indictments. Because there's
23 twelve it doesn't mean any more or less than if there were
24 just one or two. They're allegations the State must prove
25 against Mr. Wheeler. The State is required to present its

1 evidence first. Mr. Wheeler may not present any evidence.
2 I don't know. It doesn't matter to me as Mr. Wheeler has
3 no burden or responsibility or duty whatsoever to disprove
4 the allegations. The State's got to prove them.

5 Now my understanding is there were the twelve
6 indictments read and the allegations and facts concerning
7 Mr. Wheeler in several property crimes and several drugs
8 crimes. Has any -- now I'm gonna ask these questions to
9 you as a group. I'm gonna ask you in a moment do you know
10 the lawyers, the investigators, the lawyers, Mr. Wheeler
11 and that sort of thing, and the end result of my questions
12 is gonna be notwithstanding that fact that you know
13 someone, notwithstanding that fact that you heard something
14 about the case, if that -- if that is the actual case, can
15 you be fair and impartial.

16 Newberry's a very small county. Edgefield's a very
17 small county. There's generally a lot of common
18 friendships, common knowledge, you go to school with
19 people, that kind of thing, so notwithstanding that can
20 you still be fair and impartial. Because what I'm looking
21 for are jurors on this jury that can listen attentively to
22 the evidence and the testimony presented, listen to the
23 instructions on the law provided by me, which is my job in
24 every trial is to provide the law of the case, apply the
25 law as instructed and then deliberate and consider what's

1 been presented and reach a fair and impartial verdict.
2 That's the job of the jury. So I'm looking for good
3 listeners who can listen well and can follow instructions.
4 That's what I'm looking for. That's the end goal.

5 So the first question. Now if I ask you a question
6 to which you can affirmatively tell me I know some of
7 these people, the investigator, the solicitor, whomever,
8 and if that's an issue that's gonna create for you being
9 fair and impartial, but I'm gonna ask that question to
10 you. What I don't need is somebody standing up and saying
11 oh, yeah, I know everybody involved, the sheriff and I
12 grew up together, and Mr. Wheeler, he and I were in the
13 same kindergarten class, and this, that and the other.
14 Let me ask the question so I don't get the whole
15 explanation because one explanation may just give me more
16 information than I can digest at one time.

17 So my question is gonna be who do you know and that
18 relationship would it make you not be able to be fair and
19 impartial and a good listener, yes or no; not because and
20 then all the reasons given because then all the rest of
21 the jurors will hear that and it may influence their
22 decision if they don't know anything.

23 All right. The first question. Does any member
24 of the jury panel know anything about the facts and
25 allegations contained in the indictments published

1 moments ago by Solicitor Maye regarding the incident on
2 December 22nd of 2015 involving Mr. Wheeler? If so,
3 please stand. No one's standing.

4 Mr. Maye, please introduce everybody at your table.

5 **MR. MAYE:** Seated at the State's table with me is
6 Assistant Solicitor Al Eargle. My name is Ervin Maye.
7 I'm a prosecutor with the Eleventh Circuit Solicitor's
8 Office. And, of course, Sheriff Dobey of Edgefield County
9 here, and Investigator James Smith and Assistant Solicitor
10 Doug Fender.

11 **THE COURT:** All right. Mr. Thuss, introduce everybody
12 at your table also, please.

13 **MR. THUSS:** Good morning. I'm Robert Thuss and
14 present with me are Mr. Timothy Wheeler and Ms. Heather
15 Leighann Hall.

16 **THE COURT:** All right. Ladies and gentlemen of the
17 jury, is any member of the jury panel related by blood,
18 marriage, close personal friends of any of those parties at
19 the two tables just introduced? If so, please stand.

20 (Jurors stand.)

21 **THE COURT:** We got one. And your name is Smith?

22 **JUROR:** No, William Hall.

23 **THE COURT:** Hall. Mr. Hall, who do you know?

24 **JUROR:** Heather Hall.

25 **THE COURT:** Now is she kin to you?

1 **JUROR:** No, not blood-related, but we are close like
2 a family member.

3 **THE COURT:** Do you socialize with Mr. Wheeler and
4 Ms. Hall on occasion?

5 **JUROR:** Only -- only Ms. Hall.

6 **THE COURT:** Only Ms. Hall. And she's not on trial.
7 She's just sitting at the table. You understand that?

8 **JUROR:** Yeah. I've never met Mr. Wheeler.

9 **THE COURT:** Never met Mr. Wheeler. Now the fact that
10 Ms. Hall is seated there, will that create an issue for you
11 being fair and impartial for the State and/or Mr. Wheeler?

12 **JUROR:** No.

13 **THE COURT:** You can be fair?

14 **JUROR:** Yes.

15 **THE COURT:** Very well. All right. Thank you, sir.

16 All right. Lady in the black and white check, tell me
17 your name again.

18 **JUROR:** Cathy Cooper.

19 **THE COURT:** Ms. Cooper. Your juror number?

20 **THE CLERK:** 25.

21 **JUROR:** 25.

22 **THE COURT:** 25. Which party do you know?

23 **JUROR:** Jimmy Smith.

24 **THE COURT:** And how do you know him?

25 **JUROR:** Personal friend.

1 **THE COURT:** And would that personal friendship with
2 him create an issue for you being fair and impartial in
3 this case?

4 **JUROR:** No.

5 **THE COURT:** You can be fair?

6 **JUROR:** Yes.

7 **THE COURT:** All right. Thank you, Ms. Cooper.
8 Gentleman last standing, tell me your name.

9 **JUROR:** Zack Rearden.

10 **THE COURT:** Zack?

11 **JUROR:** Rearden.

12 **THE COURT:** Rearden?

13 **JUROR:** Yes, sir.

14 **THE COURT:** What number is he?

15 **THE CLERK:** 135.

16 **THE COURT:** 135. Mr. Rearden, which party do you
17 know?

18 **JUROR:** Mr. Jimmy Smith. I'm on the fire department
19 transport team.

20 **THE COURT:** All right. Now the fact that you're a
21 fireman -- or a firefighter or a part of that with him,
22 would that create an issue for you being fair and impartial
23 in this case?

24 **JUROR:** No, sir. I just wanted to make it known.

25 **THE COURT:** Okay. Very well.

1 All right. The next question. Any member of the
2 jury panel ever been represented in any fashion by any
3 of the four lawyers introduced; that being Mr. Eargle,
4 Mr. Fender, Mr. Maye or Mr. Thuss? If so, please stand.
5 No one's standing.

6 All right. Potential witnesses in this case in no
7 particular order. I'm gonna read them in two groups. I'm
8 gonna read one group and basically ask the same questions
9 just asked. So the first group of witnesses, Brian Wade,
10 Curtis Morris, Ricardo Prince, Stewart Robinson, Warren
11 Miller, Jennifer Aycock, Shana Sorrells, Fred Teeter. Any
12 member of the jury panel related by blood, marriage or
13 close personal friends to any of that group of potential
14 witnesses, please stand. No one's standing.

15 Last group of witnesses potentially. Chris Harmon,
16 Stewart Robinson, James Densmore, Jennifer Dewitt, Jearl
17 Guy Fletcher, Jose Negron, Roosevelt Young, William Cecil
18 Allen, James Thomas Minor. Any member of the jury panel
19 related by blood, marriage or close personal friends to any
20 of those potential witnesses, please stand. No one's
21 standing.

22 All right. Any member of the jury panel -- this is
23 for information -- a member of your immediate family a
24 member of the law enforcement community whether it be a
25 probation officer, a SLED local -- local officer or an

1 officer -- police officer in another jurisdiction? If so,
2 please stand. I got a couple, three.

3 (Jurors stand.)

4 **THE COURT:** All right. I'm gonna start with you,
5 ma'am, in the blue. Tell me your name.

6 **JUROR:** Jessica Bone.

7 **THE CLERK:** Number 7.

8 **THE COURT:** Number 7. Ma'am, who do you know or
9 who's related to you by blood or marriage that's a police
10 officer?

11 **JUROR:** My ex-husband's an officer.

12 **THE COURT:** And where's he employed?

13 **JUROR:** North Augusta.

14 **THE COURT:** And the fact that your ex-husband is a
15 police officer in North Augusta, would that affect your
16 ability to be fair and impartial in this case?

17 **JUROR:** No.

18 **THE COURT:** Thank you very much.

19 Gentleman in the middle, tell me your name.

20 **JUROR:** John Allen.

21 **THE COURT:** Somebody coughed when you said your name.
22 What was your name?

23 **JUROR:** John Allen. Juror Number 3.

24 **THE COURT:** Number 3?

25 **JUROR:** Yes, sir.

1 **THE COURT:** And you or a member of your immediate
2 family in law enforcement?

3 **JUROR:** No.

4 **THE COURT:** Who?

5 **JUROR:** A friend. Just a friend.

6 **THE COURT:** A close friend. All right. And how close
7 friends? Are you best friends or --

8 **JUROR:** No.

9 **THE COURT:** All right. Would that affect your ability
10 to be fair and impartial in this case?

11 **JUROR:** It won't.

12 **THE COURT:** All right. Now your friend is employed by
13 whom?

14 **JUROR:** One's highway patrol and one's North Augusta.

15 **THE COURT:** Okay. None of the jurisdictions involved
16 in this case?

17 **JUROR:** No.

18 **THE COURT:** Okay. Thank you very much.
19 Gentleman in the necktie, tell me your name.

20 **JUROR:** Caleb Veihman.

21 **THE CLERK:** 160.

22 **THE COURT:** Juror Number 160. All right. Who in your
23 family is law enforcement?

24 **JUROR:** My brother.

25 **THE COURT:** And which department does he work for?

1 JUROR: Columbia County.

2 THE COURT: And that would be over near Augusta?

3 JUROR: Yes, sir.

4 THE COURT: All right. Would that affect your ability
5 to be fair and impartial in this case?

6 JUROR: No, sir.

7 THE COURT: Thank you very much.

8 Any member of the -- I forgot one. Ma'am, you stood
9 up when I looked down. I'm sorry. Tell me your name.

10 JUROR: Victoria Robinson. Paul Hammond.

11 THE COURT: All right. Tell me her name again.

12 THE CLERK: Number 143, Victoria Robinson.

13 JUROR: I'm Victoria Robinson.

14 THE COURT: You're 143?

15 JUROR: Number 143.

16 THE COURT: Who in your family is law enforcement?

17 JUROR: Paul Hammond.

18 THE COURT: And how is he kin to you?

19 JUROR: Cousin.

20 THE COURT: Cousin. Who does he work for?

21 JUROR: Edgefield County.

22 THE COURT: How close of a cousin?

23 JUROR: First cousin.

24 THE COURT: First?

25 JUROR: (Nods head.)

1 **THE COURT:** So he's currently with Edgefield County?

2 **JUROR:** He's supposed to be a jailer.

3 **DEPUTY:** He's no longer employed.

4 **THE COURT:** He doesn't work for the sheriff's
5 department anymore?

6 **DEPUTY:** No, sir.

7 **THE COURT:** All right. Ma'am, the fact that your
8 cousin used to work for the Edgefield County Sheriff's
9 Department, would that affect your ability to be fair and
10 impartial here?

11 **JUROR:** No, sir.

12 **THE COURT:** All right. Thank you very much.

13 Any member of the jury panel or member of your
14 immediate family employed in any capacity as a prosecutor,
15 solicitor, attorney general, anything of that sort, any
16 type of attorney? If so, please stand. No one's standing.

17 Any member of the jury panel or member of your
18 immediate family either been accused of committing a
19 violent crime or been a victim of a violent crime? If so,
20 please stand.

21 (Jurors stand.)

22 **THE COURT:** Now those standing, I don't really care
23 which side it was, whether a victim or accused of. My
24 question is for the benefit of, whatever it was, would that
25 affect your ability to be fair and impartial, okay? So

1 anybody that's been accused of or a victim of, you or your
2 immediate family, please stand.

3 (Jurors stand.)

4 **THE COURT:** We've got one gentleman. Tell me your
5 name.

6 **JUROR:** Joseph Beasley.

7 **THE CLERK:** Number 43.

8 **THE COURT:** Mr. Beasley. And you told me that there's
9 a current case pending right now against a family member
10 that he's involved with?

11 **JUROR:** Yes, sir.

12 **THE COURT:** Would that affect your ability to be fair
13 and impartial in this case?

14 **JUROR:** No.

15 **THE COURT:** Okay. Thank you, sir.

16 All right. Ms. --

17 **JUROR:** Bone.

18 **THE COURT:** -- Bone. Tell me -- you're Juror Number
19 34?

20 **JUROR:** 7, I think.

21 **THE COURT:** 7. Have you or a member of your family
22 been accused of or a victim of a crime?

23 **JUROR:** My brother was accused.

24 **THE COURT:** Okay.

25 **JUROR:** My brother, attempted armed robbery.

1 **THE COURT:** See, that's what I don't want to hear. I
2 just want to know whether it was a family member. See,
3 that's how it works. That's okay. Now the fact that your
4 brother was involved in an accusation, would that affect
5 your ability to be fair and impartial in this case?

6 **JUROR:** No.

7 **THE COURT:** Thank you very much.

8 Any member of the jury panel or a member of your
9 immediate family a member of any organization which
10 encourages temperance against the use of alcohol, any
11 illicit drugs and/or violence and crime? So Citizens
12 Against Violence Crime, Bikers Against Child Abuse, MADD
13 mothers, SADD students, organizations such as that. If so,
14 please stand. No one's standing.

15 Any of -- this is information only. Any member of the
16 jury panel or member of your immediate family ever struggle
17 with substance abuse? If so, please stand. No one's
18 standing.

19 Any member of the jury panel know of any reason
20 whatsoever y'all can't give a fair and impartial trial
21 to both the State of South Carolina, Edgefield County
22 Sheriff's Department and Mr. Timothy Wayne Wheeler? If so,
23 please stand. No one's standing.

24 Any further voir dire?

25 **MR. MAYE:** Nothing from the State, Your Honor. Thank

1 you.

2 **THE COURT:** Mr. Thuss?

3 **MR. THUSS:** No, Your Honor.

4 **THE COURT:** All right, folks. Here's how it works.
5 The Clerk of Court, Mr. Reel, is gonna direct his deputy
6 clerk of court to ask the magic computer to generate a
7 random list of you and y'all will be called up here one at
8 a time and each side gets a certain number of "please
9 excuse the jurors" if they so choose. Now I'll tell you
10 this, in selecting a jury it's entirely -- not guesswork,
11 but gut work, a hunch. I used to strike jurors and -- I
12 would keep brown eyed people and strike blue eyed people.
13 But, anyway, don't worry about it if you don't get put on
14 the jury. If you do get put on the jury, don't worry about
15 it either. I'm certain you'll be like most jurors that I
16 interact with; is people find that it's very educational,
17 particularly about things going on and what the law is and
18 how the courtroom works. And most people, although it'll
19 be an inconvenience on your time, it's -- they find it very
20 rewarding and they're generally glad they did it. So it is
21 a responsibility that we have as citizens in South Carolina
22 to sit on one as jurors -- as jurors.

23 Back -- way back when before we came and started the
24 United States, if the king accused of you a crime, the
25 judge that was picked by the king was the judge and jury.

1 And guess who won? The king. Well, that was our solution
2 is we didn't want the king calling the shots and so that's
3 how our jury system kind of got laid out way back when we
4 founded the country was we were a little unhappy when we
5 moved from Europe to America because that the king always
6 won all the cases.

7 Are y'all ready?

8 **MR. MAYE:** The State's ready, Your Honor. Thank you.

9 **THE COURT:** Are you ready, Mr. Thuss?

10 **MR. THUSS:** Yes, sir.

11 **THE COURT:** All right. Any objection to the jurors
12 being called to just stand in their place rather than come
13 all the way up here and be presented, Mr. Maye?

14 **MR. MAYE:** None from the State.

15 **THE COURT:** Mr. Thuss, are you okay with that?

16 **MR. THUSS:** Yes, sir.

17 **THE COURT:** Okay. Let's go with that, Mr. Reel.

18 **THE CLERK:** Okay. When I call your name, just stand
19 up where you are. We'll ask the State, then we'll ask the
20 defense. If they say please dismiss the juror, then just
21 sit back down. If they say please present the juror or
22 seat the juror, you will come up the side here up this ramp
23 and my bailiff here, Ms. Clark, will seat you in the jury
24 booth.

25 Juror Number 139, Michael P. Reynolds.

1 (Whereupon, Michael P. Reynolds, a white male, stood
2 up.)

3 **THE CLERK:** What sayeth the State?

4 **MR. MAYE:** Please excuse the juror from the trial of
5 this case.

6 **MR. THUSS:** Please dismiss the juror.

7 **THE CLERK:** You may be seated.

8 Juror Number 160, Caleb Veihman.

9 (Whereupon, Caleb Veihman, a white male, stood up.)

10 **THE CLERK:** What sayeth the State?

11 **MR. MAYE:** Please present the juror.

12 **THE CLERK:** What sayeth the defense?

13 **MR. THUSS:** Please seat the juror.

14 **THE CLERK:** Come up, sir.

15 **THE COURT:** Mr. Reel, did the State excuse the first
16 juror?

17 **THE CLERK:** Yes, sir.

18 **THE COURT:** Okay. That's what I thought.

19 **THE CLERK:** Juror Number 143, Victoria Robinson.

20 (Whereupon, Victoria Robinson, a white female, stood
21 up.)

22 **THE CLERK:** What sayeth the State?

23 **MR. MAYE:** Please present the juror.

24 **THE CLERK:** What sayeth the defense?

25 **MR. THUSS:** Please dismiss the juror.

1 **THE CLERK:** You may be seated, ma'am.

2 Juror Number 41, Dustin Doolittle.

3 (Whereupon, Dustin Doolittle, a white male, stood up.)

4 **THE CLERK:** What sayeth the State?

5 **MR. MAYE:** Please present the juror.

6 **THE CLERK:** What sayeth the defense?

7 **MR. THUSS:** Please seat the juror.

8 **THE CLERK:** Come forward, sir.

9 Juror Number 55, Lloyd T. Gordon.

10 (Whereupon, Lloyd T. Gordon, a white male, stood up.)

11 **THE CLERK:** What sayeth the State?

12 **MR. MAYE:** Please excuse the juror from the trial of
13 this case.

14 **THE CLERK:** You may be seated.

15 Juror Number 29, Amy Covar.

16 (Whereupon, Amy Covar, a white female, stood up.)

17 **THE CLERK:** What sayeth the State?

18 **MR. MAYE:** Please present the juror.

19 **THE CLERK:** What sayeth the defense?

20 **MR. THUSS:** Please seat the juror.

21 **THE CLERK:** Juror Number 4, William Bacon.

22 (Whereupon, William Bacon, a white male, stood up.)

23 **THE CLERK:** What sayeth the State?

24 **MR. MAYE:** Please present the juror.

25 **THE CLERK:** What sayeth the defense?

1 **MR. THUSS:** Please seat the juror.

2 **THE CLERK:** Come forward, sir.

3 Juror Number 44, Anita Ellefson.

4 (Whereupon, Anita Ellefson, a white female, stood up.)

5 **THE CLERK:** What sayeth the State?

6 **MR. MAYE:** Please present the juror.

7 **THE CLERK:** What sayeth the defense?

8 **MR. THUSS:** Please excuse the juror.

9 **THE CLERK:** You may be seated, ma'am.

10 Juror Number 135, Zachariah Rearden.

11 (Zachariah Rearden, a white male, stood up.)

12 **THE CLERK:** What sayeth the State?

13 **MR. MAYE:** Please present the juror.

14 **THE CLERK:** What sayeth the defense?

15 **MR. THUSS:** Please seat the juror.

16 **THE CLERK:** Some forward, sir.

17 Juror Number 25, Cathy Cooper.

18 (Whereupon, Cathy Cooper, a white female, stood up.)

19 **THE CLERK:** What sayeth the State?

20 **MR. MAYE:** Please present the juror.

21 **THE CLERK:** What sayeth the defense?

22 **MR. THUSS:** Please excuse the juror.

23 **THE CLERK:** You may be seated.

24 **MR. THUSS:** How many strikes does that make?

25 **THE CLERK:** That's three out of five.

1 Juror Number 13, Dorothy Brown.

2 (Whereupon, Dorothy Brown, a black female, stood up.)

3 **THE CLERK:** What sayeth the State?

4 **MR. MAYE:** Please present the juror.

5 **THE CLERK:** What sayeth the defense?

6 **MR. THUSS:** Please seat the juror.

7 **THE CLERK:** Come forward, ma'am.

8 Juror Number 18, Rodger Burgess.

9 (Whereupon, Rodger Burgess, a white male, stood up.)

10 **THE CLERK:** What sayeth the State?

11 **MR. MAYE:** Please present the juror.

12 **THE CLERK:** What sayeth the defense?

13 **MR. THUSS:** Please seat the juror.

14 Juror Number 74, Alex Hillary.

15 (Whereupon, Alex Hillary, a black male, stood up.)

16 **THE CLERK:** What sayeth the State?

17 **MR. MAYE:** Please present the juror.

18 **THE CLERK:** What sayeth the defense?

19 **MR. THUSS:** Please seat the juror.

20 **THE CLERK:** Come forward, sir.

21 Juror Number 62, William Hall.

22 (Whereupon, William Hall, a white male, stood up.)

23 **THE CLERK:** What sayeth the State?

24 **MR. MAYE:** Please excuse the juror from the trial of

25 this case.

1 **THE CLERK:** You may be seated.
2 Juror Number 123, Michael Pace.
3 (Whereupon, Michael Pace, a white male, stood up.)
4 **THE CLERK:** What sayeth the State?
5 **MR. MAYE:** Please present the juror.
6 **THE CLERK:** What sayeth the defense?
7 **MR. THUSS:** Please excuse the juror.
8 **THE CLERK:** Juror Number 67, Shannon Hammond.
9 (Whereupon, Shannon Hammond, a white female, stood
10 up.)
11 **THE CLERK:** What sayeth the State?
12 **MR. MAYE:** Please present the juror.
13 **THE CLERK:** What sayeth the defense?
14 **MR. THUSS:** Please seat the juror.
15 **THE CLERK:** Juror Number 114, John Mitchem.
16 (Whereupon, John Mitchem, a black male, stood up.)
17 **THE CLERK:** What sayeth the State?
18 **MR. MAYE:** Please present the juror.
19 **THE CLERK:** What sayeth the defense?
20 **MR. THUSS:** Please seat the juror.
21 **THE CLERK:** Juror Number 5, Stanley Barnes.
22 (Whereupon, Stanley Barnes, a black male, stood up.)
23 **THE CLERK:** What sayeth the State?
24 **MR. MAYE:** Please present the juror.
25 **THE CLERK:** What sayeth the defense?

1 **MR. THUSS:** Please seat the juror.

2 **THE CLERK:** Juror Number 15, Donovan Brunson.

3 (Whereupon, Donovan Brunson, a black male, stood up.)

4 **THE CLERK:** What sayeth the State?

5 **MR. MAYE:** Please excuse the juror from the trial of
6 this case.

7 **THE CLERK:** Juror Number 90, Sandra Johnson.

8 (Whereupon, Sandra Johnson, a black female, stood up.)

9 **THE CLERK:** What sayeth the State?

10 **MR. MAYE:** Please present the juror.

11 **THE CLERK:** What sayeth the defense?

12 **MR. THUSS:** Please excuse the juror.

13 Juror Number 43, Joseph Easler.

14 (Whereupon, Joseph Easler, a white male, stood up.)

15 **THE CLERK:** What sayeth the State?

16 **MR. MAYE:** Please excuse the juror from the trial of
17 this case.

18 **THE CLERK:** Juror Number 117, Nathaniel Moton.

19 (Whereupon, Nathaniel Moton, a black male, stood up.)

20 **THE CLERK:** What sayeth the State?

21 **MR. MAYE:** Please present the juror.

22 **THE CLERK:** What sayeth the defense?

23 **MR. THUSS:** Please seat the juror.

24 **THE CLERK:** Two alternates?

25 **THE COURT:** Let's just do one.

1 **THE CLERK:** One?

2 **THE COURT:** Uh-huh.

3 **THE CLERK:** Strikes one and one?

4 **THE COURT:** Yes.

5 **THE CLERK:** Juror Number 2, Terri Adams.

6 (Where upon, Terri Adams, a white female, stood up.)

7 **THE CLERK:** What sayeth the State?

8 **MR. MAYE:** Please present the juror.

9 **THE CLERK:** What sayeth the defense?

10 **MR. THUSS:** Please seat the juror.

11 **THE COURT:** Is one alternate enough, gentlemen?

12 **MR. MAYE:** I'll leave it to the Court's discretion,

13 Your Honor. I do not know.

14 **THE COURT:** Let's get one more just in case. That way

15 we'll have an extra alternate. We'll have two.

16 **THE CLERK:** Juror Number 82, Diane Hooper.

17 (Whereupon, Diane Hooper, a black female, stood up.)

18 **THE CLERK:** What sayeth the State?

19 **MR. MAYE:** Please present the juror.

20 **THE CLERK:** What sayeth the defense?

21 **MR. THUSS:** Please seat the juror.

22 **THE COURT:** All right. Now are there any matters of

23 law the Court needs to take up with regard to the selection

24 process employed and/or the composition of the jury from

25 either side?

1 **MR. MAYE:** Nothing from the State, Your Honor. Thank
2 you.

3 **MR. THUSS:** Nothing, Your Honor.

4 **THE COURT:** Very well. All right, folks. I'm gonna
5 send y'all to the jury room so y'all get to see where it
6 is, then I'll bring you back in here and give you some
7 instructions and we'll probably go to lunch. It's 12:00
8 noon. I've got to make plans on how we're gonna proceed.
9 Y'all step in the jury room.

10 Now at every break I'm gonna tell you don't discuss
11 the case. I'll tell you more about that. Just don't
12 discuss the case. Just discuss the nice weather we're
13 having in January, okay? So step into the jury room.

14 (Whereupon, the jury retires to the jury room at
15 11:59 AM.)

16 **THE COURT:** All right. Out of an abundance of
17 caution, do we want these jurors to call back tonight or --

18 **MR. MAYE:** No, sir, Your Honor. I think we're good.
19 We could run pleas if anything were to happen.

20 **THE COURT:** All right. I don't know if y'all
21 understand what that meant. Those are the jurors I need
22 for this week. Y'all are done for the week. Thank you for
23 your patience. Y'all are free to go. Have a good week.

24 (Whereupon, the remaining jury panel was excused at
25 12:01 AM.)

1 **THE COURT:** All right. Gentlemen, do y'all want to
2 let me to speak to the jury briefly and send them to lunch
3 and get them back here at 1:15, something like that, before
4 1:30 and we get started or do we have pre-trial stuff we
5 need to do?

6 **MR. MAYE:** I don't have any pre-trial motions. I
7 don't know if they do.

8 **MR. THUSS:** No, Your Honor. I do want to put this
9 -- that memo into the court record, the one I submitted to
10 you --

11 **THE COURT:** Yes, sir.

12 **MR. THUSS:** -- and ask that to be --

13 **THE COURT:** We'll accept that as a Court's exhibit
14 and we can -- and so the Court -- we have a record of what
15 we did today in chambers and so I don't need to go any
16 further on that because Ms. Johnson took down everything
17 that was said in the chambers here.

18 **MR. THUSS:** Yes, Your Honor.

19 **THE COURT:** Okay. Fair enough.

20 (Court's Exhibit Number 1 was marked for
21 identification.)

22 **MR. THUSS:** Did you want to say anything to Ms. Hall?

23 **THE COURT:** I actually want her to know that you've
24 been relieved of representing her and we'll either let her
25 hire private counsel or I'll appoint her a public defender

1 off of the conflict of the interest list because the public
2 defender is representing a co-defendant. We'll figure that
3 out later today who that will be unless you want to hire
4 private counsel.

5 Now that being the case, I don't think it would be
6 appropriate for her to be seated at counsel table. We'll
7 put her in the audience right there and we'll bring the
8 jury back out, okay?

9 **MR. THUSS:** Okay. Thank you, Your Honor.

10 **THE COURT:** Do you understand?

11 **MS. HALL:** Yes, sir.

12 **MR. MAYE:** And may it please the Court, Your Honor? I
13 don't know if they're gonna move -- it may be strategy not
14 to move to suppress the search warrant, so if they don't
15 want to take that up pretrial, you know, I -- that's what
16 we did last week. I'm not trying his case for him. If
17 that's not part of their strategy, I'll stand aside, but we
18 do have a search warrant.

19 **THE COURT:** All right.

20 **MR. THUSS:** Yes, Your Honor. I was here and I was
21 able to hear the -- hear the argument in court. It was a
22 search warrant that was supported by sworn oral testimony
23 and within the four corners of the search warrant it looked
24 like there could be issues and those issues were presented
25 by Mr. Drylie, but then after hearing Investigator Smith's

1 testimony concerning the oral testimony that he gave to the
2 magistrate, I don't believe that there's -- that there's
3 an issue here that I would want to present on the search
4 warrant especially in light of what we're dealing with with
5 the constraints on time.

6 **THE COURT:** Okay.

7 **MR. MAYE:** No worries about that. I just wanted to
8 make sure it was strategy and we'll -- we do have a search
9 warrant and I understand there'll be no contesting it.
10 Thank you.

11 **THE COURT:** Mr. Thuss, for the record, this case does,
12 as I'm informed, involve the results of a search of a piece
13 of property based on a search warrant and that issue was
14 presented to Judge Hayes last week via the affidavit from
15 the magistrate as well as sworn testimony from the
16 investigator. Mr. Thuss was present during the entire
17 trial and observed that and he is making an informed
18 decision that the search warrant appeared after considering
19 everything to be sufficient and probable cause was found to
20 have a search presented.

21 **MR. THUSS:** Yes, Your Honor. Because the real issue
22 was reliability of the confidential informant and whether
23 or not there was any corroboration investigation and the
24 supplemented oral testimony addressed those.

25 **THE COURT:** Okay. All right.

1 All right. I'm gonna bring the jury in here and give
2 them some brief instructions and then we're gonna break
3 for -- I'm gonna say a -- a long hour, hour and fifteen
4 minutes, along about there. So bring the jury in, please.

5 (Whereupon, the jury returns to the courtroom at
6 12:05 PM.)

7 **THE COURT:** All right. I don't know whose sunglasses
8 got brought up, but did anybody lose any sunglasses? There
9 you go. It's your lucky day.

10 All right, folks. As I told you a little bit earlier,
11 my name is Eugene Griffith. I'm a circuit judge from
12 Newberry. It's my pleasure to preside over this trial. It
13 shouldn't last too very long. As I've already told you,
14 Friday's already booked up for all the judges, so we ought
15 to get through this fairly quickly.

16 Now here's y'all's job. Y'all get to listen
17 attentively. I allow jurors to take notes. If you'd like,
18 there should be some notepads available. The bailiff can
19 show you when y'all come back after lunch. If y'all want
20 to take a notepad to take notes, you can. You're not
21 required to. It makes no difference to me. I have to take
22 notes as part of my job, but I'm listening for certain
23 things and y'all will be listening to the testimony and the
24 evidence presented. Importantly, you've got to listen and
25 pay attention about what's going on and that's your job.

1 So if notes help you or don't help you, it's your choice.

2 Now the State goes first. They're gonna present
3 their testimony and evidence first. Mr. Wheeler may not
4 submit any witnesses. It's his decision whether or not he
5 wants to or not and he doesn't have to tell us ahead of
6 time. Now he may choose not to testify. That's his
7 constitutional right. No one accused of a crime has to
8 disprove or prove they didn't do it. The State's got to
9 prove it happened beyond a reasonable doubt; it's the
10 State's job therefore. Generally people that are in trial
11 don't make the decision on whether they wish to present
12 witnesses and evidence until they see what the State
13 presents, and so that's their right and they can do that.

14 Now Mr. Wheeler stands -- he doesn't stand, but
15 figuratively stands in the courtroom presumed innocent.
16 Until the State disproves his innocence, he's presumed
17 innocent, all right?

18 So y'all are gonna be attentive listeners, y'all
19 don't get to ask questions, but, importantly, y'all don't
20 get to decide the case as it's being presented. You decide
21 at the very end after you hear everything and you hear my
22 instructions on the law. That's very important. At every
23 break I'm gonna say don't discuss, don't discuss the case.
24 Because you can't make up your mind after the first
25 witness, the second witness, the third witness. You make

1 up your mind when I say okay, it's fair to now go talk
2 about the facts.

3 Additionally, what you need to decide this case
4 you'll get here in the courtroom on the record. Y'all
5 heard is that on the record, is that on the record?
6 Everything in the courtroom is on the record. Here it is
7 right here. She's typing it up and it's coming up on her
8 screen, it's pretty neat to watch, but she takes down
9 everything everybody says, my comments, questions, answers,
10 everything.

11 Now my job is to make certain the trial is fair and
12 your job is to make certain questions of fact are answered
13 fairly. Y'all answer questions of fact, I answer and rule
14 on questions of law. Meaning, I was in court last week in
15 Lexington. I don't have any idea who the witnesses are in
16 this case. I'll be hearing it just like y'all are, so if
17 one witness gets asked a question and he answers a question
18 about a conversation he had the day before with somebody
19 else and that somebody else isn't in the courtroom, that's
20 called hearsay. The other lawyer can say hey, Judge,
21 that's hearsay, it's not fair, it's against the rules.

22 I make the calls on the fly. Kind of like a
23 basketball, football, baseball game. They pitch, catch,
24 score, whatever; if it's instant replay, they look at it
25 and then they go on forward. Well, here's what the problem

1 is. I can't rewind it and look at it a second time. If
2 it's not supposed to be said and it gets said and y'all
3 heard it and y'all can't forget what you just heard, that's
4 hard to do if you think about it. So I get kind of a
5 reversed instant replay. If a lawyer says judge, I believe
6 this next testimony is gonna be unfair to my side, okay, I
7 send the jury out and I say all right, ask your question,
8 let me kind of get a preview of it and I'll decide whether
9 it's fair and allowed under the rules or not. If it is, it
10 is; if it isn't, it isn't. Those calls that I make are my
11 job and you don't need to be in here helping me do my job
12 because you might not understand the law like I do.

13 Now equally important, when y'all get asked to resolve
14 the questions of fact in the jury room, I won't be back
15 there listening to y'all resolve those facts either. So
16 I'll do my job, and we'll have to work hand in hand, and
17 y'all do y'all's job. I can't influence you in your
18 decision, nor can you influence me or figure out why I made
19 my decision. We work together and do the best we can with
20 the instructions. It's my job to rule on the law and
21 y'all's job to rule on the facts, okay?

22 Now during lunch, any break, tonight, whenever, do not
23 get on Facebook, Twitter, any social media and say I'm on
24 the jury because then you're inviting someone who doesn't
25 know what's going on to talk with you about the case and

1 that can't happen. Y'all can only talk about the case in
2 the jury room. Well, why would you be allowed to talk
3 about it at the backyard fence, social media or otherwise?
4 So my instruction is don't talk about the case. That
5 includes going home tonight and talking to your family
6 about it or anybody on social media. Y'all are gonna
7 base your decision, what you need to decide the case, from
8 here in the courtroom and not something outside of this
9 courtroom because we have no control over what's said out
10 there.

11 Additionally, y'all will take an oath in a little bit
12 to follow the law as I instruct it, so you don't need to go
13 on the Internet and Google the law. Holy smokes, there's
14 so much bad law on the Internet that's wrong. Our General
15 Assembly and the Supreme Court hands down the law we're
16 supposed to follow, okay? That's the law that I'm gonna
17 instruct you with. What's on the Internet makes no
18 difference to me. It could -- there's no rhyme or reason
19 who puts what on the Internet. You don't -- you don't get
20 graded on it, you don't get scored on it. It doesn't get
21 -- it has no influence on the actual law what's on the
22 Internet. So I'm gonna tell you don't do any independent
23 research, don't get chatting up to somebody about what's
24 going on in the case. Until the case is over confine your
25 discussions to the weather, what you got for Christmas,

1 Clemson's nice win the other night, that sort of thing.
2 Just don't talk about the case until I tell you all right,
3 go discuss the case, all right?

4 Now it is 12:15. If y'all will be back in the jury
5 room that you've just now seen by 1:30 we're gonna get
6 started and I'll place you under oath. Again, I need you
7 back before 1:15 so I can start at 1:30, okay? Enjoy your
8 lunch.

9 (Whereupon, the jury is excused for lunch at
10 12:15 PM.)

11 **THE COURT:** All right. We'll stand at ease until
12 about 1:25.

13 **MR. MAYE:** 1:25?

14 **THE COURT:** Yeah.

15 **MR. MAYE:** Thank you.

16 **THE COURT:** I'll try to get the jury in at 1:30 sharp.

17 **MR. MAYE:** Thank you.

18 (Whereupon, a luncheon recess was taken.)

19 (Defendant's Exhibit Numbers 1 through 11 were marked
20 and stipulated into evidence.)

21 (State's Exhibits Number 2, an aerial diagram; State's
22 Exhibit Number 3, a diagram; State's Exhibit Numbers 4, 5,
23 6, 7, 8, 9, 10, 11, photographs; State's Exhibit Number 12,
24 a map; State's Exhibit Numbers 13, 14, 15, 16, 17, 18, 19,
25 20, 21, photographs; State's Exhibit Number 22, a gun;

1 State's Exhibit Number 23, an ammo box; State's Exhibit
2 Numbers 24 and 25, drugs; State's Exhibit Numbers 26, 27,
3 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42,
4 43, 44, 45, 46, 47, 48 and 49, photographs; State's Exhibit
5 Numbers 50, 51 and 52, shotguns; State's Exhibit Numbers
6 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67,
7 68, 69, 70, 71, 72, 73, photos, were marked and stipulated
8 into evidence.)

9 **THE COURT:** All right. Lawyers, are you ready?

10 **MR. FENDER:** Yes, Your Honor.

11 **THE COURT:** Are y'all gonna sequester the witnesses?
12 You've got the lead investigator and the Defendant. Who
13 else you got here?

14 **MR. MAYE:** One other investigator. He can go out.

15 **THE COURT:** It's up to you, Mr. Thuss.

16 **MR. THUSS:** Well, Your Honor, I heard the case last
17 week. I'm gonna stipulate to a lot of --

18 **MR. MAYE:** And, Your Honor, I think before the jury
19 comes in I guess we need to do something.

20 Madam Court Reporter, can you tell me the items of
21 evidence that we have by stipulation?

22 **THE COURT REPORTER:** Defendant's 1 through 11, photos.
23 And then the State's are -- there's a bunch of them. 2, 3,
24 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19,
25 20, 21, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38,

1 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 53 through 73
2 are all stipulated to.

3 **MR. MAYE:** Your Honor, we have a variety of photos. I
4 have a box of maps and items that came in the last time and
5 the defense has 1 through 11. All of those items are in by
6 stipulation. I -- I agree to the defense exhibits coming
7 in. Mr. Thuss informs me that --

8 **THE COURT:** Are all stipulated to?

9 **MR. MAYE:** Those are in by stipulation and in
10 concordance with the State. I'll let Mr. Thuss put his
11 stipulation on the record.

12 **THE COURT:** All right. Mr. Thuss?

13 **MR. THUSS:** Yes, Your Honor. I've reviewed the -- the
14 exhibits and I'm stipulating --

15 **THE COURT:** Are any of them that you aren't gonna
16 stipulate to?

17 **MR. MAYE:** Yes, Your Honor. I have obviously the
18 drug evidence in the case and I have some weapons here.
19 Everything other than that, everything else --

20 **THE COURT:** All right. So I can tell the jury most of
21 the photographs have been agreed to?

22 **MR. MAYE:** Yes.

23 **MR. THUSS:** Yes, Your Honor.

24 **THE COURT:** Bring the jury in.

25 **MR. THUSS:** Thank you.

1 **MR. MAYE:** And, Your Honor, we have witnesses
2 scheduled throughout the day. We are certainly available
3 to run as late as Your Honor can today in order to expedite
4 it.

5 **THE COURT:** Okay.

6 **MR. MAYE:** Thank you.

7 (Whereupon, the jury enters the courtroom at 1:32 PM.)

8 **THE COURT:** All right, folks. Good afternoon. I hope
9 your lunch was good. We're ready to start the case, so
10 what we're gonna do is I'm gonna tell you kind of the
11 outline is that the State will make opening comments first
12 and then the defense will make his opening comments;
13 basically what the case will show, what they can prove,
14 that kind of thing. Once they give their opening remarks,
15 after that then the State will then call its witnesses.
16 They'll be able to ask questions and introduce evidence
17 and then the defense will be allowed an opportunity to
18 cross-examine them.

19 Now I'll tell you that during a trial I generally
20 sit and enjoy a piece of hard candy sometimes and I also
21 provide it in the basket over there on the rail for the
22 jury to enjoy. There's some chocolate in there, some
23 Lifesavers and different things, so y'all pass that around.
24 As long as you don't throw the paper on the courtroom
25 floor, our bailiffs will be okay with us.

1 Now if you see one of the lawyers sneaking over there
2 to get a piece, I don't allow that. This is for jurors and
3 judges, okay? We're the ones doing the listening and we
4 need to be able to enjoy the candy. So that's for y'all,
5 I put that over there for you. So if y'all will give your
6 attention to the clerk, he'll place you under oath.

7 **THE CLERK:** Please rise and raise your right hand.

8 (Whereupon, the jury was duly sworn by the Clerk of
9 Court.)

10 **THE CLERK:** You may be seated. If is there any member
11 of the jury panel that was unable to take the oath, please
12 stand. No one stood.

13 **THE COURT:** Very well. All right. Mr. Fender. Or
14 Mr. Maye.

15 **MR. MAYE:** May it please the Court, Your Honor? Thank
16 you.

17 Ladies and gentlemen, let me first off say we
18 certainly appreciate the fact that each one of you have
19 been taken away from what you would have normally been
20 doing this week. You're not going to work, you're not
21 with your family, you're not doing whatever your planned
22 activities were for this week and we're certainly cognizant
23 of that. A lot of people up here in the courtroom have
24 heard me say this over and over again and they might smile,
25 but it's no less true, maybe it's gonna be new to y'all, I

1 doubt that when any of you went down to the mailbox or you
2 went down to the post office box and you saw that jury
3 summons, I doubt anybody was skipping for joy or dancing
4 when they went back to either their car or went back up
5 to their house from the mailbox, but this is the last
6 compulsory public service that we have. There used to be
7 a day -- believe it or not there used to be a day before
8 they had the highway department that you had to go out and
9 get a shovel and dig and work the road or you had to pay a
10 tax and get somebody to pick or shovel in your place. On
11 this square and a lot of other squares around South
12 Carolina and around the nation are monuments to the people
13 who had the ultimate compulsory public service. They had
14 to go and serve their country in foreign wars and a lot
15 didn't come back home. There used to be all sorts of
16 things that were a requirement for citizenship. We don't
17 have any of those anymore except for service on a jury.

18 Winston Churchill once said that the highest duty that
19 a citizen has during peacetime is service on a jury. And
20 you already heard some of the people that introduced
21 themselves up here this week. There are a lot of people
22 from other places. They're not from Edgefield County. The
23 judge here, he's from up the road. A lot of folks are
24 gonna get in their car at the end of this week and they're
25 gonna go back to wherever they're from. But the twelve of

1 you that are gonna go back into that jury room and
2 deliberate. The one thing that all of you've got in common
3 is you're all residents here of Edgefield County and what
4 goes on up here at the courthouse and what goes on out on
5 the street is vitally important to all of you because y'all
6 live here.

7 Now the State's got the burden of proof in this case.
8 You heard the State get up and publish all of the charges
9 that are levied against Mr. Timothy Wayne Wheeler, who's
10 sitting over there to the far side over there, and I
11 submit to you we've got the burden of proving all of those
12 indictments, and we welcome that. He's charged with
13 trafficking various drugs, he's charged with possession of
14 sawed-off shotguns, stolen vehicles of every description,
15 just a -- you heard all of the laundry list of things that
16 he's charged with in this case, and I submit to you the
17 tale that you're gonna hear starts not out -- the items
18 were all taken here in Edgefield County at a doublewide
19 mobile home that's way off from the road down a rough,
20 twisted dirt road. ■ Rainforest Lane is the address.

21 What you're gonna here in this case as far as the law
22 enforcement, and I mean a passel of them, the sheriff's
23 department here in Edgefield, ATF, SLED, a whole group of
24 people on December the 22nd of 2015 descended on this
25 doublewide mobile home on Rainforest Lane and you're gonna

1 hear why all of that group got together and you're gonna
2 hear why they felt like they needed all of them to go, but
3 this starts several days earlier when a Brian Wade, who's
4 from over in Aiken, and he's gonna get up and you'll hear
5 him because he's gonna be the first witness to testify for
6 the State in this case, and he's basically gonna get up and
7 tell you that he's from the Valley over in Aiken because a
8 lot of these folks are Aiken County people. This is over
9 -- in Edgefield County, but a lot of the people involved in
10 it come from over in Aiken, and he's gonna tell you all
11 about himself. He's gonna talk about how he grew up there
12 and went to school, how he fell into drugs and started
13 using marijuana and he ultimately started using meth, then
14 he went to the Army and he got into a mess in the Army and
15 he got put out of the Army over something absolutely
16 stupid, but that he came back to the Valley and he came
17 back to Aiken and he fell back in with some of his bad
18 friends and he started right back up using methamphetamine.
19 And you will ultimately hear this veteran of our armed
20 services tell how drugs reduced him down to just basically
21 stealing vehicles and living in stolen vehicles and just
22 basically living from pillar to post on the street.

23 What you're further gonna hear is the life that he
24 was leading obviously was attracting the attention of law
25 enforcement and so he got what's called vehicle crimes from

1 the South Carolina Law Enforcement Division, SLED. They
2 were working on this because cars were getting stolen all
3 around Aiken County and they believed he was involved in
4 it. And you're gonna hear how before December the 22nd of
5 2015 they caught up with him and they caught him red-handed
6 with a stolen vehicle and he also had some drugs on him.
7 Well, of course, afterwards when they caught him with this
8 they started talking to him and he basically came clean and
9 said yeah, I've been stealing vehicles, you got me with
10 stolen vehicles, you got me with some drugs in this case,
11 and I'll tell you about where they came from.

12 So the location where he said he was getting drugs
13 from and he's been dealing with these stolen vehicles is
14 over in Edgefield County. So the Aiken County Sheriff's
15 Department, like you would expect, they cooperated and they
16 worked with the Edgefield County Sheriff's Department.
17 They summoned some investigators from over here in
18 Edgefield County. Mr. Jimmy Smith seated over here at the
19 State's table was one of them. He and another experienced
20 investigator named Phil Ireland they went over and
21 interviewed Brian Wade and they collected information from
22 him. What he laid out to them was basically an organized
23 operation that was going around this ■ Rainforest Lane
24 here in Edgefield. Because what he was doing was stealing
25 vehicles and he was taking over there these stolen vehicles

1 and he's trading them for methamphetamine and he's gonna
2 say that that's what he was involved with. He knew the
3 people that were at this address, one of which was
4 Mr. Wheeler. He called him Biker Tim or some name that he
5 had for him, but he identified Mr. Tim Wheeler, the
6 Defendant in this case, when they go over initially and
7 talk to him. He said he's one of the people that's there.
8 He said there's another guy there named David Coon. He's
9 also there. There's a lady living there named Heather
10 Hall. He laid out what the arrangement was between these
11 people. Mr. Coon is the father of Heather Hall.
12 Ms. Hall's the boyfriend of Timothy Wheeler.

13 Now there was another lady there when they executed
14 the search warrant there. It was a lady named Jennifer
15 Dewitt. There were three people that were actually there
16 the day they raided and they hit this place with the search
17 warrant. Actually there at the residence when they descend
18 on this place with all these law enforcement officers, the
19 Defendant in this case, Mr. Wheeler, his girlfriend
20 Ms. Hall and Ms. Jennifer Dewitt. Now at that time
21 Mr. Coon he was over somewhere else in Aiken County. They
22 caught up with him later.

23 Well, they all get charged with all these different
24 things. They all get charged with trafficking, they get
25 charged with different offenses, all these stolen vehicles,

1 a laundry list of things, everybody up there. Mr. Coon as
2 well.

3 Now you're gonna hear that Brian Wade laid out for
4 them you ought to be careful when you go over there
5 because they've got guns of every description, they've got
6 sawed-off shotguns, they've got surveillance, they've got
7 cameras on the driveway so that when somebody comes down
8 the driveway they know somebody's coming. They've got
9 explosives. They've got all sorts of things as
10 countermeasures for somebody coming in trying to, A, rip
11 them off and steal their dope or law enforcement coming in.
12 And he's gonna tell how he went over there and that he
13 developed a relationship with Mr. Coon and they go over to
14 the house and he said that he'd actually been there at this
15 ■ Rainforest Lane. He basically went over there as kind
16 of a get-to-know-you with Mr. Coon and they hung out and
17 they took these sawed-off shotguns and they blasted at an
18 old van that was in the front yard and Mr. Coon was laying
19 out all of the stuff that they were doing there. They went
20 through and they looked at all of the guns that they had
21 there, heard the huffing and puffing about the surveillance
22 and the things that were there, and basically said because
23 they had an on-going relationship, a successful
24 relationship of him bringing stolen property there and
25 trading it for methamphetamine, that what it would shift

1 into was they were actually gonna let him start selling
2 meth for them and they were gonna front him the drugs, let
3 him sell them, bring back the proceeds, bring him a little
4 further into the operation of trafficking of
5 methamphetamine. And he's gonna tell you he had
6 discussions with Mr. Coon, but ultimately when they reached
7 this agreement they also bring in Mr. Wheeler, who's the
8 main man with the methamphetamine. You're gonna hear in
9 this case he had a great old big green box that was just
10 full of methamphetamine and other drugs and that that was
11 his role there.

12 You're gonna hear from Ms. Dewitt who's gonna come and
13 testify and she's charged. I anticipate that you will hear
14 her say that basically she acted as the lookout when people
15 would come -- folks would come up to the door that wanted
16 methamphetamine. Some of them would ask for Mr. Coon, some
17 of them would ask for Mr. Wheeler, just whoever they were
18 comfortable dealing with. She's gonna tell you what her
19 role there -- what Ms. Hall's role was. She's gonna tell
20 you basically she stayed for several weeks before then, she
21 had been staying there months actually, that she'd been on
22 and off in and out of that ■ Rainforest Lane and that the
23 four of them had basically been residing there. Mr. Coon
24 lived in one bedroom, she stayed there at the house there
25 in the den or bedroom, and because Mr. Wheeler and Ms. Hall

1 were boyfriend and girlfriend they were staying in another
2 bedroom in the house together and they were all residing
3 there.

4 And she's going to tell you about this on-going
5 operation that they had there, people bringing in either
6 cash to buy methamphetamine, people bringing in goods, and
7 she's gonna lay out for you what her role was. She and
8 Ms. Hall were going and getting the supplies, the little
9 bags to bag the stuff up in, going to the grocery store,
10 running errands for them, but they were all basically
11 involved in this trafficking operation.

12 Now the judge in this case is gonna tell you that we
13 put all of the evidence up and we're gonna bring in
14 officers around here who did the search warrant. We've
15 already agreed that a lot of the photographs that we took
16 out there on December the 22nd of 2015 are coming into
17 evidence and you will see pictures of guns, you're gonna
18 see pictures of the drugs, you're gonna see pictures of
19 everything that they took into custody there that day when
20 they executed their search warrant.

21 Now they got SLED and they got ATF, they got everybody
22 under the sun to go down there and help them because they
23 were worried about explosives, they were worried about
24 booby traps, they were worried about surveillance, so they
25 went down there ready to deal with the situation.

1 You're gonna hear from the officers that went in and
2 actually logged the evidence in this case and they're gonna
3 tell you about finding -- one of the things that we've got
4 to prove, and the judge is gonna charge you with the law at
5 the conclusion of all this, is that there was trafficking
6 going on. Now there are all levels of drug activity, but
7 in South Carolina the highest is trafficking. What we've
8 got to prove is that they were trafficking more than
9 400 grams of methamphetamine along with all the other
10 things that we've got to prove.

11 But in this case you're gonna hear that they went in
12 there and they seized from this green box that's associated
13 with Mr. Wheeler that he was taking that box in and out and
14 dealing with people, 717 grams of finished product of
15 methamphetamine that was there in the house that they
16 seized in the bedroom immediately adjacent to where Wheeler
17 was staying. You're gonna also hear that they found all
18 sorts of personal items in this case associated with
19 Mr. Wheeler; bills, mail, his clothes, all the things
20 showing that he was, in fact, living there. You're gonna
21 hear that they found his billfold there with his driver's
22 license in it with another address with \$7,300 in cash in
23 it. You'll hear from the officers in this case, and
24 they'll go through all the things that they found; a stolen
25 Harley-Davidson, a stolen pick-up truck, campers, three

1 sawed-off shotguns, Xanax tablets, marijuana tablets.
2 You're gonna hear about all of the things that they took
3 out of this place and you're gonna see a mountain of
4 photographs that were taken there the day that they
5 executed the search warrant.

6 Now you're gonna hear from all of these witnesses and
7 at the conclusion of all of the evidence the State's gonna
8 rest in this case and the judge he'll tell you in great
9 detail what the law is, what we've got to prove, each and
10 every element of it. We've got to prove that all of these
11 things happened in Edgefield County. He'll go through the
12 elements of all the crimes in this case and charge you with
13 what the law is and then you take the law as the judge
14 gives it to you. You'll hear it discussed and talked
15 about, but at the conclusion of all of the evidence you're
16 gonna get the law from the judge.

17 Now the word "verdict" actually means to speak the
18 truth. All that we're gonna ask that the twelve of you do,
19 and I've talked about those responsibilities that a juror
20 has, all that we're gonna ask that the twelve of you do is
21 take the evidence that the State puts forth to you and
22 apply it to the law that the judge gives you in this case
23 and come back with a verdict. The word "veredicto" means
24 to speak the truth. Just come back with a verdict that
25 speaks the truth and if the twelve of you that go back to

1 the jury room to deliberate do that, you will certainly
2 have fulfilled your role as jurors. I appreciate your
3 close attention.

4 **THE COURT:** All right. Mr. Thuss.

5 **MR. THUSS:** May it please the Court?

6 **THE COURT:** Yes, sir.

7 **MR. THUSS:** Good afternoon, folks. I'm Rob Thuss.
8 I'm from Irmo, South Carolina, and I'm representing
9 Mr. Timothy Wheeler here, who is the Defendant in this
10 action. And Mr. Wheeler has pled that he's not guilty and
11 as the judge instructed you, he is innocent until there is
12 a decision by this jury about whether or not he's guilty --
13 whether or not he's guilty and he gets the presumption of
14 innocence until you make that decision.

15 I listened to the story that Mr. Maye told about the
16 story of this case and it's true that a search warrant was
17 executed at ■ Rainforest Drive in Edgefield and it's true
18 that when that search occurred the drugs and the weapons
19 alleged on the property were found. That is Mr. Coon's
20 residence. Mr. Coon, who is a co-defendant in this case
21 and was tried last week, he may appear here today or
22 tomorrow as a witness and you can hear from him.

23 Mr. Wheeler was in a relationship with Mr. Coon's
24 daughter, Heather Hall, who is also charged but she's not
25 -- hasn't been tried yet on this, but he did not reside

1 at ■ Rainforest Drive. He was present when the search
2 warrant was executed and he was charged with these crimes,
3 but he denies that that methamphetamine that was taken is
4 his. He denies that the stolen goods that were taken were
5 his and he denies that the various weapons, some of which
6 were illegal -- I mean, they weren't sawed-off shotguns,
7 but -- which they were, which you'll see, those were not
8 his, that those belonged to someone else, but not to him,
9 and that, again, the judge will charge you at the end of
10 the case on -- on the law, the law that you are to apply.
11 We do not believe that you'll find that the State will meet
12 its burden of proving beyond a reasonable doubt that these
13 items belonged to Mr. -- Mr. Wheeler.

14 The two witnesses who I expect you will hear from who
15 will try to link Mr. Wheeler to this are this Brian Wade,
16 who you will hear from, and from Jennifer Nicole Dewitt.
17 Brian Wade will testify that he came to the house with
18 Mr. Coon and that they hung out together and he'll testify
19 about his -- his background, his trouble with the law and
20 his drug addiction and his drug issues.

21 Ms. Dewitt will also testify she was present at the
22 house when -- when the search warrant was executed and she
23 was there and she will testify that she was there four or
24 five days, she might have been there in the past, and she
25 will give -- attempt to give testimony against Mr. Wheeler.

1 And she is a drug addict and she has a problem and she is
2 charged now with these same charges as Mr. Wheeler and
3 Ms. Hall are charged with. Both of them are cooperating
4 with the authorities to give testimony related to this and
5 Ms. Dewitt -- the day that this bust occurred was on
6 December 22nd of 2015 and that afternoon of the bust before
7 Ms. Dewitt was charged with any crimes she gave an oral
8 statement, a recorded statement, to the police that she
9 said was truthful, that last Thursday at Mr. Coon's trial
10 she contradicted, and you're gonna have to determine what
11 the truth is in this matter and I hope that you will listen
12 carefully to the evidence that is given, the testimony of
13 these witnesses and make your judgments based upon what
14 they say, what comes out of their mouth and judge their
15 credibility and not on the stories that we present in our
16 opening statements to you.

17 Mr. Wheeler is fifty-four years old. He's been a
18 resident of Aiken County -- or the Aiken area for several
19 years. He served in the military, he was honorably
20 discharged and he worked for many years after he left the
21 military as an arborist, trees and landscaping and things
22 along those lines. Four or five months before he was
23 arrested, he developed a relationship with Heather Hall.
24 Heather Hall is Mr. Coon's stepdaughter. And Mr. Coon had
25 serious health issues, cancer, things along those lines,

1 and there was a strong attachment between Mr. Coon and his
2 daughter, and what brought Mr. Wheeler to Rainforest Drive
3 was Ms. Hall's activities caring for her father. He was
4 present when the search warrant was executed and we can't
5 contest that, but what we do contest was whether or not he
6 had involvement with or actual possession of the drugs, the
7 stolen property or weapons.

8 I'll let you hear the rest of the evidence in the case
9 and then you can draw your own conclusions. Thank you.

10 **THE COURT:** Folks, before I brought y'all out here the
11 lawyers told me that they've agreed to a large number of
12 exhibits, photographs and some of the other exhibits,
13 they've already agreed will come into evidence. They may
14 pick them up and say we agree this is in evidence and talk
15 about it. Anything that they introduce into evidence y'all
16 will have in the jury room.

17 So call your first witness.

18 **MR. MAYE:** The State would call Walter Brian Wade,
19 Junior.

20 **THE CLERK:** Raise your right hand and place your left
21 hand on the Bible.

22 (Whereupon, Walter Brian Wade, Jr., was duly sworn by
23 the Clerk of Court.)

24 **THE CLERK:** Thank you, sir. You may be seated. Scoot
25 up close to the mic. State your full name for the record

1 and spell your last name.

2 **THE WITNESS:** My name is Walter Brian Wade, W-A-D-E.

3 WALTER BRIAN WADE, JR.,

4 having been duly sworn, testified as follows:

5 DIRECT EXAMINATION

6 BY MR. MAYE:

7 Q. Mr. Wade, tell the ladies and gentlemen of the jury
8 what you actually go by. What -- what do you go by? What
9 do people typically call you?

10 A. Brian.

11 Q. Brian Wade?

12 A. Yes, sir.

13 Q. Okay. Brian, tell them where you grew up. Where are
14 you originally from?

15 A. I grew up in the Valley of South Carolina.

16 Q. The Valley, what -- what county is that in? What part
17 of the state is that in?

18 A. That's Bath. Bath in Aiken.

19 Q. Over in Aiken County?

20 A. Yes, sir.

21 Q. Okay. Did you go to school and all over in Aiken
22 County?

23 A. I did.

24 Q. Where all did you go to school over there?

25 A. I went to Byrd Elementary, Leavelle McCampbell and

1 Midland Valley High School.

2 Q. Okay. Have you got family members that live over
3 there in the area of Aiken County as well?

4 A. I do.

5 Q. Tell the ladies and gentlemen of the jury who are your
6 family members.

7 A. I've got a mother and a father and I've got three
8 sisters.

9 Q. Okay. What do your mother and father do? What do
10 they do? What kind of work?

11 A. My father's a plant manager at AB Beverage and my
12 mother's an insurance lawyer at Tom Murphy's law firm.

13 Q. Okay. And you got -- you said you got sisters there
14 as well?

15 A. I do.

16 Q. Okay. Once you got out of high school -- what did you
17 do when you got out of high school? What was the first
18 thing you did, Mr. Wade?

19 A. I went into the military.

20 Q. Okay. What branch of the military were you in and
21 where did you go?

22 A. I was in the Army and I've been to Fort Sill,
23 Oklahoma; Fort Bliss, Texas. I've been to Korea and Iraq.

24 Q. Okay. Let me ask you this. What year did you go in
25 to start with, Mr. Wade?

1 A. It was at the end of 2004.

2 Q. In 2004?

3 A. Yes, sir.

4 Q. And when did you get put out? What year was it?

5 A. 2007.

6 Q. 2007?

7 A. Yes, sir.

8 Q. What caused the end of your military career?

9 A. Me and another soldier played a joke on another
10 soldier. You know, we ordered food to a room, you know,
11 that cost a lot of money and they didn't take it very well.

12 Q. They didn't take it well at all. They court
13 marshalled you, didn't they?

14 A. Yes, sir.

15 Q. And put you out of the military, didn't they?

16 A. Yes, sir.

17 Q. Okay. Once you got out of the military, what did you
18 do when you got back? When you came back to Aiken, what
19 happened to you?

20 A. I got with my child's mother, you know, and --

21 Q. Okay. Had y'all -- you previously had a child with
22 somebody over in Aiken?

23 A. I did, yes, sir.

24 Q. Okay. So you got with her and what happened in your
25 life at that point in time?

1 A. You know, at the time, you know, it went downhill.

2 Q. Okay. Let me ask you this. Before you ever went in
3 the military or anything, when did you first start using
4 drugs, Brian?

5 A. At a young age, you know. Probably about age of
6 thirteen or fourteen.

7 Q. What did you first start using, Brian?

8 A. Marijuana and then meth.

9 Q. What happens when you start using meth? Do you care
10 about other drugs at all when you start using meth?

11 A. Not particularly, no, sir.

12 Q. Does that pretty much take over your life at that
13 point?

14 A. Absolutely.

15 Q. Were you able to get out from under that and get
16 yourself together and go on to the military though?

17 A. I did, yes, sir.

18 Q. Okay. But once you got back here after you got put
19 out, what happened involving your drug use?

20 A. You know, it got worse and, you know, eventually, you
21 know, it split my family apart.

22 Q. Okay. What did you start doing to get money to buy
23 drugs? I mean, what were you stealing?

24 A. I was stealing vehicles.

25 Q. You were stealing vehicles?

1 A. Yes, sir.

2 Q. Okay. Were you pretty active at stealing vehicles?

3 A. Yes, sir, you could say so.

4 Q. Okay. Now what would you do with the vehicles? To
5 get drugs, how do you convert stealing vehicles into
6 getting drugs?

7 A. You know, I'd, you know, basically, you know, find
8 someone that will take the vehicles, you know, either for
9 cash or drugs.

10 Q. Okay. How about over at ■ Rainforest Lane? Were you
11 able to trade stolen vehicles for drugs there?

12 A. Yes, sir.

13 Q. Okay. Did you do so -- let's say, prior to December
14 of 2015, did you do so?

15 A. I did. Yes, sir.

16 Q. Not just once, but several times, didn't you?

17 A. Yes, sir.

18 Q. Okay. Now let's talk about December of 2015.
19 December the 10th of 2015. Law enforcement caught up with
20 you involving stealing stolen vehicles, didn't they?

21 A. They did.

22 Q. Or having -- stealing vehicles, didn't they?

23 A. They did. Yes, sir.

24 Q. What agency was working that case against you and who
25 actually caught you?

1 A. I was caught by a SLED agent out of Columbia, Daquan
2 Smith.

3 Q. He actually works vehicle crimes for SLED, doesn't he?

4 A. He does. Yes, sir.

5 Q. Now once he caught you with stolen vehicles, you had
6 meth on you, too, when they caught you, didn't you?

7 A. (Nods head.) I did. Yes, sir.

8 Q. And you caught a whole variety of charges at that
9 time, didn't you, when they arrested you?

10 A. I did.

11 Q. What all did they charge you with, Brian?

12 A. I got possession of stolen vehicles, grand larceny,
13 receiving stolen goods and escape.

14 Q. Okay. You tried to run from them initially, didn't
15 you?

16 A. I did. Yes, sir.

17 Q. It didn't work, did it?

18 A. No, it didn't.

19 Q. Okay. Did you tell them -- when they started talking
20 with you, did you give them information involving your
21 stolen vehicle crimes? Did you help them get back some of
22 the vehicles you'd taken?

23 A. I did. Yes, sir.

24 Q. Okay. Involving this ■ Rainforest Lane here in
25 Edgefield County where you'd previously been taking the

1 stolen vehicles and trading them for drugs, what
2 information did you pass on and who did you give that
3 information to here in Edgefield County?

4 A. You know, there were two investigators that came and
5 visited me while I was in Aiken County, you know --

6 Q. Uh-huh.

7 A. -- and I told them, you know, that I, you know, might
8 have information that could help them lead, you know, to
9 the -- you know, where I was taking the vehicles.

10 Q. Uh-huh. Did you talk to Investigator James Smith? Do
11 you remember Mr. Smith coming over and talking with you?

12 A. I do. Yes, sir.

13 Q. Okay. Tell the ladies and gentlemen of the jury what
14 you told him about what was going on at ■ Rainforest Lane,
15 who the people were, what your involvement was in going out
16 there. Just relate what you told them.

17 A. Yes, sir. I told them that, you know, there was a
18 guy, you know, named Pops, you know.

19 Q. Who is Pops? What's his real name?

20 A. Mr. David Coons {sic}.

21 Q. David Coon. Okay. Who else did you tell them that
22 was there at that place?

23 A. There was another person that lived there, Timothy
24 Wheeler.

25 Q. Okay. And who else did you tell them that was there?

1 A. There was another female. Her name was Heather Hall.

2 Q. Heather Hall?

3 A. Yes, sir.

4 Q. Okay. Once you identified the people that were there,
5 what did you tell them about what you knew about what was
6 going on there at ■ Rainforest Lane?

7 A. You know, I told them, you know, they would -- you
8 know, they would accept the vehicles and I would trade them
9 for meth.

10 Q. Okay. Now let's talk about December the 6th of 2015.
11 Did you actually go over to ■ Rainforest Lane?

12 A. Yes, sir. I did.

13 Q. Let me stop you and ask you this. This ■ Rainforest
14 Lane, it sounds like a stupid question, what county is that
15 in?

16 A. Edgefield.

17 Q. In Edgefield County. Okay. So you went over there.
18 What kind of place is ■ Rainforest Lane?

19 A. I'd say as you go down the driveway, it's a dirt road,
20 you know. It's pretty -- you know, you go down into the
21 woods pretty deep.

22 Q. How did you end up going to ■ Rainforest Lane? What
23 led up to you getting down there to that property?

24 A. I had met Mr. Coons at a hotel, me and my girlfriend,
25 and, you know, we had left the hotel with him and went down

1 to his home.

2 Q. Okay. What did you do once you got there? Once you
3 went with Mr. Coon and he took you back there, what
4 happened?

5 A. You know, we just talked about people we knew and, you
6 know, we fired some, you know, firearms.

7 Q. You fired firearms?

8 A. Yes, sir, we did.

9 Q. Okay. What kind of guns and all did you see there at
10 the residence?

11 A. You know, there was rifles, assault rifles, handguns,
12 sawed-off shotguns, pistols. There were multiple.

13 Q. Okay. Did you learn about the measures that they had
14 in place there involving surveillance, booby traps and
15 those sorts of things?

16 A. I did.

17 Q. What did you relate to Investigator Smith in regard to
18 that?

19 A. You know, I was -- you know, informed him, you know,
20 that there was C-4 planted around the perimeter of the
21 property, you know, in case something were to happen and,
22 you know, they needed to get away, you know, they had it.

23 Q. Okay. Did you see a live camera feed, a surveillance
24 camera, that they had there as well?

25 A. I did, yes, sir.

1 Q. Okay. So once you got there you said y'all shot guns.
2 What kind of guns did you shoot?

3 A. We shot just sawed-offs mostly.

4 Q. Just sawed-offs?

5 A. (Nods head.)

6 Q. What did you shoot them at?

7 A. There was a van there that was -- you know, that was,
8 you know, already, you know, broken down there in their
9 driveway.

10 Q. Okay. I guess once y'all got through with the show
11 and tell, the guns and all that stuff, what happened next?

12 A. That's when, you know, my girlfriend and Ms. Hall went
13 to the store, you know, and when they left to the store
14 that's when, you know, I had a conversation about the meth,
15 you know, that I could get fronted to, you know, if I could
16 bring it back, you know, we could speak more about, you
17 know, getting bigger quantities.

18 Q. Okay. Let me ask you this. So you initially went and
19 start dealing with Mr. Coon, correct?

20 A. I did.

21 Q. And you had been taking stolen vehicles over there
22 and trading them and getting drugs from that address,
23 correct?

24 A. I did.

25 Q. Okay. Who else did you deal with there that day

1 when they were talking about beginning to front the
2 methamphetamine, this changed relationship? Who else did
3 you deal with?

4 A. Mr. Wheeler.

5 Q. Okay. Are you talking about the Defendant in this
6 case, Tim Wheeler?

7 A. Yes, sir.

8 Q. Is he present here in the courtroom today?

9 A. Yes, sir.

10 Q. Could you point out where he is?

11 A. He's right here, sir.

12 Q. Okay. And so what conversations did y'all have, you
13 Mr. Coon and Mr. Wheeler, about what your activities were
14 to be, what your role was and what you were expected to do?

15 A. Like I said, you know, that I could get -- you know,
16 they would front me, you know, some -- you know, a quarter
17 ounce, you know, and if I could bring that back, you know,
18 then the quantities would get bigger.

19 Q. Okay. Did they, in fact, front you a quarter ounce of
20 meth that day?

21 A. They did. Yes, sir.

22 Q. Okay. The meth that you were caught with by Daquan
23 Smith with SLED when you got caught on the 10th, is that
24 the same drugs that they had fronted you that day?

25 A. Yes, sir.

1 Q. Okay. What conversation specifically did you have
2 with -- I mean, what did Mr. Wheeler do while you were
3 there that day? What's everything you saw and observed?

4 A. You know -- you know, when I was talking to Mr. Coons,
5 you know, he went -- he went back to his room and he was
6 the one that brought it to Coon's room, you know, to give
7 it to me.

8 Q. Okay. So Mr. Wheeler actual actually brought the
9 drugs to Coon?

10 A. Yes, sir.

11 Q. Okay. How was it packaged and all for you and what
12 did you see in the way of drug evidence while you were
13 there that day?

14 A. It was in -- in Ziploc bags.

15 Q. Like --

16 A. Yes, sir.

17 Q. -- like you get at the grocery store? It was in a
18 Ziploc bag?

19 A. Yes, sir.

20 Q. Okay. All right. Come down here off the stand, if
21 you would.

22 (Whereupon, the witness steps down from the witness
23 stand.)

24 Q. And let's back up here just a little bit. I'm gonna
25 show you what's already been into evidence -- admitted into

1 evidence by stipulation State's Exhibit Number 59. Do you
2 recognize that?

3 A. I do.

4 Q. What is this?

5 A. That's the home I went to.

6 **THE COURT REPORTER:** I'm sorry, you're gonna have
7 to --

8 **MR. MAYE:** Talk up.

9 **THE WITNESS:** I'm sorry. That's the home that I went
10 to.

11 BY MR. MAYE:

12 Q. The home that you went to at Rainforest Lane here in
13 Edgefield?

14 A. Yes, sir.

15 Q. Okay. State's --

16 **MR. MAYE:** Could you tell me what that number is? I'm
17 sorry.

18 **THE COURT REPORTER:** That's 61.

19 BY MR. MAYE:

20 Q. 61. I'm gonna show you what's in evidence already as
21 State's 61. What does that show, 61?

22 A. That's the back side of the home.

23 Q. Had you seen this pick-up there at the property
24 previously?

25 A. Yes, sir.

- 1 Q. Okay. State's 60, what is that?
- 2 A. That's the back side of the home.
- 3 Q. The back side of the trailer?
- 4 A. Yes, sir.
- 5 Q. Let's talk about State's 54. What's that?
- 6 A. That's the motorcycle Mr. Wheeler drove.
- 7 Q. State's 54 is a motorcycle that you saw Mr. Wheeler
- 8 operate and drive?
- 9 A. Yes, sir.
- 10 Q. Okay. I'm gonna show you what's in by stipulation as
- 11 State's 4 and ask you to take a look at all of the items
- 12 that are in this photograph here.
- 13 A. Yes, sir.
- 14 Q. Are you familiar with these items here and what does
- 15 that depict?
- 16 A. You know, there's multiples of the ones that I seen in
- 17 the home that day.
- 18 Q. Do these fairly and accurately reflect the weapons
- 19 that you saw there in the house that day when you went --
- 20 A. Yes, sir.
- 21 Q. -- on the 6th of December of 2015? Okay. Do you see
- 22 photographs of the sawed-off shotguns that you fired that
- 23 day at the van?
- 24 A. Yes, sir.
- 25 Q. Okay. Let me show you State's 5 in evidence already.

1 What is that?

2 A. That's the van.

3 Q. The van that y'all fired the weapons at?

4 A. Yes, sir.

5 Q. Okay. Let me ask you this. I'm gonna show you
6 State's 6 that's in evidence already. What is that? Do
7 you recognize that?

8 A. Yes, sir. That's one of the sawed-offs that I shot.

9 Q. You shot one of those sawed-off shotguns that day?

10 A. Yes, sir.

11 Q. Let's talk about State's 7. What's that show?

12 A. That's another sawed-off I shot that day.

13 Q. You shot State's 7 that day?

14 A. Yes, sir.

15 Q. What in particular happened when you fired this
16 shotgun on that day?

17 A. I just -- you know, when I shot it, the handgrip, when
18 I held it, you know, it was so powerful, you know, when I
19 shot it, you know, it came off in one hand, you know, and I
20 had the other part in the other hand.

21 Q. Okay. In State's 7, is there damage to the foregrip
22 on the shotgun? Is that what you're talking about?

23 A. Yes, sir.

24 Q. Is that the damage that resulted that day when you
25 fired it, the handgrip came off?

- 1 A. Yes, sir.
- 2 Q. And you're certain about that?
- 3 A. 100 percent.
- 4 Q. Okay. I'm gonna show you State's 8 in this case. Is
5 that the kind of Ziploc bags that you're talking about --
- 6 A. Yes, sir.
- 7 Q. -- that the drugs were in that Mr. Wheeler brought out
8 that day?
- 9 A. Yes, sir.
- 10 Q. Let's talk about State's 9 here. What does that show?
- 11 A. That's the motorcycle that Mr. Coons drove.
- 12 Q. Mr. Coon rode this motorcycle?
- 13 A. Yes, sir.
- 14 Q. And it was there when you went out there that day?
- 15 A. Yes, sir.
- 16 Q. I'm gonna show you State's 11 in this case. What all
17 is depicted in State's 11?
- 18 A. The camper and the truck.
- 19 Q. A camper and a truck?
- 20 A. Yes, sir.
- 21 Q. Were they there that day when you went out there?
- 22 A. Yes, sir.
- 23 Q. Did you inform Investigator Smith that you had seen
24 those items there?
- 25 A. Yes, sir.

1 Q. Let me ask you this. Could you obtain other drugs --
2 could you obtain other drugs other than methamphetamine if
3 you went out to ■ Rainforest Lane and dealt with them?

4 A. Yes, sir.

5 Q. What else could you obtain?

6 A. You know, there was pills you could get, you know,
7 there's different -- you know, sometimes it vary, but
8 mostly, you know, meth.

9 Q. Mostly meth, but you could also get pills and other
10 drugs if you wanted?

11 A. Yes, sir.

12 Q. Okay. What does State's 16 show?

13 A. It shows pills, meth, scales and money.

14 Q. Okay. Let me ask you this. What all vehicles had
15 you seen the various individuals operating out there at
16 different times?

17 A. You know, there were motorcycles, there was a truck
18 -- there was another truck, an F-150, camouflaged that
19 Mr. Coon drove.

20 Q. Okay.

21 A. You know, those -- those four-wheelers and, like I
22 said, the motorcycles.

23 Q. Okay. And you -- could you basically trade whatever
24 stolen items that you had? Could you trade guns? Could
25 you trade any stolen item out there?

- 1 A. If they wanted them, yes, sir.
- 2 Q. Okay. And you could swap them for drugs --
- 3 A. Yes, sir.
- 4 Q. -- out at that location?
- 5 A. Yes, sir.
- 6 Q. Okay. Go back and take the stand.
- 7 (Whereupon, the witness returns to the witness stand.)
- 8 Q. Now let me ask you this. You got court marshalled and
- 9 put out of the Army, right?
- 10 A. Yes, sir.
- 11 Q. You got caught -- what did they actually convict you
- 12 of over in Aiken? You got all those charges from Daquan
- 13 Smith that led you to cooperate with Edgefield. What all
- 14 actually were -- did you end up pleading to and what
- 15 happened to you?
- 16 A. I pled to the escape, I pled to grand larceny,
- 17 possession of meth, failure to stop for a blue light.
- 18 Q. Okay. What happened as a result of that?
- 19 A. I got sentenced to prison time in the State -- you
- 20 know, SCDC.
- 21 Q. SCDC. And as you sit here right now, where are you a
- 22 resident now?
- 23 A. I'm a prisoner.
- 24 Q. You're a prisoner at SCDC right now?
- 25 A. Yes, sir.

1 Q. Okay. Mr. Wade, you cooperated initially with
2 Edgefield County, correct?

3 A. Yes, sir.

4 Q. Did you really get any assistance on your charges from
5 Edgefield on the front end of your charges?

6 A. No, sir.

7 Q. Okay. You went to prison, didn't you?

8 A. Yes, sir.

9 Q. Okay. Mr. Wade, was it your hope that you could help
10 yourself in cooperating --

11 A. (Nods head.)

12 Q. -- you know, when you gave that other information
13 initially?

14 A. I would hope so. Yes, sir.

15 Q. You hoped you could, didn't you?

16 A. Yes, sir.

17 Q. It actually didn't end up working out very well, did
18 it?

19 A. No, sir.

20 Q. Now, Mr. Wade, you are aware in this case as you
21 testify up here today that there is a method why we -- we
22 could review your sentence that you got previously,
23 correct?

24 A. Yes, sir.

25 Q. And you know that and you've been informed that,

1 haven't you?

2 A. Yes, sir.

3 Q. Has anybody made you actually any specific promises as
4 to what actually will be able to be done and what we will
5 do? Do you have any specific promises?

6 A. No, sir.

7 Q. Okay. But you're gonna -- you certainly hope for the
8 best in that case, don't you?

9 A. Absolutely. Absolutely.

10 Q. Okay. Mr. Wade, in 2014 you got convicted for giving
11 false information to law enforcement, correct?

12 A. Yes, sir.

13 Q. So you previously had a charge?

14 A. Yes, sir.

15 Q. Okay. So that was part of your downhill slide once
16 you got back into drugs, wasn't it?

17 A. Yes, sir.

18 Q. Okay. Brian, are you absolutely certain that the
19 source of the drugs that you were fronted there that you
20 left with on December the 6th of 2015 came from the
21 Defendant in this case, Mr. Wheeler?

22 A. Yes, sir.

23 Q. You're certain of that?

24 A. Yes, sir.

25 Q. You actually saw him hand them to Mr. Coon and they

1 were provided to you?

2 A. I did.

3 Q. Okay. Let me ask you this. What were you paying for
4 methamphetamine? You know, what -- if you had to go out
5 and buy it, what was the street value if you were doing it
6 per gram? What would you have to pay?

7 A. You know, like I said, my girlfriend, you know,
8 introduced me to them, you know, earlier, you know, that
9 year, you know, because, you know, I was able to get it
10 cheaper from them.

11 Q. You could get a better deal from them?

12 A. Yes, sir.

13 Q. From Mr. Wheeler and Mr. Coon?

14 A. Yes, sir.

15 Q. Okay. What kind of money are we talking about when
16 you're dealing with meth?

17 A. You know, any other person, you know, I'd get a gram
18 for a hundred, but, you know, I could get it from them for
19 sixty or seventy.

20 Q. Sixty or seventy a gram from them?

21 A. (Nods head.)

22 Q. When you left with the drugs that you were fronted,
23 how much did you hope to be able to realize from that in
24 return? What was your goal? What did you believe that you
25 could do involved in selling it?

1 A. You know, like I could double it. You know, I was
2 told that, you know, to bring back two hundred, you know.

3 Q. Okay. So you were gonna get it upfront? That was the
4 deal that you struck with them?

5 A. (Nods head.)

6 Q. You got -- you were gonna sell it and bring that back
7 to them and keep the profit, correct?

8 A. Yes, sir.

9 Q. Okay. Was that also gonna provide you with a steady
10 pipeline of methamphetamine for your own use?

11 A. Yes, sir.

12 Q. Okay. And so y'all had discussions about that and
13 that's was what y'all agreed on before you left?

14 A. Yes, sir.

15 Q. Okay.

16 **MR. MAYE:** Answer any questions that the defense has
17 for you, Brian. Thank you.

18 **THE WITNESS:** Absolutely.

19 **CROSS-EXAMINATION**

20 **BY MR. THUSS:**

21 Q. Good afternoon, Mr. Wade. I'm Rob Thuss. I'm
22 Mr. Wheeler's attorney.

23 A. Yes, sir.

24 Q. You stated that you had been convicted of giving false
25 information to the police --

- 1 A. Yes, sir.
- 2 Q. -- prior to this?
- 3 A. I lied about my name.
- 4 Q. Pardon me?
- 5 A. I lied about my name.
- 6 Q. You lied about your name?
- 7 A. Yes, sir.
- 8 Q. And what other criminal history do you have?
- 9 A. Like I said, I had receiving stolen goods, possession
10 of stolen vehicles.
- 11 Q. Okay. I'm looking back. Were you charged with a
12 forgery at some point?
- 13 A. Yes, sir, you know, but that was settled out of court,
14 you know.
- 15 Q. And then you have prior drug convictions?
- 16 A. No, sir. That was the first drug --
- 17 Q. That was the first drug -- have you been convicted of
18 any drug convictions?
- 19 A. No, sir.
- 20 Q. What about, you know, financial transaction theft?
- 21 A. That's the same thing as the forgery.
- 22 Q. Criminal domestic violence?
- 23 A. Yes, sir.
- 24 Q. Assault and battery?
- 25 A. Again, that was settled out of court, you know. That

1 was dismissed.

2 Q. And you've got the -- the grand larceny charge, the
3 stolen vehicle charges?

4 A. Yes, sir.

5 Q. Those were in 2015?

6 A. Yes, sir.

7 Q. Those were -- now do you recall when you were arrested
8 for the -- the stolen vehicles that you've discussed? When
9 did SLED arrest you?

10 A. They arrested me the 10th of December.

11 Q. Okay. And -- and I believe you testified -- what date
12 had -- had you been to the Rainforest address?

13 A. It was the 6th of December.

14 Q. The 6th of December?

15 A. Yes, sir.

16 Q. Okay. Now you -- after you were arrested on the -- on
17 the stolen vehicle charges on the 10th --

18 A. Yes, sir.

19 Q. -- did you -- did you make bond on that?

20 A. I did. Yes, sir.

21 Q. Okay. And did you receive any subsequent charges?

22 A. All I was, you know, arrested for was the possession
23 of stolen vehicle and -- you know, the possession of stolen
24 vehicle and the grand larceny that was -- you know, I had a
25 warrant out for my arrest for a grand larceny. It was for

1 another vehicle.

2 Q. For another vehicle?

3 A. Yes, sir.

4 Q. Okay. Were you -- were you arrested while you were
5 out on bond?

6 A. Yes, sir, I was.

7 Q. And what were you arrested for?

8 A. That's when I, you know, got the escape, the grand
9 larceny, receiving stolen goods and possession of meth.

10 Q. And what was the -- you said escape?

11 A. Yes, sir.

12 Q. What was the nature of that?

13 A. I got out of the back of the police car and ran.

14 Q. Okay. Now after you were out on bond, did you
15 continue to use drugs?

16 A. Yes, sir. You know, of course. Yes, sir.

17 Q. So you have a -- you have a drug problem?

18 A. I did, yes, sir.

19 Q. And when was it that -- you said you had gone
20 downhill. When did the drug problem really begin to get
21 worse where you started to commit crimes?

22 A. Well, like after -- you know, during, you know, the
23 time me and my child's mother were together.

24 Q. Do you have date or a year?

25 A. No, sir. You know, it's within -- you know, from

1 2007, you know, to present.

2 Q. To present?

3 A. Yeah.

4 Q. So -- so you've been in the lifestyle of drugs and
5 crime since 2007?

6 A. No. Like I said, you know, if you could see my arrest
7 record, you know, it started basically within the last
8 three years. You know, that's when I heavily started
9 getting back into it, yes, sir.

10 Q. Okay. Now you said that you know -- you know David
11 Coon?

12 A. I do.

13 Q. And how long had you known him?

14 A. I'd known him a couple of months prior.

15 Q. A couple of months prior to what?

16 A. You know, the -- you know, me getting, you know, the
17 meth fronted to me.

18 Q. From Coon?

19 A. Yeah, you know, from Coons. Yes, sir.

20 Q. So that's -- you were -- you were -- so about two
21 months prior to December you met Mr. Coon?

22 A. Yes, sir.

23 Q. Okay. And how did you meet him?

24 A. You know, I met him -- you know, I was friends with a
25 guy that stayed down the road, you know, and he told me,

1 you know, that if I -- you know, eventually, you know, if
2 I could show that, you know, I could bring money that he
3 would, you know, invite me, you know, to their home, you
4 know, so I could meet Mr. Wheeler and Mr. Coons.

5 Q. Some -- somebody told you that if you could -- well,
6 did you know Mr. Wheeler?

7 A. At that time, no, sir.

8 Q. All right. But you -- but that's how you met Mr. Coon
9 two months earlier?

10 A. Yes, sir. You know, I had seen Mr. Wheeler, but I --
11 you know, I didn't get to speak with him, no, sir.

12 Q. You had seen him where?

13 A. You know, he would come down to, you know, my friend's
14 house that was down the road.

15 Q. But, in other words, your relationship with Coon began
16 first?

17 A. Yes, sir.

18 Q. And -- and that relationship went back two months
19 prior to December of 2015?

20 A. You know, yes, sir, you know, it was prior. You know,
21 I don't know the exact time, but, yes, sir, it was prior to
22 that.

23 Q. Okay. Because in your -- in the arrest warrant you
24 didn't identify Tim Wheeler as Tim Wheeler, did you?

25 A. It was, you know, Biker Tim.

1 Q. It was Biker -- someone you just described as Biker
2 Tim. You didn't know his real name?

3 A. I knew the name was Timothy. I didn't know his last
4 name, no, sir.

5 Q. The -- so you also testified that from what I could
6 understand you had been bringing stolen property out to the
7 Rainforest Drive?

8 A. Yes, sir, I had.

9 Q. On about how many occasions?

10 A. Maybe three or four times.

11 Q. Three or four times. During that time, did you ever
12 meet Mr. Wheeler there?

13 A. No, sir, I'd just -- you know, I'd stay outside and my
14 girlfriend would go in, you know, and trade and we'd leave
15 from there.

16 Q. With Mr. Coon?

17 A. I don't know that. She just went in, you know, and I
18 sat outside.

19 Q. Oh, she -- your girlfriend went in?

20 A. Yes, sir.

21 Q. And -- okay. Who is she? Is she your -- who was she?

22 A. She was my girlfriend at that point, you know, but,
23 you know, I haven't spoke with her.

24 Q. Okay. Were you ever involved with a Jennifer Dewitt
25 or Nicole Dewitt?

1 A. No, sir.

2 Q. You don't know her?

3 A. I know her. We grew up in the same, you know, county.

4 Q. You know Nicole Dewitt?

5 A. I do, yes, sir.

6 Q. Did you two use drugs together, too?

7 A. Did we use drugs together?

8 Q. Yes.

9 A. No, sir.

10 Q. The -- you had said that you came to that Rainforest
11 Drive location on December 6th?

12 A. Yes, sir.

13 Q. Okay. And -- and you said that, what, over a
14 two-month period you might have been there three or four
15 times?

16 A. Yes, sir.

17 Q. All right. What -- did you tell the police that when
18 you -- when Investigator Smith and Investigator Ireland
19 came to talk to you?

20 A. No, sir.

21 Q. You didn't? You withheld that?

22 A. I guess, you know, I wasn't asked, you know, how many
23 times I was out there.

24 Q. Okay.

25 A. You know, I just gave them the information that I knew

1 and they wrote it down.

2 Q. Okay. Did -- when they came to see you, was -- were
3 you surprised that the investigators came to see you?

4 A. No, sir.

5 Q. Did you contact -- did you contact them from the jail?

6 A. Daquan Smith, the SLED agent from the stolen vehicles,
7 he contacted them and they came to me, you know, from my
8 request.

9 Q. Did you ask -- did you ask the SLED agent for them to
10 do that?

11 A. Yes, sir.

12 Q. When you were there that day, did Mr. Coon take you --
13 you said that you went with Mr. Coon to the house?

14 A. I did, yes, sir.

15 Q. And did Mr. Coon take you through and show you his
16 firearms and things like that?

17 A. He did, yes, sir.

18 Q. Was Mr. Wheeler doing that, too, or was this Mr. Coon?

19 A. Mr. Wheeler. You know, we had shot a handgun right
20 off -- right when he opened the front door and he had a gun
21 that he shot and, you know, asked me if I'd like to shoot,
22 too, and I shot one with him, too, yes, sir.

23 Q. Was he outside shooting at the -- at the van with
24 y'all?

25 A. No, sir, it was just me and Mr. Coons then.

1 Q. You and Mr. Coon. Did Mr. Coon ever say anything
2 about who owned these various firearms?

3 A. No, it was never mentioned, you know, who owned them.

4 Q. He never told you that -- did you go into Mr. Coon's
5 bedroom?

6 A. I did.

7 Q. And did you see a number of firearms that were in
8 Mr. Coon's bedroom?

9 A. I did.

10 Q. And did he ever point any of these out to you and say
11 -- and say look at this, this is mine?

12 A. Yes, sir. He had a couple of them.

13 Q. So he -- so he did say that -- he did say that some of
14 these firearms belonged to him?

15 A. Yes, sir.

16 Q. Can you come down so we can look at some of these --

17 A. Yes, sir.

18 Q. -- and I'll show them to you.

19 (Whereupon, the witness steps down from the witness
20 stand.)

21 Q. Do you remember if Mr. Coon said that this was his?

22 A. No, sir, he never -- he did not specify whose that one
23 is.

24 Q. Okay. Was this the one that you shot?

25 A. I shot that one, yes, sir.

1 Q. Okay. Who gave it to you to shoot?

2 A. Mr. Coon.

3 Q. Did Mr. Coon give you this --

4 A. Yes, sir.

5 Q. -- to shoot?

6 A. Yes, sir.

7 Q. Did he get this from his room?

8 A. Yes, sir.

9 Q. And this was the one I just showed you. This is the

10 one Mr. Coon gave you --

11 A. Yes, sir.

12 Q. -- that he said it was his to shoot? Let me ask you

13 about -- go back to the stand for a second, please.

14 (Whereupon, the witness returns to the witness stand.)

15 Q. You identified a red Chevy pick-up truck?

16 A. Yes, sir.

17 Q. Let me ask you, before -- the time before that you had

18 been there, in other words, you were there on December --

19 on December 6th?

20 A. (Nods head.)

21 Q. How many weeks before that was the last time you had

22 been there?

23 A. Oh, I don't know. Like I said, you know, it had been

24 maybe a couple of weeks, maybe a couple -- I can't remember

25 specifically.

1 Q. You can't?

2 A. You know, I don't want to tell you a time, you know,
3 and, you know, I don't remember.

4 Q. Were you under the influence of drugs when you were
5 going out there?

6 A. Yes, sir.

7 Q. You were pretty much a daily user if you could be?

8 A. Yes, sir.

9 Q. Besides methamphetamine, what other -- what other
10 drugs did you use?

11 A. Marijuana.

12 Q. That's it?

13 A. Yes, sir.

14 Q. Did you use pills?

15 A. I did not.

16 Q. No? What about alcohol?

17 A. No, sir. I don't drink.

18 Q. Okay.

19 **MR. THUSS:** A moment, please.

20 **THE COURT:** Yes, sir.

21 **BY MR. THUSS:**

22 Q. Just one -- a couple more questions. You -- and this
23 has been put into testimony (sic). You've given this
24 information -- you gave the information to the police in
25 the hopes of receiving favorable treatment with your

1 charges?

2 A. I wasn't -- like I said, you know, I haven't been
3 aware that, you know, that my case could even be reviewed
4 until after -- you know, over a year afterwards.

5 Q. Okay. You gave the statement to the police about this
6 case on -- on December 10th?

7 A. Yes, sir. That's when I was arrested. You know, I
8 gave the statement, you know, days afterwards.

9 Q. And then you were subsequently convicted on the escape
10 charge and the drugs and more charges that you picked up?

11 A. Yes, sir. I pleaded out to them.

12 Q. Did -- did any of the investigators or anyone
13 associated with law enforcement give you a belief that you
14 would receive favorable treatment for your help?

15 A. No, sir.

16 Q. No?

17 A. No, sir.

18 Q. Now when were you next contacted by law enforcement
19 regarding this case?

20 A. It was a couple of weeks ago.

21 Q. Do you know -- do you know when?

22 A. Not the date, you know. It's been maybe in -- it was
23 in December.

24 Q. In December. And what happened?

25 A. You know, I was, you know, brought down here to tell

(Walter Brian Wade - Cross by Mr. Thuss)

1 -- you know, asked if I would testify, you know, and give
2 them, you know -- and tell them, you know, more about, you
3 know, the case and what happened, you know, in that period
4 of time.

5 Q. Okay. And so sometime in December you spoke with --
6 with whom?

7 A. Mr. Maye.

8 Q. Okay. Did any other law enforcement officers try and
9 talk to you or just Mr. Maye?

10 A. They were in there, you know, when we talked, but that
11 was it.

12 Q. Who else was there?

13 A. Him right here.

14 Q. Mr. Young?

15 A. Yes, sir. And there was another -- I guess another,
16 you know, policeman that was with him.

17 Q. And at that time did you become aware that -- that
18 there was a statute that could provide -- provide you with
19 a -- a lighter sentence based on your cooperation in this
20 trial?

21 A. You know, I was made aware that, you know, it could
22 be.

23 Q. It could be?

24 A. Yes, sir.

25 **MR. THUSS:** No further questions.

1 **THE COURT:** Redirect?

2 **MR. MAYE:** Just a couple.

3 **THE COURT:** All right.

4 REDIRECT EXAMINATION

5 BY MR. MAYE:

6 Q. Now you testified Mr. Wheeler actually met you at the
7 door the first time you saw him with a pistol in his hand,
8 correct?

9 A. Yes, sir.

10 Q. Okay. Now did Mr. Coon have all these guns locked in
11 some kind of safe or did anybody have access to them?

12 A. They were laying around his whole house.

13 Q. They were laying around the whole house?

14 A. Yes, sir.

15 Q. So anybody inside the house maybe to defend it could
16 have certainly picked up any of those weapons at any time?

17 A. Oh, absolutely. Absolutely.

18 Q. Okay. And, in fact, you were informed that was the
19 purpose of having all the weapons, security, correct?

20 A. Yes, sir.

21 Q. What other security measures were you informed were
22 there in order to guard the place?

23 A. C-4, you know, they had surveillance. They had, like
24 I said, pistols in every, you know, room you went in.

25 Q. There were pistols in every room you went in?

1 A. Absolutely.

2 Q. Okay. Were there weapons throughout the house?

3 A. Absolutely. Yes, sir.

4 Q. Okay. Come down here.

5 (Whereupon, the witness steps down from the witness
6 stand.)

7 Q. Let's talk about State's 3 that's already in evidence.
8 Is that a pretty fair diagram of the layout of inside that
9 doublewide?

10 A. Yes, sir.

11 Q. Okay. Where was Mr. Coon's bedroom when you went in
12 the front door?

13 A. Right here.

14 Q. Coon's bedroom was here?

15 A. Yes, sir.

16 Q. Okay. Where did Wheeler and Hall stay in the trailer?

17 A. This one.

18 Q. The center bedroom?

19 A. Yes, sir.

20 Q. Well, did you ever go in the third bedroom there?

21 A. Yes. That was pretty much an empty room.

22 Q. That was kind of an empty room?

23 A. Yes, sir.

24 Q. What about all this in here? What does that show?

25 A. Well, they had, you know, weights that were right

1 here, like a Bowflex. That was pretty much a great room,
2 you know, and the living room was right here when you
3 walked in.

4 Q. Okay. And you say there were weapons throughout the
5 house?

6 A. Yes, sir.

7 Q. Okay. So all the residents had access to these
8 weapons?

9 A. Yes, sir.

10 (Whereupon, the witness returns to the witness stand.)

11 Q. Okay. Did Ms. Hall and Mr. Wheeler have security
12 concerns that they discussed with you involving weapons and
13 all during the visit that you were there?

14 **MR. THUSS:** Leading.

15 **THE COURT:** Sustained as to leading.

16 BY MR. MAYE:

17 Q. What, if any, discussions did you have with Hall
18 and/or Mr. Wheeler?

19 A. That the night prior that, you know, they believed
20 they had heard someone out there and they were walking
21 around the perimeter, you know, on the outside with
22 handguns.

23 Q. They believed they'd heard somebody on the perimeter
24 and they walked around with handguns?

25 A. Yes, sir.

1 **MR. MAYE:** Nothing else. Thank you.

2 **THE COURT:** Anything else?

3 **RE CROSS EXAMINATION**

4 **BY MR. THUSS:**

5 **Q.** When did that conversation occur?

6 **A.** That was probably, you know, when we got there. When
7 I got there with Mr. Coons, you know, they had come out --
8 they had just woken up, Mr. Wheeler and Ms. Hall, and they
9 come into the living room and was discussing it.

10 **Q.** The weapons, the guns that are here, did -- did you
11 ever see Mr. Wheeler shooting these?

12 **A.** No, sir. Not them, no, sir.

13 **MR. THUSS:** Thank you.

14 **THE COURT:** Okay. You may step down or go to the
15 back.

16 (Witness excused.)

17 **THE COURT:** Let's take a break. We've been going a
18 little over an hour. You have about ten minutes to step
19 in the jury room. You can't discuss the case. We'll be
20 back in ten minutes.

21 (Whereupon, the jury retires to the jury room at
22 2:41 PM.)

23 **THE COURT:** We'll stand at ease for a few minutes.

24 (Recess taken.)

25 **BAILIFF:** All rise.

1 Q. Okay. What were you utilizing the property for? How
2 did you come to own this property?

3 A. It was a rental -- rental property --

4 Q. A rental property?

5 A. -- I invested in.

6 Q. How much property do you own around there?

7 A. Two and a half acres.

8 Q. Two and a half acres?

9 A. Yes, sir.

10 Q. Okay. Describe what the structure is. What is it
11 like?

12 A. It's a doublewide mobile home.

13 Q. Okay. A doublewide. Let me show you what's already
14 into evidence as State's 2. Does that kind of fairly and
15 accurately show an aerial of the area there where the
16 trailer is?

17 A. Yes, sir.

18 Q. Okay. Come down here, if you would.

19 (Whereupon, the witness steps down from the witness
20 stand.)

21 Q. How do you come in off the road to this property?

22 A. Murrah Road will be here at the top and you come down
23 and it's at the end of the dirt lane down there.

24 Q. Okay. It comes in like this?

25 A. Yes, sir.

1 Q. Where on here is the actual trailer situated?

2 A. It would be this area here.

3 Q. Okay. This here?

4 A. That was a camper I had stored down there back when
5 the photo was taken.

6 Q. So this is a old photo and you had a camper on it at
7 that time?

8 A. Yes, at that time.

9 Q. But that's basically an aerial layout?

10 A. Yes.

11 Q. Okay. If you could take -- you can stay right here,
12 if you will. I'm gonna show you State's 12. If this is
13 kind of a map of this section of the county in here and
14 this is the courthouse, how do you get down there to where
15 this property is from leaving the courthouse? How do you
16 go, Mr. Harmon?

17 A. Travelling Sweetwater Road down to -- all the way down
18 to Mealing and turn right on Mealing and go down and then
19 turn right on Murrah and Rainforest would be down on the
20 left.

21 Q. Okay. So you go down Sweetwater and turn where?

22 A. On Mealing --

23 Q. Okay.

24 A. -- here and then come down to Murrah and it would be
25 down here in the corner.

1 Q. But it's definitely all Edgefield County?

2 A. Yes, it's all Edgefield County.

3 Q. Okay. Go back and retake the stand.

4 (Whereupon, the witness returns to the witness stand.)

5 Q. Who did you first start out with renting this place to
6 for this crowd?

7 A. Heather Hall and a different individual.

8 Q. Not Mr. Wheeler, the Defendant in this case?

9 A. No, sir.

10 Q. She and a boy?

11 A. Yes, that's right.

12 Q. They rented it from you?

13 A. Yes.

14 Q. Okay. I guess it's in December when they did the
15 search warrant there, but how much prior to that did they
16 started renting the place from you in all?

17 A. It was almost practically a year before that and then
18 her dad had moved in and he had joined the lease and then
19 it was the three of them on there.

20 Q. Okay. So she and some other boy to start with?

21 A. Yeah.

22 Q. And then how did it come that she and her daddy ended
23 up both on it and the other boy was gone?

24 A. Well, I was going to evict the other boy and -- and
25 Heather and then Mr. Coon come up and wanted to rent the

1 place, so I let him -- he go rent it and then he come up
2 with the deposit and the money to rent it and then, of
3 course, he wanted -- she wanted to move back in with him,
4 which I was fine with that, I thought it was gonna be the
5 daughter -- you know, daughter and father, and so then they
6 joined the lease and stayed.

7 Q. Okay.

8 MR. MAYE: Thank you. Answer any questions the
9 defense has for you.

10 CROSS-EXAMINATION

11 BY MR. THUSS:

12 Q. Good afternoon. I'm Rob Thuss, Mr. Wheeler's
13 attorney.

14 A. How are you?

15 Q. I'm fine. Mr. Wheeler doesn't have any rental or
16 lease agreement with you, does he?

17 A. No, he does not.

18 Q. Do you know him?

19 A. I don't know him.

20 Q. Don't know him?

21 A. No.

22 Q. So he does not to your knowledge reside at
23 ■ Rainforest?

24 A. No, sir.

25 Q. And does Mr. Coon -- was it primarily Mr. Coon's

1 residence after -- after Ms. Hall moved out?

2 A. Well, it was. It was -- showed on the paper it was.

3 Now the last two months before this all transpired, she had
4 paid the rent.

5 Q. Was she -- she had given you the rent personally?

6 A. Yes.

7 Q. But you don't know whether or not she might have
8 gotten the money from Mr. Coon or someone else?

9 A. It was stated that she would be paying me. Now as
10 far as, you know, where the money come from, she was there
11 and I didn't see Mr. Coon for the last two months.

12 Q. All right. Do you know whether or not she was
13 actually residing there as her legal residence or
14 full-time?

15 A. I had done a monthly inspection the first of that
16 month and, of course, her belongings were there, yes.

17 **MR. THUSS:** Thank you. No further questions.

18 **MR. MAYE:** Just one.

19 **REDIRECT EXAMINATION**

20 **BY MR. MAYE:**

21 Q. You don't know who was all in there day by day though,
22 do you?

23 A. I don't.

24 Q. You didn't know this place was full of guns and
25 explosives and drugs, did you?

1 A. No, sir.

2 MR. MAYE: Okay. Nothing else. Thank you.

3 THE COURT: All right. You can step down.

4 THE WITNESS: Thank you.

5 (Witness excused.)

6 MR. MAYE: The State calls Jimmy Smith.

7 THE CLERK: Raise your right hand and place your left
8 on the Bible.

9 (Whereupon, Jimmy Smith was duly sworn by the Clerk of
10 Court.)

11 THE CLERK: Please be seated, sir. State your full
12 name and spell your last name for the record.

13 THE WITNESS: Investigator Jimmy Smith, S-M-I-T-H.

14 JIMMY SMITH,

15 having been duly sworn, testified as follows:

16 DIRECT EXAMINATION

17 BY MR. MAYE:

18 Q. Investigator Smith, tell the ladies and gentlemen of
19 the jury about your background in law enforcement and how
20 you got involved in this case.

21 A. Well, my background in law enforcement is in 1998 I
22 started at the Saluda County Detention Center. I stayed
23 there about a year and become a police officer with the
24 Johnston Police Department. In 19 -- in 2005, I left there
25 to come to the Edgefield County Sheriff's Office and in

(Jimmy Smith - Direct by Mr. Maye)

1 2006 I became a criminal investigator.

2 Q. Okay. Investigator Smith, y'all have got a narcotics
3 unit at the sheriff's office, right?

4 A. Yes, sir.

5 Q. Who's over the narcotics unit?

6 A. Lieutenant Young.

7 Q. Lieutenant Young. Who else works with him there in
8 narcotics?

9 A. Investigator Warren Miller and Investigator Chase
10 Harley.

11 Q. Okay. Investigator Smith, is it typical for you to
12 work property crimes and burglaries and that kind of thing
13 in your capacity as an investigator for the sheriff's
14 office for Sheriff Dobey?

15 A. Yes, sir.

16 Q. Okay. Let me ask you this. Did you have an occasion
17 to go over to the detention center over in Aiken County and
18 speak with an inmate?

19 A. Yes, sir.

20 Q. Who was that?

21 A. That was Walter Brian Wade.

22 Q. Okay. Once you went over and talked to him, did you
23 gather information from him?

24 A. Yes, sir.

25 Q. In reference to what area of the county?

1 A. ■ Rainforest Lane, which is on the southern end of
2 Edgefield County.

3 Q. Okay. Let me ask you this. When you went over and
4 talked with him, what did you do with all of the
5 information that he provided to you in regard to carrying
6 out an investigation at ■ Rainforest Lane and specific to
7 getting a search warrant? What all did you do?

8 A. When we went and spoke to him on the 14th of December,
9 we took down information that he gave us in reference to
10 ■ Rainforest Lane, which he stated he had seen large
11 quantities of guns, methamphetamines, heroin, C-4
12 explosives all located in the residence at Rainforest Lane.
13 He had told us at the residence there was a David Coon, a
14 Heather Hall and a guy he described to us as Biker Tim.

15 Q. Okay. He said they were staying there?

16 A. Yes, sir.

17 Q. Okay.

18 A. He gave us a detailed drawing of what the residence
19 looked like. We took that information. Myself and
20 Investigator Ireland came back to Edgefield County where
21 we received information that Deputy Florida with the
22 sheriff's office was familiar with that residence, had
23 been looking at that residence and also had been in that
24 residence on a prior call.

25 Q. Did he give you a diagram?

(Jimmy Smith - Direct by Mr. Maye)

1 A. Yes, sir. He also give us a diagram of the residence
2 that matched what was given to us by Mr. Wade.

3 Q. Okay. Who had -- what kind of vehicle traffic had
4 been in and out of there?

5 A. The deputies had been watching two black in color
6 motorcycles that had been coming in and out of there on a
7 regular basis. That was the main vehicles coming in and
8 out. Deputy Florida, Sergeant Florida now, he had been
9 watching that and at one point in time he had saw one of
10 them at the gas station nearby there and went and started
11 up a conversation with the guy that was on the motorcycles
12 -- the guy on the motorcycle.

13 Q. Okay. Don't go into what he said there at that time,
14 but based on you talking to -- Mr. Wheeler talking with the
15 deputy and gathering information, did you go down and
16 attempt to obtain a search warrant in this case?

17 A. Yes, sir, on December 15th.

18 Q. Okay. Did you do a written affidavit for the
19 magistrate at that point in time laying out the information
20 that you had at that time?

21 A. Yes, sir.

22 Q. Okay. Did you supplement that with oral testimony?
23 Were you sworn and under oath when you did that?

24 A. Yes, sir.

25 Q. Okay. Did you provide supplemental oral testimony to

1 the magistrate basically telling everything that you knew
2 about that residence and the suspected criminal activity
3 there?

4 A. Yes, sir.

5 Q. Okay. After you provided all of that information to
6 the magistrate under oath, did the magistrate issue a
7 search warrant for ■ Rainforest Lane?

8 A. Yes, sir, she did.

9 Q. Okay. Was that search warrant carried out within ten
10 days? When did y'all carry out the search warrant?

11 A. It was carried out on December the 22nd.

12 Q. Okay. Did you continue to watch and observe -- the
13 sheriff's department, y'all continued to watch and observe
14 that property right up until the time that you got the
15 search warrant. Now you talked with Wade in this case on
16 December the 14th, I think; is that correct?

17 A. Yes, sir. That's the day we went to Aiken County and
18 spoke with him.

19 Q. And the very next day you went to Judge Carpenter; is
20 that correct?

21 A. Yes, sir.

22 Q. Okay. So you talked with him and did what you could
23 to verify what he told you and then went to the magistrate,
24 correct?

25 A. Yes, sir.

1 Q. Okay. She gave you the search warrant and y'all went
2 out on December te 22nd of 2015 and executed it, correct?

3 A. I didn't personally go out, but officers did go out
4 and execute it on the 22nd, yes, sir.

5 Q. Okay. Was a return generated and was the return given
6 back to the magistrate within ten days?

7 A. Yes, sir.

8 Q. Okay. What is a return? What do y'all do with that?

9 A. It lists the persons that were present when the search
10 warrant was served, the person that served the search
11 warrant and it lists items that were taken from the
12 residence as a result of the search warrant.

13 Q. So y'all made an inventory of all the items that you
14 took?

15 A. Yes, sir.

16 Q. Who was the copy of the search warrant actually served
17 with as a resident there?

18 A. It was left -- it says left at the house, but
19 Mr. Wheeler was a resident of the house when the search
20 warrant was served on that date.

21 Q. Okay. And so you gave -- it was given to Mr. Wheeler?

22 A. Yes, sir.

23 Q. Okay.

24 **MR. MAYE:** Please answer any question that the defense
25 has for you.

1 CROSS-EXAMINATION

2 BY MR. THUSS:

3 Q. All right. Investigator Smith, we know each other --

4 A. Yes, sir.

5 Q. -- and so you know who am and that I'm representing
6 Mr. Wheeler?

7 A. Yes, sir.

8 Q. Did -- on the search warrant you said Mr. Wheeler was
9 a resident. He was -- based on what my understanding is,
10 is that -- that you weren't present for the -- for the
11 execution -- for the serving of that search warrant?

12 A. That's correct.

13 Q. And so do you have actual firsthand knowledge of --
14 of if he was a resident or anything along those lines?15 A. That was the information that was told to me by
16 Investigator Ireland who actually served the warrant.17 Q. Who served the warrant. And you said that the warrant
18 was left with him?19 A. The warrant said it was left at the house and
20 Mr. Wheeler was at the house when the warrant was served.

21 Q. Mr. Wheeler was taken into custody, wasn't he?

22 A. Yes, sir.

23 Q. So really it just could have been left at the house
24 and it wasn't actually given to him?

25 A. That's what it said. It says it was left with the

(Curtis Morris - Direct by Mr. Maye)

1 house.

2 Q. Okay. And at that time did -- did y'all know that
3 this was Mr. Coon's principal residence?

4 A. Yes, sir, we had that information.

5 **MR. THUSS:** Thank you. No further questions.

6 **THE COURT:** You can step down.

7 (Witness excused.)

8 **MR. MAYE:** Curtis Morris.

9 **THE CLERK:** Raise your right hand and place your left
10 on the Bible.

11 (Whereupon, Curtis Morris was duly sworn by the Clerk
12 of Court.)

13 **THE CLERK:** Thank you, sir. You may be seated.
14 Please state your full name and spell your last for the
15 record.

16 **THE WITNESS:** Curtis Allen Morris. The spelling of my
17 last name is M-O-R-R-I-S.

18 CURTIS ALLEN MORRIS,

19 having been duly sworn, testified as follows:

20 DIRECT EXAMINATION

21 BY MR. MAYE:

22 Q. Officer Morris, tell the ladies and gentlemen of the
23 jury about your job responsibilities with the sheriff's
24 office. What's your area of specialty?

25 A. At this current time I'm assigned to the forensic

1 section of the Edgefield County Sheriff's Office for
2 approximately the last eight years. Crime scene.

3 Q. Let me ask you this. Did you go out and execute a
4 search warrant or did you go with ATF, the SLED SWAT team
5 and the sheriff's office to execute a search warrant on
6 ■ Rainforest Lane December the 22nd of 2015?

7 A. Yes, sir, I did.

8 Q. Okay. What was your role in doing that?

9 A. Collection and preservation of evidence.

10 Q. Tell the ladies and gentlemen what you did to document
11 what y'all found as a result of the search warrant that day
12 as a crime scene officer.

13 A. Everything that was found in -- on the property
14 designated to be evidence was photographed on its location
15 and documented that way and then collected.

16 Q. Okay. Let me show you what's marked State's 22 for ID
17 at this time. Did you take custody of that weapon as a
18 result of the search warrant on that day?

19 A. Yes, sir, I did.

20 Q. Okay. So what type of shotgun is that? What
21 information does it reflect?

22 A. This is a -- excuse me. It's a Mossberg 12 gauge
23 shotgun, Serial number ■■■■■■

24 Q. Okay. You seized that at the residence and took
25 custody of it?

(Curtis Morris - Direct by Mr. Maye)

1 A. Yes, sir.

2 Q. Correct?

3 A. Yes, sir.

4 Q. And you're sure that that's the same shotgun you took
5 as a result of the search warrant that day?

6 A. Yes, sir.

7 **MR. MAYE:** Move to admit it in evidence subject to any
8 objection by the defense.

9 **MR. THUSS:** No objection.

10 **MR. MAYE:** Thank you.

11 **THE COURT:** All right. Admitted without objection.

12 (State's Exhibit Number 22, a shotgun, was admitted
13 into evidence.)

14 **THE COURT:** Just for the jury, that gun has a safety
15 device where it can't be loaded. That chain is locked in
16 there so it can't go off. You can see the lock on it.

17 BY MR. MAYE:

18 Q. Did you collect a number of firearms as a result of
19 the search warrant?

20 A. Yes, sir.

21 Q. Okay. How many guns are we talking about?

22 A. I cannot give you the exact amount, sir.

23 Q. Let me show you State's Exhibit 4 in this case. Take
24 a look at all the items there.

25 A. Yes, sir.

1 Q. Did you seize and take custody of all of those weapons
2 there when you executed the search warrant on that day?

3 A. From the scene, yes, sir.

4 Q. Did you photograph them -- did you get them all
5 together and put them together?

6 A. Yes, sir.

7 Q. Okay. Where all in the trailer did you find firearms?

8 A. They were throughout the entire residence.

9 Q. You're positive about that? They weren't in just one
10 room, but they were scattered throughout the residence?

11 A. Yes, sir.

12 Q. Okay. State's 13 and 14 already in evidence by
13 stipulation, tell me what those are and what -- where you
14 found those.

15 A. These are photographs of a blasting cap that was found
16 in the common area of the residence.

17 Q. Explosives?

18 A. Yes, sir.

19 Q. And you found those in the common area? Go down here
20 on the diagram.

21 (Whereupon, the witness steps down from the witness
22 stand.)

23 Q. Where are you talking about the common area of the
24 house?

25 A. It would have been laying on this counter right here.

(Curtis Morris - Direct by Mr. Maye)

1 Q. Okay. I'm gonna show you State's 18 already in by
2 stipulation, 63, 62 and 68. Okay. Take a look at those.

3 A. Yes, sir.

4 Q. The items that are depicted and photographed there,
5 what bedroom or where in the trailer were they located?

6 A. These were located in Bedroom Number 2.

7 Q. Show me and mark where Bedroom Number 2 is. Take a
8 pen and mark where you're talking about Bedroom 2.

9 A. This would be Bedroom 2 here.

10 Q. Okay. And so all of these items that are in these
11 photographs you found there, correct?

12 A. Yes, sir.

13 Q. Come down here if you would.

14 A. (Witness complies.)

15 Q. 68.

16 A. Yes, sir.

17 Q. What does that show that's already in evidence in this
18 case? What is that?

19 A. It's a wallet of one Timothy Wayne Wheeler containing
20 cash money.

21 Q. Okay. Do you know how much cash money was in that
22 wallet in that bedroom?

23 A. I do not, sir.

24 Q. Okay. All right. But you're positive you took
25 pictures of that in Bedroom 2?

1 A. Yes, sir.

2 Q. Okay. Let me show you State's 62. What does that
3 show?

4 A. That's the same wallet showing a close-up of the money
5 being able to be visible more.

6 Q. Okay. And you can still see the corner of his
7 driver's license in that picture, correct?

8 A. Yes, sir.

9 Q. State's 18.

10 A. Yes, sir.

11 Q. Where is that a photograph of?

12 A. This is up under the bed in Bedroom Number 2.

13 Q. What all items were there under the bed in Bedroom 2?

14 A. There was some cash money, some rolling papers, a
15 green plant-like substance believed to be marijuana, and
16 some other paraphernalia.

17 Q. Okay. Under the bed in Bedroom 2?

18 A. Yes, sir.

19 Q. Okay. And State's 63, what does that show?

20 A. This is a close-up of the driver's license of one
21 Timothy Wheeler as well.

22 Q. And that was in Bedroom 2?

23 A. Yes, sir.

24 Q. Let me ask you this. Officer Morris, the photographs
25 that I have, 9, 58, 57, 56, 53, 11, 61, did you take all of

1 these photographs out there at the scene?

2 A. Yes, sir.

3 Q. Okay. Do these photographs fairly and accurately
4 reflect what you saw there when you executed the search
5 warrant?

6 A. Yes, sir.

7 Q. And you inventoried those contents in your return to
8 the magistrate?

9 A. Yes, sir.

10 Q. Okay. Let me ask you this. State's 21 here, what
11 does that depict?

12 A. A ballistic vest that was found in the residence.

13 Q. Body armor?

14 A. Yes, sir.

15 Q. Okay. What type of body armor is that indicated?

16 A. U.S. Army is what it says.

17 Q. Military body armor?

18 A. Yes, sir.

19 Q. This where was this located?

20 A. Also located in the common area.

21 Q. In the common area of the residence?

22 A. Opposite wall of the bedroom, yes, sir.

23 Q. Let me show you State's Exhibit Number 72.

24 A. Yes, sir.

25 Q. What does that depict?

1 A. Different miscellaneous paper documents containing the
2 name Timothy Wheeler.

3 Q. Did you collect all of these documents from there in
4 the residence?

5 A. Yes, sir.

6 Q. With the name of Mr. Wheeler on it?

7 A. Yes, sir, in Bedroom Number 2.

8 Q. What's 67?

9 A. A picture of the same documentation.

10 Q. A letter?

11 A. Yes, sir.

12 Q. Who's it addressed to?

13 A. Timothy Wheeler, sir.

14 Q. Okay. What address does that say on there?

15 A. [REDACTED] Duncan Road, North Augusta, South Carolina, 29841.

16 Q. Okay. 66.

17 A. Again, documents containing the name Timothy Wheeler.

18 Q. What address?

19 A. [REDACTED] Bristol Drive, Graniteville, South Carolina,

20 29829.

21 Q. So a different address that's in 67? 66 is a letter
22 with a different address, correct?

23 A. Yes, sir.

24 Q. Okay. How about 70, what does that show?

25 A. It's more miscellaneous documents containing the name

(Curtis Morris - Direct by Mr. Maye)

1 Timothy Wheeler.

2 Q. Okay. An envelope with his name on it, correct?

3 A. Yes, sir.

4 Q. How about 65, what does that show?

5 A. It appears to be insurance information containing the
6 name Timothy Wheeler.

7 Q. To what -- to what type of vehicle does that purport
8 to be for?

9 A. A 2004 Chevrolet C-1500, silver in color.

10 Q. Okay. That's an insurance bill with his name on it?

11 A. Yes, sir.

12 Q. How about 64, what's the name on that?

13 A. The name on this one is Timothy W. Wheeler.

14 Q. And that's correspondence of some type? Some sort of
15 document?

16 A. From Aiken County, yes, sir.

17 Q. Okay. And you found that in the residence as well?

18 A. Yes, sir, in Bedroom Number 2.

19 Q. Okay. 69, what did you find there?

20 A. Another envelope containing the name Timothy Wheeler.

21 Q. Okay. Did you find -- you can go back and re-take the
22 stand.

23 A. Yes, sir.

24 (Whereupon, the witness returns to the witness stand.)

25 Q. Did you see and observe in Bedroom 2 clothing

1 consistent with habitation or somebody living inside the
2 residence?

3 A. Yes, sir.

4 Q. Okay. Men's and women's clothing? What type of
5 clothing was in the residence?

6 A. I can't tell you. All I -- I know I remember seeing
7 clothing.

8 Q. You -- you saw clothing. It was evidence that
9 somebody was living there --

10 A. Yes.

11 Q. -- from the clothing being there?

12 A. Yes, sir.

13 Q. Okay. So you found his billfold and all this mail
14 that was there that you photographed and documented?

15 A. Yes, sir.

16 Q. Okay. Let me ask you this. The weapons that were
17 under twenty-six inches in overall length or the barrel
18 length was less than eighteen, did you take those and seize
19 those?

20 A. Yes, sir.

21 Q. Okay. You actually did take them?

22 A. Yes, sir.

23 Q. Okay. I'll show you State's 52 for ID. Is that one
24 of the weapons that you seized there on December the 22nd
25 of 2015 as a result of the search warrant?

(Curtis Morris - Direct by Mr. Maye)

1 A. Yes, sir.

2 Q. Okay.

3 MR. MAYE: I move to admit this into evidence subject
4 to any objection.

5 MR. THUSS: No objection.

6 THE COURT: It will be 52.

7 MR. MAYE: Thank you.

8 (State's Exhibit Number 52, a shotgun, was admitted
9 into evidence.)

10 BY MR. MAYE:

11 Q. Let's talk about 50 for ID at this point in time.
12 What is that, Investigator Morris?

13 A. A 12 gauge shotgun, Topper Model 158. A sawed-off
14 shotgun.

15 Q. Okay. Did you seize that as pursuant to the search
16 warrant on December 22, 2015, at that residence?

17 A. Yes, sir.

18 MR. MAYE: I move to admit this into evidence subject
19 to any objection.

20 MR. THUSS: No objection.

21 THE COURT: Admitted without objection.

22 (State's Exhibit Number 50, a shotgun, was admitted
23 into evidence.)

24 BY MR. MAYE:

25 Q. State's 51 for ID at this point in time. What is that

1 item and where did you seize it from?

2 A. It's a Harrington & Richardson Arms Company 12 gauge
3 shotgun that was seized from the residence.

4 **MR. MAYE:** I move to admit this into evidence at this
5 time.

6 **MR. THUSS:** No objection.

7 **THE COURT:** No objection. 51.

8 (State's Exhibit Number 51, a shotgun, was admitted
9 into evidence.)

10 BY MR. MAYE:

11 Q. Did you keep and maintain all of the weapons that you
12 seized in evidence in this case with the exemption of the
13 three that are termed as sawed-offs?

14 A. Yes, sir.

15 Q. Okay. Who were the shortened or sawed-off shotguns
16 turned over to?

17 A. To the ATF.

18 Q. To ATF? Alcohol, Tobacco and Firearms?

19 A. Yes, sir.

20 Q. Do you remember the agent's name that worked that?

21 A. I believe it was Rico Prince, Ricardo Prince.
22 Something of that nature.

23 Q. Okay. So all of the items of evidence that were taken
24 in this case in the way of firearms you took and you kept
25 with the exception of the short ones, correct?

(Curtis Morris - Cross by Mr. Thuss)

1 A. Yes, sir.

2 Q. Okay. Any drug evidence, did you seize the drug
3 evidence yourself or did someone else in the department
4 seize the drug evidence?

5 A. The drug evidence was seized by the narcotics
6 division.

7 Q. Okay. Who was there with the narcotics division while
8 you were executing the search warrant?

9 A. That would be Lieutenant Roosevelt Young and
10 Investigator Warren Miller.

11 Q. Okay. Did you log all of these things on a return for
12 the warrant?

13 A. Yes, sir.

14 Q. Did y'all turn those back in to the magistrate within
15 ten days?

16 A. To my knowledge, yes, sir.

17 **MR. MAYE:** Okay. Answer any questions that the
18 defense has for you, Investigator Morris. Thank you.

19 **THE WITNESS:** Yes, sir.

20 **CROSS-EXAMINATION**

21 **BY MR. THUSS:**

22 Q. Thank you, Investigator. I'm Rob Thuss representing
23 Mr. Wheeler.

24 A. Yes, sir.

25 Q. When you began to take photographs of the -- of the

1 scene there, had the scene already been searched?

2 A. The SLED SWAT team had went in and cleared the
3 residence. I don't know if they searched previous to me
4 going in there.

5 Q. Okay. I've seen about three or four hundred
6 photographs that you took --

7 A. Yes, sir.

8 Q. -- that were turned over in discovery.

9 A. Yes, sir.

10 Q. Now it appeared from looking at those photographs
11 that there was a lot of disarray, things were thrown and
12 scattered all over the place.

13 A. Yes, sir.

14 Q. Was that as a result of the search for weapons and
15 contraband?

16 A. The photographs themselves were taken over a period of
17 time while the search was on-going.

18 Q. Okay. Who -- do you know whether or not the -- the --
19 there was in -- in your return whether all of them -- all
20 monies and all were counted?

21 A. I'm sorry, sir. Repeat that.

22 Q. Do you know if the monies that you said -- there was
23 an accounting for the monies or the cash --

24 A. Okay.

25 Q. -- that was taken during the search?

(Curtis Morris - Cross by Mr. Thuss)

1 A. As far as I know, all the monies were accounted for,
2 yes, sir.

3 Q. Okay. Who -- who performed the count?

4 A. I believe that was the narcotics division and another
5 investigator.

6 Q. So I could ask those officers about that?

7 A. I would believe so, sir.

8 Q. Okay. You didn't personally count any of the money?

9 A. No, sir.

10 Q. And apart from going there to inventory, you don't
11 know who any of this belongs to?

12 A. I documented the items where they were located.

13 Q. Where they were located?

14 A. Yes, sir.

15 Q. Isn't it true that you took pictures that depicted
16 quite a few of these weapons in Mr. Coon's -- the majority
17 of the weapons in Mr. Coon's room?

18 A. Yes, sir.

19 Q. And did that include the -- the sawed-off shotguns?

20 A. I can't tell you exactly which one was in which
21 location without going through each one and looking at it.

22 Q. But you did document -- you have photographs that you
23 could review?

24 A. Those photographs there, yes, sir.

25 Q. Well, there were other photographs that have not been

1 admitted. I just -- you have a recollection of -- of --
2 you don't have a recollection of these sawed-off weapons
3 being in Mr. Coon's room?

4 A. Off the top of my head, I can't remember that, sir.

5 Q. Okay. You don't have any reason to believe they
6 couldn't have been in his room?

7 A. No, sir.

8 Q. I'm gonna ask you whether you recognize a couple of
9 photographs that haven't yet been admitted.

10 A. Yes, sir.

11 **MR. THUSS:** Your Honor, these are -- these are
12 Defendant's 1, 2 and 3.

13 **THE COURT:** Those were agreed to, correct?

14 **MR. MAYE:** I did. I agree to all of the defense -- I
15 think 1 through 11, I agreed to all of them by stipulation.
16 They're in as defense exhibits.

17 **THE COURT:** Y'all want to -- let's take a minute and
18 make sure. Because y'all agreed to virtually all the
19 exhibits, both sides?

20 **MR. MAYE:** Yes.

21 **MR. THUSS:** Yes, sir.

22 **THE COURT:** I just want the jury to know. They --
23 they talked about this; that basically all the pictures
24 that either side wanted they agreed to let them come in.

25 **BY MR. THUSS:**

(Curtis Morris - Cross by Mr. Thuss)

1 Q. And do you recognize these as pictures that -- that
2 you would have taken at the time you were photographing the
3 scene?

4 A. Yes, sir. These are my pictures.

5 Q. Thank you. I'm going to -- I'd like to show them to
6 the -- to the jury.

7 Now is it true that Defendant's Exhibit 1, which
8 depicts an undetermined amount of cash with a hundred
9 dollar bill at least on top, along with some drugs and an
10 ammo box, this -- is it true that this was found in bedroom
11 -- in the bedroom where the puppies were, Bedroom Number 3?

12 A. I cannot answer that. I don't know where that was
13 located at. It was brought out and I photographed it in
14 the hallway.

15 Q. Okay. So this was brought out from -- this was
16 brought out together and you photographed it in the
17 hallway?

18 A. Yes, sir.

19 Q. Okay. And this would be a larger -- an enlargement of
20 one of the other photographs?

21 A. Yes, sir.

22 Q. Okay. Thank you.

23 **MR. THUSS:** I don't have any further questions.

24 **MR. MAYE:** Nothing else. Thank you.

25 **THE COURT:** You can step down.

1 **THE WITNESS:** Yes, sir.

2 (Witness excused.)

3 **MR. MAYE:** Your Honor, I would -- if I could take a
4 brief moment and go into the back. We have some property
5 owners here and I'll tell you which one we're gonna call
6 next. I'd like to take a brief --

7 **THE COURT:** All right, Mr. Mayes. Let's take a short
8 break. Let's let the jury step in the jury room.

9 (Whereupon, the jury retires to the jury room at
10 3:38 PM.)

11 (Recess taken.)

12 **THE COURT:** Are you ready?

13 **MR. MAYE:** We're ready, Judge.

14 **THE COURT:** Bring them in.

15 (Whereupon, the jury return to the courtroom at
16 3:47 PM.)

17 **THE COURT:** All right. Call your next witness.

18 **MR. FENDER:** The State calls Jearl Guy Fletcher.

19 **THE CLERK:** Raise your right hand and place your left
20 hand on the Bible.)

21 (Whereupon, Jearl Guy Fletcher was duly sworn by the
22 Clerk of Court.)

23 **THE CLERK:** Thank you, sir. Please be seated. State
24 your full name and spell your last name for the record.

25 **THE WITNESS:** My first name is Jearl, J-E-A-R-L, Guy

(Jearl Guy Fletcher - Direct by Mr. Fender)

1 Fletcher, F-L-E-T-C-H-E-R.

2 JEARL GUY FLETCHER,

3 having been duly sworn, testified as follows:

4 DIRECT EXAMINATION

5 BY MR. FENDER:

6 Q. Mr. Fletcher, can you tell the jurors just a little
7 bit about yourself, you know, what area you live in and
8 that kind of thing.

9 A. I live in Jackson, South Carolina. I moved here from
10 the Washington, D.C., area ten years ago to get away from
11 the crime and to find a nice rural isolated area to buy an
12 old home to renovate so I could have a nice peaceful home.
13 I'm gonna be fifty-six years old in about two weeks, so.

14 Q. At one point did you also buy a Harley-Davidson
15 motorcycle?

16 A. I bought a Harley-Davidson motorcycle brand new as
17 I was leaving Washington at Patriot Harley-Davidson in
18 Virginia. Memorial Day weekend 2006 I got a new bike for
19 the first time.

20 Q. What kind of motorcycle did you buy?

21 A. A Harley-Davidson 883 XLC. The C stands for -- it's
22 already customized by the manufacturer, then after having
23 owned it and having it on my own I added a lot more chrome
24 and detailing to make it exactly what I wanted.

25 Q. How much did you pay for the bike originally?

1 A. The bike cost about -- just about exactly ten thousand
2 and I have maybe twelve to fifteen hundred more in parts,
3 which I could do the work on it myself and add to it.

4 Q. Okay. So \$10,000 and then another couple of thousand
5 dollars for custom parts, chrome and that kind of stuff?

6 A. Between 11 and \$12,000.

7 Q. Where did you keep this motorcycle at?

8 A. That was parked at my home in a drive-through shed
9 which was made of railroad ties. It's been there for many
10 years. It came with the home. I had it taken off the
11 road. I was using some of the money that I was usually
12 putting out for that on a monthly basis for insurances and
13 things and trying to put that money towards fixing the
14 house. So I was working so much there I didn't need a car
15 and a motorcycle, so I had taken the motorcycle off the
16 road assuming that it would be safe locked up on my own
17 property for at least a temporary amount of time. The bike
18 only had between five and six thousand miles on it, so
19 that's how new it was.

20 Q. So you had it secure there on your property?

21 A. Yes.

22 Q. When did it first go missing?

23 A. The last week of July in 2015 I came home from work,
24 it was gone. I called the sheriff's office and put in a
25 report.

1 Q. So when you noticed it was missing, you immediately
2 reported it stolen?

3 A. Yes.

4 Q. Do you have the VIN number that you reported?

5 A. I have it.

6 Q. Could you please read that to the jurors?

7 A. 1HD463M1X6K405022.

8 Q. Was your motorcycle later recovered by law
9 enforcement?

10 A. It was. I was notified by the sheriff's office that
11 they had recovered my motorcycle and gave me an address to
12 go claim it. I went to claim the motorcycle. It was
13 unrecognizable. It had been cut apart and replaced with
14 welded-on parts for something that didn't even look like a
15 motorcycle part. Additionally, it cost me \$550 to get it
16 out of the lot that it had been taken to and I did find
17 someone who was willing to buy it for \$500 as salvage. So
18 I not only lost the motorcycle, but I lost the money on
19 getting the bike back because I had to pay somebody with a
20 truck to tow it and all of the other things that went with
21 getting it out of the lot that it was put in temporarily.

22 Q. Had the chrome parts been stripped from your
23 motorcycle?

24 A. Entirely. Even the wheels.

25 Q. Had -- the vehicle identification number, had it been

1 painted over?

2 A. They tried to obscure the number. I had a
3 professional guy at the tow lot who had to actually use
4 several tools to get down to the number and read it where
5 it had been minimized underneath several coats of what
6 looked like paint and maybe some -- some drippings from
7 welding.

8 Q. Okay. I'm showing you now what's been marked as
9 State's 58, State's 56 and State's 9, and also State's 57.
10 Can you tell the jurors what these pictures appear to be.

11 A. It looks like what was left of my motorcycle in
12 someone else's -- at someone else's property. This is how
13 it looked when I -- when I retrieved it from the lot.

14 Q. In fact, is that your signature there where you
15 identified this motorcycle?

16 A. It is my signature.

17 Q. There's also a number there. Can you read that number
18 to the jurors?

19 A. The minimum amount that I valued of the bike was
20 \$4,500.

21 Q. So that was the approximate value in December of 2015?

22 A. July of 2015 that would have been a fair trade-in
23 value at a dealer.

24 Q. So sometime in this late summer, fall, winter of 2015
25 this is the approximation essentially of the -- of your

(Fred W. Teeter - Direct by Mr. Fender)

1 motorcycle that was stolen from you?

2 A. It is.

3 Q. Okay.

4 **MR. FENDER:** Please answer the defense attorney's
5 questions.

6 **MR. THUSS:** No questions.

7 **THE COURT:** No questions. You can step down.

8 **THE WITNESS:** Thank you.

9 (Witness excused.)

10 **MR. FENDER:** The State calls Fred Teeter.

11 (Whereupon, Fred W. Teeter was duly sworn by the Clerk
12 of Court.)

13 **THE CLERK:** State your full name and spell your last
14 for the record.

15 **THE WITNESS:** My name is Fred W. Teeter, T-E-E-T-E-R.

16 FRED W. TEETER,

17 having been duly sworn, testified as follows:

18 DIRECT EXAMINATION

19 BY MR. FENDER:

20 Q. Mr. Teeter, are you from the Greenwood area of South
21 Carolina?

22 A. Yes, uh-huh.

23 Q. Do you also have a home in the Columbia area?

24 A. Yes, sir.

25 Q. At one point did you buy a red pick-up truck?

1 A. Yes, I did. Approximately four or five years ago.

2 Q. Can you tell the jurors a little bit about that truck?

3 A. Well, the truck was red. It had sort of a custom
4 body on the back, it had custom wheels on it, and it had
5 approximately 100,000 miles on it, but it was in excellent
6 condition.

7 Q. When did you buy it?

8 A. Oh, I think I've had it about five years. Four and a
9 half, five years.

10 Q. And what brand of truck was it?

11 A. It was a Chevrolet.

12 Q. Was it a two-door truck? Did it have two doors?

13 A. I'm sorry? I can't --

14 Q. How many doors did the truck have?

15 A. Two doors.

16 Q. Two doors. Okay. Now did this truck go missing?

17 A. Yes.

18 Q. Can you tell the jurors a little bit about that?

19 A. The truck was parked in front of a modular home in
20 Columbia and the doors were locked and the key was not
21 in it and it was stole sometime after dark and it had a
22 telephone and a camera in the pocket.

23 Q. Okay. Did you report this to police?

24 A. Yes, reported it the next morning after that, yes,
25 sir.

1 Q. And what was the VIN number? The VIN number?

2 A. VIN number, okay. IGCEC14X35Z197758.

3 Q. I want to show you now some pictures; State's
4 Exhibit 73, 61, 11. Can you tell us -- what do you see in
5 those pictures?

6 A. I see a red truck that I owned. It looks like a wheel
7 off of it down there on the ground. I'm not sure that was
8 it, but that was the truck.

9 Q. This was the truck that was stolen from you?

10 A. (Nods head.)

11 Q. Are those the custom wheels you were telling us about,
12 sir?

13 A. Yes. Uh-huh.

14 Q. Does that appear to be your signature there where you
15 identified that truck?

16 A. Yes, that is the truck and that's my signature, yes.
17 Uh-huh.

18 Q. Can you tell us -- what's that number right there?

19 A. The value of it is \$7,500 to \$8,000.

20 Q. And that's the fair market value in December of 2015?

21 A. Yes. And he said it was worth more, but I didn't have
22 the bills to back it up, so.

23 Q. Okay. And how much did you pay for this truck?

24 A. I think it was about ninety-five -- \$9,500.

25 **MR. FENDER:** All right. Please answer the defense

1 attorney's questions.

2 **MR. THUSS:** No questions.

3 **THE COURT:** No questions. You may step down,
4 Mr. Teeter. Thank you very much.

5 (Witness excused.)

6 **MR. MAYE:** The State calls Roosevelt Young to the
7 stand.

8 (Whereupon, Roosevelt Young was duly sworn by the
9 Clerk of Court.)

10 **THE CLERK:** Please be seated. State your full name
11 and spell your last for the record.

12 **THE WITNESS:** Roosevelt Young, Y-O-U-N-G.

13 Roosevelt Young,

14 having been duly sworn, testified as follows:

15 DIRECT EXAMINATION

16 BY MR. MAYE:

17 Q. Investigator Young, tell the ladies and gentlemen of
18 the jury where you're employed and where you were employed
19 back in December of 2015, a little bit about your
20 experience.

21 A. I work at the sheriff's office, the Edgefield County
22 Sheriff's Office. I've been there approximately twenty-one
23 years and I was one of the officers at Rainforest Lane on
24 December 22nd, 2015.

25 Q. What's your area of specialty for Sheriff Dobe? What

1 do you do for him that's different than what some of the
2 road officers who go out and answer calls do?

3 A. I'm a supervisor of narcotics for him.

4 Q. How long have you worked narcotics?

5 A. Since January of 2000. Seventeen years.

6 Q. Seventeen years?

7 A. Yes, sir.

8 Q. Let me ask you this. When you went out on the search
9 warrant, were you -- just tell them what your particular
10 focus was when you went out to help them on the search
11 warrant December the 22nd of 2015 there at Rainforest Lane.

12 A. To collect any controlled substances, illegal
13 narcotics, suspected narcotics.

14 Q. Let me show you what's been marked for ID at this
15 point in time 24 for ID. Let me ask you if you recognize
16 the items that are inside there.

17 A. Yes, sir.

18 Q. Okay. What are -- what are those items? Identify
19 them and tell what you did to secure them on the day that
20 you seized them on the search warrant.

21 A. You've got several packages of a crystal-type
22 substance, suspected methamphetamine. You've got three
23 different types of pills.

24 Q. Okay. Let me ask you this. What did you do to secure
25 those items for later testing? What's your procedure and

1 what did you do on December the 22nd of 2015 to secure
2 them?

3 A. The procedure at the sheriff's department is to simply
4 put them in a BEST kit, get it sealed and get it ready for
5 SLED to test it.

6 Q. What is a BEST kit and sealing it? What does that
7 mean?

8 A. It's an evidence -- it's basically a plastic bag
9 that's got a control number on it that is from SLED. We
10 seal it, we've got to fill out a chain, it goes from person
11 to person, and I take it to SLED and they analyze it.

12 Q. Did you document the serial number of the BEST kit
13 when you seized that?

14 A. Yes, sir, I did.

15 Q. And that is the BEST kit number which you sealed up
16 all those items on that day in December of 2015?

17 A. Yes, sir, it is.

18 Q. Okay. During the time that you had the items after
19 you sealed them or before, did you change or alter them in
20 any way?

21 A. No, sir, I didn't.

22 Q. Okay. Where did you take those items once you seized
23 them there at the scene December 22nd of 2015? Where did
24 you take them and what did you do with them?

25 A. I took them to the Edgefield County drug safe on the

1 22nd.

2 Q. All right. What was the next thing that you did with
3 them?

4 A. On the 23rd, I got them out of the drug safe and we
5 took them to the South Carolina Law Enforcement Division,
6 SLED.

7 Q. What was your purpose of taking them to SLED?

8 A. To have a certified chemist perform an analysis on it.

9 Q. Okay. Who did you drop those items off with and when
10 did you drop them off?

11 A. To Jennifer Aycock and I dropped them off on
12 December 23, 2015.

13 Q. At any point in time during the time that you had
14 them, did you break the seal on the BEST kit or change or
15 alter them in any way?

16 A. No, sir.

17 Q. Okay. I'm gonna show you what's been marked
18 State's 25 for ID at this point in time. What is that
19 item?

20 A. It's a quantity of suspected marijuana.

21 Q. Okay. Where did you seize that from and what steps
22 did you take to preserve that evidence?

23 A. I seized it out of the green ammo can which is seated
24 on the table right there. I sealed it inside of an
25 evidence bag, filled it out and put it inside the evidence

1 vault at the sheriff's office.

2 Q. Okay. Did you -- while you mentioned this, I'm gonna
3 show you State's 23. You talked about getting -- the items
4 of suspected drug evidence, where did they come from?

5 A. They came out of this green ammo can found inside the
6 residence in Bedroom Number 3 --

7 Q. You found it in Bedroom 3?

8 A. -- at ■ Rainforest Lane.

9 Q. ■ Rainforest Lane?

10 A. Yes, sir.

11 Q. Okay. So this is the box -- the ammo box you seized,
12 correct?

13 A. Yes, sir.

14 Q. Okay.

15 MR. MAYE: I'm gonna move to admit this into evidence
16 at this time if there's no objection.

17 MR. THUSS: No objection.

18 THE COURT: State's 33?

19 MR. MAYE: Excuse me, 23.

20 THE COURT: State's 23 in evidence.

21 MR. MAYE: Right. State's 23.

22 (State's Exhibit Number 23, an ammo box, was admitted
23 into evidence.)

24 BY MR. MAYE:

25 Q. Come down please and show them where you found the

1 ammo box.

2 (Whereupon, the witness steps down from the witness
3 stand.)

4 A. It was found in Bedroom Number 3 inside the closet
5 area.

6 Q. Okay. What else was in Bedroom 3?

7 A. Bedroom 3 was empty. That's where they kept the
8 puppies at.

9 (Whereupon, the witness returns to the witness stand.)

10 Q. Okay. Just for purposes of reference, it's already
11 into evidence, but let me show you what's been marked as
12 Defendant's 1 there. Does that show and depict the items
13 that were removed out of the box there?

14 A. Yes, sir, it does.

15 Q. Okay. Are the items of suspected drug evidence, were
16 they in the green box there?

17 A. Yes, sir.

18 Q. Okay. What steps did you take to secure State's 25,
19 the suspected green plant-like material? What steps did
20 you take to secure 25? How did you do it and where did you
21 take it to?

22 A. Of course, we photographed it in place and we put it
23 inside this evidence bag, filled out the chain, which is
24 all the self-explanatory information. I took it and put it
25 in the vault on December the 22nd.

1 Q. Okay. What did you do with that item? Was it
2 subsequently transferred to someone else?

3 A. Yes, sir. December -- I'm sorry. On January the 28th
4 of 2016, Investigator Miller got it out --

5 Q. Who's Investigator Miller?

6 A. He's another officer that works in narcotics with me.

7 Q. Okay. Where was it subsequently transferred to?

8 A. It was transferred to Deputy Densmore, who works with
9 the sheriff's office who is also a certified SLED chemist
10 for marijuana analysis, and it was transferred to him on
11 the 28th of January.

12 Q. On the 28th of January it was transferred to him?

13 A. Yes, sir, it was.

14 Q. Okay. Let me show you State's 62 and State's 68.
15 What are those items right there?

16 A. It's a wallet containing money with a South Carolina
17 driver's license with Mr. Timothy Wayne Wheeler's name on
18 it. The items was found in Bedroom Number 2.

19 Q. How much U.S. currency did you count and document that
20 was seized there?

21 A. \$7,337.

22 Q. Out of his billfold in Bedroom 2?

23 A. Yes, sir. Now in the ammo can, which you just took
24 back, was an additional \$358, bringing the total \$7,731.

25 Q. That money in his billfold and money in the ammo can

(Roosevelt Young - Cross by Mr. Thuss)

1 as well?

2 A. Yes, sir.

3 MR. MAYE: Okay. Thank you, Investigator. Answer any
4 questions the defense has for you.

5 CROSS-EXAMINATION

6 BY MR. THUSS:

7 Q. Good afternoon, Investigator.

8 A. Good afternoon, Mr. Thuss.

9 Q. I'm just gonna -- I wanted to ask you about the --
10 about, you know, the money that you just testified to.

11 A. Yes, sir.

12 Q. Now according to the return, a total of \$7,373 was --
13 was taken in in U.S. currency.

14 A. Yes, sir.

15 Q. And on the return -- this is the search warrant return
16 after everything was inventoried. There is something about
17 some money in a jar.

18 A. Yes, sir.

19 Q. Do you know how much money was in that jar?

20 A. It's a brown colored antique jar, glass jar. No,
21 sir, because you would have to break it to actually get
22 into it to count the denominations of money and coins and
23 we haven't done that yet.

24 Q. Okay. Oh, so it was a sealed --

25 A. Yes, sir.

1 Q. -- a sealed jar?

2 A. Yes, sir. Yes, sir, it was.

3 Q. Now the -- what was it you just testified to about the
4 amount of money that was -- that was --

5 A. The \$7,300 that was in the wallet?

6 Q. Is that what you said?

7 A. Yes, sir.

8 Q. And then there was --

9 A. \$358 that was inside of the ammo can itself.

10 Q. Okay. Is that -- I'm just not seeing where that was
11 accounted for on the return. I see a total of 7,373.

12 A. It should be in there somewhere. I didn't fill out
13 the return. The only thing I was doing was documenting it
14 and passing it down the line for what should be on there
15 from our section of it. It should be on there somewhere.

16 Q. Well, I'm -- I am at a loss. I was just trying to
17 confirm about -- you know, confirm how much money was where
18 based on the information that was documented the actual day
19 that the money was seized --

20 A. Right.

21 Q. -- and it looks to me like either something's missing
22 or the count isn't right.

23 A. Well, the 7,337 is in the wallet and as you can see --
24 the pictures should depict the other loose money in the
25 ammo can. I don't have the picture up here with me.

1 Q. Right. And I did have a -- a photograph showing the
2 stack of bills -- a stack of bills here.

3 A. Yes, sir. You can see a couple hundreds right there.
4 It should be the 358.

5 Q. Okay. But from this picture you can't tell, can you?

6 A. No, sir. No, sir.

7 Q. So based on the information in the return, there was
8 money found in here with the ammo can?

9 A. Yes, sir.

10 Q. And then there was certain amount of money in the
11 wallet?

12 A. Yes, sir.

13 Q. But do you know with a degree of certainty that this
14 is all correct or could there have been some mistake in how
15 much money was where?

16 A. No, sir.

17 Q. Can you explain then?

18 A. \$7,337 was in the wallet unless he just forgot to put
19 it on there. We had so many people and so much stuff going
20 on, but I'm pretty sure he's got it on there somewhere.

21 Q. So -- so somebody could have made a mistake then?

22 A. I mean, it's possible, we are human, but it's in the
23 pictures and everything.

24 **MR. THUSS:** Thank you. No further questions.

25 **THE COURT:** Redirect?

1 **MR. FENDER:** No more questions.

2 **THE COURT:** You can step down.

3 (Witness excused.)

4 **MR. MAYE:** The State calls Shana Sorrells of the State
5 Law Enforcement Division.

6 **THE CLERK:** Raise your right hand and place your left
7 hand on the Bible.

8 (Whereupon, Shana Sorrells was duly sworn by the Clerk
9 of Court.)

10 **THE CLERK:** Thank you, ma'am. Please be seated.
11 State your full name and spell your last for the record.

12 **THE WITNESS:** Shana Sorrells, S-O-R-R-E-L-L-S.

13 SHANA SORRELLS,

14 having been duly sworn, testified as follows:

15 DIRECT EXAMINATION

16 BY MR. MAYE:

17 Q. Ms. Sorrells, if you would, tell the ladies and
18 gentlemen of the jury where you're employed and in what
19 capacity.

20 A. I'm employed at the South Carolina Law Enforcement
21 Division, more commonly known as SLED, as a forensic
22 chemist.

23 Q. Let me ask you this. What is it that you typically do
24 for SLED day by day? What is it -- what is your primary
25 job responsibility at SLED?

(Shana Sorrells - Direct by Mr. Maye)

1 A. I analyze any powdered -- unknown powdered substance,
2 rock substance, plant material for the presence or absence
3 of illegal substances.

4 Q. Let me ask you this. What specialized training in the
5 area of forensic chemistry and drug identification do you
6 have?

7 A. I have a bachelor's degree from the University of
8 South Carolina in chemistry. I also have a master's degree
9 in analytical chemistry also from the University of South
10 Carolina. I have -- well, I started out in the forensic
11 toxicology department and I went through an intensive drug
12 training with the tox department on how to analyze drugs,
13 alcohol and poisons in body fluids; blood, urine, brain
14 matter. I then switched to the drug chemistry department
15 where I studied under a senior drug chemist and had to do
16 multiple competency tests, proficiency tests, and several
17 mock courts, plus written tests before I was actually able
18 to analyze drugs on my own.

19 Q. Okay. Let me ask you this. Is the work that you do
20 analyzing drugs and all that subject to peer review? Are
21 you periodically tested to make sure that you're competent
22 to do that?

23 A. Yes, we get four proficiency tests per year that we
24 have to -- to complete and it's submitted by an outside
25 agency, so it's not -- it's not an interior test, it's a

1 nationwide test given to all labs, and every case that we
2 have -- or that we perform has to be technically reviewed
3 and administratively reviewed by our peers.

4 **MR. MAYE:** Subject to any voir dire on the part of the
5 defense in this case, I'm gonna offer Ms. Sorrells as an
6 expert in the area of forensic chemistry, specifically drug
7 identification. Care to cross-examine her in that -- as to
8 her qualifications as an expert witness to the defense?

9 **MR. THUSS:** I have no questions and no objection to
10 qualifying her.

11 **THE COURT:** All right. For the jury, Ms. Sorrells is
12 being qualified or offered as an expert in the field of
13 forensic chemical analysis and drug identification, so she
14 can offer opinions in that field in addition to her direct
15 testimony.

16 Go ahead, Mr. Maye.

17 BY MR. MAYE:

18 Q. Let me ask you this. I'm gonna show you what's been
19 marked here as State's 24 for ID at this point in time and
20 I'll ask you if those items were submitted to the South
21 Carolina Law Enforcement Division for analysis and how you
22 can identify them?

23 A. Yes, they were. These items were submitted and I can
24 tell -- well, there's our SLED lab number that is assigned
25 to every case that is brought into our department and also

1 you see my initials and date, which is the date that I
2 opened the evidence bag or what's known as the BEST kit
3 bag, and on every piece of evidence in the bag my initials
4 and the lab number up here, on every piece of evidence.

5 Q. Okay. Were the items -- who were the items dropped
6 off to at SLED? Who received them as the -- I guess the
7 intake person at SLED?

8 A. They were received by a Jennifer Aycok.

9 Q. Okay. Let me ask you this. Once you get the items,
10 how do you ensure that they haven't been tampered with or
11 altered in any way? What's the first step that you do in
12 carrying out a chemical analysis or your scientific
13 examination of items?

14 A. The first thing I do once I pick up the evidence from
15 Jennifer Aycok, who is our log-in technician -- she never
16 physically opens the BEST kit. That's my job. This is
17 what's considered a BEST kit. Best Evidence Sample Testing
18 is what it stands for. You can kind of see -- I have some
19 stuff in here. You can kind of see the blue on the top and
20 there's blue along here. What that shows is if it has been
21 cut into and resealed, those lines will not line up. So
22 this is considered a tamper evident bag. It can be cut in
23 two, but if it is we will notice it. That's why it's
24 tamper evident.

25 The first thing I do when I get this bag is make sure

1 that it is sealed and that it has not been tampered with.

2 Q. Okay. When you received those items on the date that
3 you prepared to test them, was it sealed? Did it appear to
4 have been tampered with or altered in any way?

5 A. It was sealed. It was not tampered with. If it had
6 been tampered with, analysis would have been stopped and we
7 would have called the agency.

8 Q. What did you do to carry out your scientific testing
9 based on the substances that were submitted to you?

10 A. The first thing we do is -- I guess the easiest thing
11 is with the crystal substance, that's what I would look at
12 first. The crystal substance is taken out of all of its
13 packaging and weighed separately, so none of the outer
14 packaging is taken into account when you weigh the crystal
15 substance. After I take a weight, I then do a color spot
16 test, which is different acids and different chemicals when
17 combined with certain structures change colors. In this
18 case, when I added a small amount of this to our acid test
19 it turned an orange. That orange is indicative of an
20 amine, most likely methamphetamine but it can be other
21 amines, but I know I'm looking at the amine class with that
22 orange color. So now I take it to the gas chromatography
23 mass spectrometer where I can then identify which amine it
24 is based off of the retention time that comes off on the
25 column and its fingerprint. And when we say every drug has

1 a fingerprint, it's pretty much like every human, each one
2 is different. Every drug has a different ion breakdown at
3 certain temperatures. So based off of -- with the crystal
4 substance, based off of the ion fingerprint that I received
5 and the retention time that it came off, it was confirmed
6 that this crystal substance is methamphetamine.

7 Also in this case I had --

8 Q. Let me just stop you here. I'm gonna ask you one
9 thing.

10 A. Okay.

11 Q. To a reasonable degree of scientific certainty, do you
12 have an expert opinion as to whether the items that you --
13 let's talk about the crystal substance in the big bags. Do
14 you have to a reasonable degree of scientific certainty an
15 expert opinion as to what they were?

16 A. It was methamphetamine.

17 Q. Okay. Did you weigh it absent the packaging and do
18 you have a weight for that?

19 A. Yes, I do.

20 Q. What is the combined weight or the total weight of the
21 methamphetamine?

22 A. There were three separate bags of the methamphetamine
23 and the total weight was 713.57 grams.

24 Q. Okay. How about the other substances that were in the
25 bag? What analysis did you carry out with them?

1 A. The other substance -- I don't know if y'all can see
2 it from there, but there were several different tablets or
3 pills in the bag. The only one -- two of them were C-IV
4 drugs, they're a lower controlled substance, those were
5 both identified just by the markings alone which meant no
6 analysis was actually performed on them, we just checked
7 the markings, and -- I'm sorry, I'm trying to see which
8 ones. Okay. Sorry. These are -- these white ones here
9 that you see, those are phentermine in the bag.

10 Q. What's the name -- what are the generic names of
11 phentermine?

12 A. Phentermine, I am not sure of the generic name, but it
13 is commonly used as a diet drug.

14 Q. Okay.

15 A. The yellow bars that you see here, those were
16 identified as alprazolam based off the markings, which is
17 more commonly known as Xanax. I have another bag in here.
18 You can't really see it. It's behind this one. That had
19 some smaller green tablets in it. Those were indicated as
20 alprazolam. These that I identified here, those -- based
21 off the markings these were considered a Schedule II, so
22 it's the highest schedule possible for the prescription
23 drugs, and it was identified based off of the markings and
24 the gas chromatography mass spectrometry that these are
25 hydrocodone.

1 Q. Okay. It's your expert opinion that you identified
2 in the bags were Xanax, hydrocodone, and you'll have to
3 pronounce that last one for me.

4 A. Phentermine.

5 Q. Phentermine?

6 A. Yes.

7 Q. Okay. Did you prepare a written report of the results
8 of your examination?

9 A. Yes, I did.

10 Q. Did you bring it with you here today?

11 A. Yes, I did.

12 Q. Can I see that, please?

13 A. (Handing.)

14 Q. Thank you.

15 **MR. THUSS:** I have seen this.

16 **MR. MAYE:** I'll ask you to mark this for ID at this
17 point in time.

18 (State's Exhibit Number 74 was marked for
19 identification.)

20 BY MR. MAYE:

21 Q. I'm gonna show you State's 74 for ID at this time and
22 I'll ask you is that your written report indicating your
23 expert opinion on the identification of the suspected items
24 of narcotics?

25 A. Yes, it is.

1 **MR. MAYE:** Okay. I move to admit that into evidence
2 at this time.

3 **MR. THUSS:** No objection.

4 **THE COURT:** No objection. What number was that?

5 **THE COURT REPORTER:** Number 74.

6 **MR. MAYE:** I'd also move at this point in time, 74,
7 the written report.

8 **THE COURT:** Without objection.

9 (State's Exhibit Number 74, a SLED drug analysis
10 report, was admitted into evidence.)

11 **MR. MAYE:** I'm gonna show you State's Exhibit 24 at
12 this time. I'm going to move to admit this into evidence
13 having established the chain of custody under Brockmeyer
14 and the identification of the items and I'm gonna move to
15 admit 24 in its entirety into evidence at this time.

16 **THE COURT:** Any objection to 24?

17 **MR. THUSS:** No, Your Honor.

18 **THE COURT:** Without objection State's 24 is admitted.
19 And that's inclusive of the entire plastic bag contents?

20 **MR. MAYE:** (Nods head.)

21 (State's Exhibit Number 24, bag of drugs, was admitted
22 into evidence.)

23 **MR. MAYE:** Answer any questions the defense has for
24 you. Thank you, ma'am.

25 **MR. THUSS:** Thank you. I don't have any questions for

1 you.

2 **THE WITNESS:** Thank you.

3 (Witness excused.)

4 **THE COURT:** Thank you, Ms. Sorrells.

5 **MR. FENDER:** May it please the Court, Your Honor?

6 **THE COURT:** Uh-huh.

7 **MR. FENDER:** The State calls William Allen to the
8 stand.

9 **THE CLERK:** Raise your right hand and place your left
10 hand on the Bible.

11 (Whereupon, William C. Allen was duly sworn by the
12 Clerk of Court.)

13 **THE CLERK:** Please be seated. State your full name
14 and spell your last name for the record.

15 **THE WITNESS:** William C. Allen, A-L-L-E-N.

16 WILLIAM C. ALLEN,

17 having been duly sworn, testified as follows:

18 DIRECT EXAMINATION

19 BY MR. FENDER:

20 Q. Mr. Allen, can you tell the jurors just a little bit
21 about who you are and kind of, you know, what general area
22 you live in and that kind of thing.

23 A. My name's William Allen. I live in Windsor, South
24 Carolina.

25 Q. At one point did you purchase a camper?

- 1 A. Did I purchase it?
- 2 Q. Yes, sir.
- 3 A. It was in '06. Late '06.
- 4 Q. Can you tell the jurors just a little bit about that
5 camper; what it looked, like that kind of stuff.
- 6 A. It was a white, 30-foot Zeppelin, '07. Fiberglass
7 sides.
- 8 Q. Is this the kind of camper that you pull behind a
9 pick-up truck?
- 10 A. It is a tagalong.
- 11 Q. Did you buy it brand new?
- 12 A. Yes, sir.
- 13 Q. About how much did you pay for it?
- 14 A. I'm thinking it was around twenty-five.
- 15 Q. Twenty-five thousand?
- 16 A. Twenty-five thousand.
- 17 Q. So after you bought this camper, where did you keep it
18 at?
- 19 A. In my yard under a camper shed that I built.
- 20 Q. And that was on your property?
- 21 A. Yes, in my yard.
- 22 Q. Now this camper, did it go missing?
- 23 A. October -- at the end of October '15.
- 24 Q. Can you tell us a little bit about kind of what
25 happened when you first noticed it was gone and that kind

1 of stuff?

2 A. I was at work and my son got home from school and he
3 called me up and he said dad, what did you do with the
4 camper and I said what are you talking about? He said it's
5 not here. I said don't be messing with me and I told him
6 to go out there and look and he found where they busted the
7 lock off it, so I come home and on the way home I called
8 Aiken County and they met me out there and did a report.

9 Q. So you had your camper secured on your property with a
10 lock under a shed and somebody took it?

11 A. Yes.

12 Q. Did you immediately report it to the police?

13 A. Yes.

14 Q. Can you please read for us the VIN number that you
15 reported?

16 A. 4YDT291277Z400913.

17 Q. I'm showing you now what's been marked as State's
18 Exhibit 73. Can you tell me does that appear to be your
19 camper?

20 A. It appears to be, yes.

21 Q. Could you please sign this photograph for me?

22 A. (Witness complies.)

23 Q. In December of 2015, how much do you estimate this
24 camper was worth?

25 A. All I can tell you is what the insurance gave me for

1 it and that was \$17,000.

2 Q. \$17,000?

3 A. (Nods head.)

4 **MR. FENDER:** Please answer the defense attorney's
5 questions.

6 **MR. THUSS:** No questions.

7 **THE COURT:** You may step down.

8 **THE WITNESS:** Thank you.

9 (Witness excused.)

10 **MR. MAYE:** The State would call James Densmore to the
11 stand.

12 **THE CLERK:** Raise your right hand and place your left
13 on the Bible.

14 (Whereupon, James Russell Densmore was duly sworn by
15 the Clerk of Court.)

16 **THE CLERK:** Thank you, sir. Please be seated. State
17 your full name and spell your last name for the record.

18 **THE WITNESS:** James Russell Densmore, D-E-N-S-M-O-R-E.

19 JAMES RUSSELL DENSMORE,

20 having been duly sworn, testified as follows:

21 DIRECT EXAMINATION

22 BY MR. MAYE:

23 Q. Officer Densmore, tell the ladies and gentlemen of the
24 jury about your background in law enforcement. What do you
25 do for Sheriff Dobey?

(James Russell Densmore - Direct by Mr. Maye)

1 A. I started my law enforcement career in 2005 with the
2 Edgefield Police Department until I came to the sheriff's
3 office in September of 2013. I'm a -- I'm on road patrol.
4 I was just promoted to corporal about a week ago. I test
5 -- I'm a marijuana analyst for the sheriff's office.

6 Q. Okay. Let me ask you this. What specialized training
7 do you have in the area of analysis and identification of
8 items of plant material that are suspected to be marijuana?

9 A. Back in 2009 when I was with the police department, I
10 went to the South Carolina Law Enforcement Division and did
11 a 16-hour course, a two-day course, for marijuana analysis
12 where the first day was classroom procedure, the next day
13 we came in, we finished up in the classroom, took a test
14 where we had to score an 80 percent on the written test and
15 then we moved to the lab where we had to test a hundred
16 unknown samples and you had to be a hundred percent
17 accurate on the samples, and then I'm recertified every
18 three years after that; 2012, 2015. My certification right
19 now expires in 2018.

20 Q. Let me ask you this. Did you successfully complete
21 all of the examinations and were you certified as an
22 analyst for marijuana for the sheriff's office?

23 A. Yes, I did. Yes, sir.

24 Q. And as to each subsequent recertification you've had,
25 have you passed those and been subsequently certified as an

1 analyst again?

2 A. Yes, I have.

3 Q. At the time that you performed an analysis on
4 State's 25 that's been marked for identification at this
5 point in time, were you certified as an analyst?

6 A. Yes, I have been.

7 **MR. MAYE:** At this point in time, Your Honor, subject
8 to anything from the defense in the area of voir dire,
9 I'm gonna offer Officer Densmore as an expert in the area
10 of marijuana identification. Of course, subject to any
11 cross-examination on the part of the defense.

12 **MR. THUSS:** I have no questions or objection.

13 **THE COURT:** He's so qualified as an expert in the
14 subject matter of marijuana identification.

15 BY MR. MAYE:

16 Q. Okay. Let me ask you this. Who transferred this
17 substance to you that's been marked as State's 25? Who
18 transferred that to you for analysis?

19 A. Investigator Miller.

20 Q. What's his full name?

21 A. Investigator Warren Miller.

22 Q. From the sheriff's department?

23 A. Yes, sir. From the Edgefield County Sheriff's Office
24 narcotics division.

25 Q. At the time that you received it, had it been changed

1 or altered or was it sealed in one of your evidence bags?

2 What condition was it in?

3 A. It was sealed in this evidence bag. It was not
4 altered or cut open or anything. I cut it open to test the
5 samples.

6 Q. Okay. Once you got it and determined that it had not
7 been tampered with, tell the ladies and gentlemen of the
8 jury what scientific tests that you carried out and
9 conducted in order to determine whether or not it was, in
10 fact, marijuana.

11 A. There's two separate tests that marijuana analysts
12 have to run. We first take the sample and whatever it's
13 placed in, whether it be -- I mean, this is a Ziploc
14 vacuum-sealed bag. You have to take it out of that, you
15 weigh it and then look at it through a microscopic -- or
16 microscope, excuse me, and that's one of the tests, the
17 microscope test. And when you look through it, the
18 microscope, you're looking for three hairs; cytolytic
19 hairs, unicellular hairs and multicellular hairs.
20 Marijuana is very distinctive. It's the only plant species
21 that has those three hairs.

22 Q. Is there any other plant known to man that has those
23 characteristics?

24 A. No.

25 Q. Okay.

- 1 A. Then once you look through it through a microscope and
2 you do see that you have all three of those hairs, you move
3 to a chemical test, which is known as the Duquenois-Levine
4 reagent. You take that and you take just a little bit of
5 the sample. We use a glass tube. It's a small glass tube
6 vile, put a little bit of the sample in it, you dampen the
7 sample with the Duquenois-Levine reagent, then you take
8 hydrochloric acid and add it to that, just a little bit, it
9 doesn't take much, and if it changes to purple you have a
10 positive test for marijuana. Then you take chloroform and
11 you add it to that and it gives a little pink eyelet and
12 you just -- when you look down in it, it looks look a
13 little pink dot, and that shows that you have a positive
14 test for marijuana and then along with your microscopic
15 test, you have a positive test as well. But if one or the
16 other was negative, you would have to say that the results
17 were not positive, but in this case both were positive.
- 18 Q. Okay. So you carried out the visual of the
19 microscopic test and it tested to be marijuana; is that
20 correct?
- 21 A. Yes, sir, on both samples.
- 22 Q. And then you did the chemical test on the samples and
23 it tested to be marijuana?
- 24 A. Yes, sir.
- 25 Q. Okay. To a reasonable degree of scientific certainty

1 then, do you have an expert opinion as to what the green
2 leafy, plant-like material that was submitted to you for
3 analysis is?

4 A. Yes, sir, it's marijuana.

5 Q. Okay. Did you weigh it and what was the weight?

6 A. Yes, you do weigh it on each one, and if you let me
7 refer to my notes, this here in the Ziploc vacuum-sealed
8 bag was 13.9 grams and you also have to transfer that to
9 ounces and that was 0.49 ounces.

10 Q. Okay.

11 A. And the other in the clear plastic bag was 15.6 grams,
12 which is 0.55 ounces.

13 Q. So each of those two bags was about half an ounce; is
14 that correct?

15 A. No, it was about one ounce because 28 grams is one
16 ounce.

17 Q. Total?

18 A. Total weight I think was 29. -- I think 29.3 maybe.

19 Q. Okay. Let me ask you this. Did you -- have you
20 marked on that bag there and signed it with the total
21 weight there? Is that your signature on the bag and the
22 total weight?

23 A. Yes, it is.

24 Q. What's the total weight?

25 A. 29.5 grams.

1 Q. 29.5 grams of marijuana?

2 A. Yes, sir.

3 Q. And there were two bags and they were roughly equally
4 distributed between the two bags?

5 A. Yes, sir.

6 Q. Okay. Answer -- well, let me ask you this. You
7 didn't change or alter this other than carrying out the
8 testing and weighing it, right?

9 A. No, when I got -- when I got the bag, it was
10 completely sealed, there wasn't anything wrong with it. I
11 simply wrote down at the bottom of it the lab number that
12 we use. We have a lab number for every test that we use.
13 Then I just cut open the bag and I put -- I re-sealed it
14 with the red evidence tape and I initialled it and dated
15 it, put the date that I opened it, and sealed it back.

16 Q. Okay.

17 **MR. MAYE:** Having identified everyone in the chain
18 that -- that transferred it in any way and having
19 identified the subject in this case, I'm gonna move to
20 admit the contents of State's 25 into evidence subject to
21 any objection on the part of the defense.

22 **MR. THUSS:** No objection, Your Honor.

23 **THE COURT:** State's 25 without objection.

24 (State's Exhibit Number 25, drugs, was admitted into
25 evidence.)

1 **MR. MAYE:** Please answer any questions the defense
2 has for you.

3 **MR. THUSS:** No questions.

4 **THE COURT:** No cross-examination. You may step down.
5 (Witness excused.)

6 **MR. MAYE:** Ricardo Prince.

7 **THE COURT:** Do y'all want to take a break?

8 **BAILIFF:** Yes, sir, they do.

9 **THE COURT:** All right. Y'all step into the jury room.
10 You can't begin to discuss the case. We'll have you back
11 out in a little bit and see where we're going from there.

12 (Whereupon, the jury retires to the jury room at
13 4:39 PM.)

14 (Recess taken.)

15 **BAILIFF:** All rise.

16 **THE COURT:** Bring in the jury.

17 (Whereupon, the jury returns to the courtroom at
18 4:54 PM.)

19 **THE COURT:** All right, Solicitor. Go ahead.

20 **MR. MAYE:** The State calls Ricardo Prince from
21 Alcohol, Tobacco and Firearms.

22 (Whereupon, Ricardo Prince was duly sworn by the Clerk
23 of Court.)

24 **THE CLERK:** Thank you, sir. Please be seated. State
25 your full name and spell your last name for the record.

1 **THE WITNESS:** Ricardo Prince. My last name is
2 P-R-I-N-C-E.

3 RICARDO PRINCE,
4 having been duly sworn, testified as follows:

5 DIRECT EXAMINATION

6 BY MR. MAYE:

7 Q. Agent Prince, what area of law enforcement are you
8 involved in and who is your employer?

9 A. I'm a special agent with the Bureau of Tobacco,
10 Alcohol and Firearms.

11 Q. Because of -- in this case where a search warrant was
12 carried out here in Edgefield County because they suspected
13 they were going to find unlawful weapons and/or explosives,
14 were you summoned to act as a cooperating law enforcement
15 agency with Edgefield County and the SLED SWAT team?

16 A. Yes, I was with them on the search warrant.

17 Q. Okay. Let me ask you this. What did you do with them
18 in order to carry out your role as an ATF agent when you
19 did the search warrant on December the 22nd of 2015?

20 A. I helped out with the search. Once the residence was
21 cleared, I went through the residence. We picked out
22 illegal firearms, we documented them, and I also advised
23 the investigators from Edgefield which ones to pretty much
24 collect.

25 Q. Okay. Any suspected unlawful weapons that were there,

1 did you seize or did you take into your custody or control?

2 A. Yes, sir. Once the sawed-offs was brought back to the
3 sheriff's department, I came and seized three weapons.

4 Q. Let me ask you this. I'm gonna start with this. I'll
5 show you State's 13 in this case. Did you -- did y'all
6 find and seize blasting caps in the house?

7 A. Actually during the clearing of the house it was done
8 by the SLED bomb squad and they seized this blasting cap
9 right there.

10 Q. But you saw that --

11 A. I seen that, yes, sir.

12 Q. -- when you were doing the search warrant?

13 A. Yes, sir. That's a form of explosive.

14 Q. It's a form of explosive. All right. Let's talk
15 about State's 52 that's already in evidence. Tell us about
16 that and tell us where you found that item located inside
17 of the residence.

18 A. This item right here is a Winchester 20 gauge Model
19 37A. The serial number is C, as in Charlie, 520219. This
20 item was found in Bedroom Number 1, which is listed as the
21 master bedroom, and this bedroom belonged to Mr. Coon.

22 Q. Okay. Tell me about that weapon in regard to the
23 overall length of it, the barrel length of it, and tell me
24 what that would have been, you know, originally, that
25 weapon.

1 A. The barrel of this weapon right here is five and
2 one-fourth inches. Overall it's twelve inches and
3 seven-eighth's inches. The barrel should be eighteen
4 inches and overall this gun should be twenty-six inches.

5 Q. Okay. And so the overall length of that gun is under
6 twenty-six inches?

7 A. Yes, sir.

8 Q. Okay. And the barrel length is under eighteen?

9 A. Yes, sir.

10 Q. And that's what you were looking for in this case?

11 A. Yes, sir.

12 Q. Okay. All right. I'm gonna show you what's been
13 marked as State's 51, it's in evidence in this case, and
14 ask you where that was located and what steps did you in
15 order to carry out any testing on that.

16 A. Okay. Okay. This item right here is a Harrington &
17 Richardson 12 gauge firearm. It's Model Number M48. The
18 serial number is H, as in Harrington, 23330. This firearm
19 was found in Bedroom Number 2 and Bedroom Number 2 is where
20 Mr. Wheeler and his girlfriend, Heather Hall, were staying
21 on the day of the search warrant.

22 Q. Okay. And so that came out of -- could you mark that
23 on the chart, which is State's 3? If you'd just take this
24 pen and mark approximately where that weapon was seized at.

25 A. (Witness complies.) Bedroom Number 2.

(Ricardo Prince - Direct by Mr. Maye)

1 Q. Okay. Tell us about your examination of that in
2 regard to the length of the weapon.

3 A. Okay. On this firearm, the barrel is actually
4 eighteen and five-eighths inch, but the overall of this
5 gun is twenty-four and one-fourth inch, which is up under
6 twenty-six inches.

7 Q. Okay. Let me ask you this. I'm gonna show you
8 State's 32, 33, 34, 35, 36, 37, 49, 48, 47, 46, 45, 44, 43,
9 42, 41, 40, 39, 38, 37, 26, 28, 27, 29, 31, and 30. I'll
10 ask you if those photographs are photographs that you
11 prepared in order to show those weapons and to demonstrate
12 the length of the weapons that you seized there as a result
13 of that search warrant on that date?

14 A. Yes, sir. Some of these weapons was prepared by me
15 -- some these photos and the rest of these photos were
16 prepared by the ATF lab.

17 Q. Okay. All of those photos, do they fairly and
18 accurately reflect the measurement tests that y'all
19 conducted and the analysis that you did?

20 A. Yes, sir.

21 Q. Do some of those photos where there's sawed-off
22 weapons that are shown with what look like weapons that are
23 intact, do they show what the weapons originally would have
24 looked like prior to being modified?

25 A. Yes, sir.

1 Q. Okay.

2 **MR. MAYE:** Agent Prince, please answer any questions
3 the defense has for you.

4 **THE WITNESS:** Okay.

5 **MR. MAYE:** Thank you.

6 CROSS-EXAMINATION

7 BY MR. THUSS:

8 Q. Good afternoon, Agent.

9 A. Hey. How you doing?

10 Q. Fine. Were you present for any interviews with --
11 with David Coon?

12 A. Yes, sir.

13 Q. And how many of them were you present for?

14 A. Three.

15 Q. Do you recall whether or not Mr. Coon discussed
16 these --

17 **MR. MAYE:** I'm gonna object to hearsay at this point
18 in time, Your Honor. He's attempting to introduce evidence
19 of a witness who is not here.

20 **THE COURT:** I'll sustain as to hearsay.

21 BY MR. THUSS:

22 Q. Did Mr. -- did Mr. Coon make any statements against
23 interest?

24 A. Could you be more specific?

25 Q. Did he make any statements against his own interest

1 since he was already charged with these weapons?

2 A. He told me two of those firearms belonged to him.

3 Q. Two of them?

4 A. Yes.

5 Q. And which two did he identify?

6 A. It was the Harrington & Richardson 12 gauge Model 158
7 and also the Winchester 20 gauge Model 37A, which is this
8 firearm, the sawed-off over there.

9 Q. The sawed-off over here?

10 A. Yes, sir.

11 Q. Did he make any such admissions regarding this
12 Mossberg?

13 A. I believe he did say -- he did he say he had a
14 Mossberg pump shotgun, but, you know, that gun right there
15 was not one of the guns I was interested in because I'm
16 pretty sure that firearm is over the legal limit.

17 Q. Okay. Concerning this last one --

18 A. Yes.

19 Q. -- did he ever discuss -- did you ever show him this
20 weapon?

21 A. I showed him this firearm and he said he'd never seen
22 it before.

23 **MR. THUSS:** Thank you. No further questions.

24 **THE COURT:** Thank you. All right. Anything else?

25 **MR. MAYE:** No further questions.

1 **THE COURT:** You may step down.

2 **THE WITNESS:** Thank you.

3 (Witness excused.)

4 **THE COURT:** All right. All the rest of our
5 witnesses are gonna be here around in this area because
6 the travelling witnesses are done, so it will be time for
7 us to stop.

8 All right, folks. We're done for the day. We're
9 gonna start back -- y'all be in the jury room at 9:30.
10 I'm gonna do my best to be here then. I have a
11 periodontist appointment at 7:30. I'm not looking forward
12 to it, but I'm gonna go to it and when I'm done with it
13 I'm gonna come straight here and we'll resume then. So if
14 I'm a few minutes late, then I apologize ahead of time.
15 It's not because I want to go to this appointment, I'm
16 dreading it, but it shouldn't take long. They're not doing
17 any of the big stuff.

18 So, anyway, you can't discuss the case. Go home and
19 enjoy your evening. If anybody says anything to you about
20 the case, remember my instructions. Just don't talk about
21 the case. Blame it on me. See y'all in the morning.

22 (Whereupon, the jury was excused for the evening at
23 5:05 PM.)

24 **THE COURT:** We'll be at ease until 9:30 in the
25 morning.

(Jose Negron - Direct by Mr. Fender)

1 (Recess taken.)

2 (Whereupon, the proceedings were concluded for
3 January 17, 2017, at 5:08 PM.)

4 **BAILIFF:** All rise.

5 **THE COURT:** Y'all be seated.

6 Everybody good? Ready to go?

7 **MR. MAYE:** Yes, sir, Your Honor.

8 **THE COURT:** Mr. Thuss, y'all ready?

9 **MR. THUSS:** Yes, Your Honor.

10 **THE COURT:** All right. Bring in the jury.

11 (Whereupon, the jury enters the courtroom at 9:44 AM.)

12 **THE COURT:** Folks, good morning. I hope y'all had a
13 nice evening. My teeth are clean. We're ready to go to
14 work. Call your next witness.

15 **MR. FENDER:** The State calls Jose Negron.

16 (Whereupon, Jose Negron was duly sworn by the Clerk of
17 Court.)

18 **THE CLERK:** Please be seated. State your full name
19 and spell your last name for the record.

20 **THE WITNESS:** Jose Negron, N-E-G-R-O-N.

21 JOSE NEGRON,

22 having been duly sworn, testified as follows:

23 DIRECT EXAMINATION

24 BY MR. FENDER:

25 Q. Mr. Negron, could you tell the jurors just a little

1 bit about who you are and where you're from.

2 A. I'm retired military and I live in Aiken.

3 Q. So you're retired from the military?

4 A. Yes, sir.

5 Q. At one point did you work at a bar as a bouncer?

6 A. It was part-time and it was about four years ago.

7 Q. Part-time at the bar?

8 A. Yes, sir.

9 Q. Now during your work, did you also know the Defendant
10 in this case, Mr. Timothy Wheeler?

11 A. Yes, sir.

12 Q. All right. Can you tell us just briefly about that?

13 A. We rode bikes together. His old lady worked as a
14 bartender and that was it. I stayed in his house a couple
15 of times, you know.

16 Q. So he knew you and he saw you riding your motorcycle?

17 A. Yeah, we rode together.

18 Q. Can you tell us about your motorcycle?

19 A. I bought it back in 2008 in Daytona, paid \$18,000
20 cash, and it was stolen two years later.

21 Q. So you paid \$18,000 cash for this motorcycle?

22 A. Yes, sir.

23 Q. Where did you keep it at?

24 A. In a shed in my house.

25 Q. Did you have a lock on that shed or something like

1 that?

2 A. Oh, yes, sir.

3 Q. Can you tell us about when you first noticed it was
4 missing? You know, what did you see? What happened?

5 A. It was -- I want to say it was a Wednesday that I
6 parked it in there. It was raining very bad and I went to
7 North Augusta to pick up Wheeler, his bike broke down, took
8 it to his house, I went to my house and the next day it was
9 nice, so I say I'm gonna ride my bike, got my helmet, went
10 to the shed and I noticed my bike was gone. I said I put
11 it somewhere else, so I went around the house, no bike, so
12 I called Aiken County.

13 Q. What did you say had been done to the lock?

14 A. The lock was put on, but it was cut.

15 Q. Someone had cut the lock?

16 A. Yes, sir.

17 Q. Okay. And did you immediately report this to the
18 police?

19 A. Yes, sir.

20 Q. And what was the VIN number that you reported?

21 A. It was 1HD1FCW126Y673417.

22 Q. I'm gonna show you some pictures now, what's
23 previously bend entered into evidence by agreement State's
24 Exhibit 10, State's Exhibit 55, 54 and 53. Does that
25 appear to be your signature where you identified this as

1 being your bike?

2 A. Yes, sir.

3 Q. Okay. There's a number right there also, isn't there?

4 A. Yes, sir. Fifteen thousand.

5 Q. Is that how much you estimate this bike was worth in
6 December of 2015?

7 A. Yes, that was what the insurance gave me.

8 Q. All right.

9 **MR. FENDER:** Please answer the defense attorney's
10 questions.

11 **MR. THUSS:** I don't have any questions, Your Honor.

12 **THE COURT:** All right, sir. You may step down,
13 Mr. Negron. Thank you.

14 **THE WITNESS:** Thank you, sir.

15 (Witness excused.)

16 **MR. FENDER:** James Minor.

17 **THE CLERK:** Raise your right hand and place your left
18 hand on the Bible.

19 (Whereupon, James Minor was duly sworn by the Clerk of
20 Court.)

21 **THE CLERK:** Thank you, sir. Please be seated. State
22 your full name and spell your last name for the record.

23 **THE DEFENDANT:** James T. Minor, M-I-N-O-R.

24 JAMES T. MINOR,

25 having been duly sworn, testified as follows:

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DIRECT EXAMINATION

BY MR. FENDER:

Q. Mr. Minor, can you tell the jurors just a little bit about who you are, what kind of work you do and that kind of stuff?

A. I used to live in Vaucluse, South Carolina where the burglary happened at. I'm an on-the-road pipefitter. I'm gone weeks at a time, sometimes a week and a half. I now reside in Ninety-Six, South Carolina.

Q. You mentioned a burglary. What was taken from you?

A. I had about fifty guns, about five thousand rounds of ammunition and a hundred and fifty or so knives, among other things, jewelry and a few other things.

Q. And that was taken from your home?

A. Yes, sir.

Q. I'll show you now what's previously been entered into evidence as State's Exhibit 22. Does this appear to be your gun?

A. Yes, sir, it's my gun.

Q. Can you tell the jurors a little bit about this gun?

A. I brought that particular shotgun from a friend of mine that lives in Aiken. I gave him \$300 for it. I had a pair just like that; a 12 and a 20. That's called a Defender Mossberg shotgun.

Q. And this is the gun that was taken from you?

1 A. Yes, sir, that's one of them.

2 Q. I'm gonna show you this exhibit, State's Exhibit 22.

3 Does that appear to be where you've written your name there
4 identifying this weapon?

5 A. Yes, sir, it is.

6 Q. You've also written a number there. Can you please
7 read that to the jurors?

8 A. \$400.

9 Q. Is that an approximate value of what this might be
10 worth in December of 2015?

11 A. Yes, sir.

12 **MR. FENDER:** Okay. Please answer the defense
13 attorneys questions.

14 **MR. THUSS:** No questions.

15 **THE COURT:** Thank you, Mr. Minor.

16 **THE WITNESS:** Thank you.

17 (Witness excused.)

18 **MR. MAYE:** The State calls Jennifer Dewitt to the
19 stand.

20 **THE CLERK:** Please raise your right hand and place
21 your left hand on the Bible.

22 (Whereupon, Jennifer Dewitt was duly sworn by the
23 Clerk of Court.)

24 **THE CLERK:** Thank you, ma'am. Please be seated.
25 State your full name and spell your last name for the

1 record.

2 **THE WITNESS:** Jennifer Nicole Dewitt, D-E-W-I-T-T.

3 JENNIFER NICOLE DEWITT,

4 having been duly sworn, testified as follows:

5 DIRECT EXAMINATION

6 BY MR. MAYE:

7 Q. Ms. Dewitt, let me ask you this. Tell the ladies and
8 gentlemen of the jury where you're originally from.

9 A. Graniteville.

10 Q. From Graniteville?

11 A. Yes, sir.

12 Q. Have you lived around Aiken County, that area, your
13 whole life?

14 A. Yes, sir.

15 Q. Let me ask you this. Let's talk about back in the
16 months before December of 2015. How did you come to be
17 staying out at Rainforest Lane here in Edgefield County,
18 the place where they went for this search warrant? How did
19 you gravitate there and tell the ladies and gentlemen of
20 the jury how you first made contact there and ended up
21 staying there.

22 A. Yes, sir. A guy I was dating at the time he had asked
23 me to ride out there with him.

24 Q. What were y'all going out there for?

25 A. He was going to buy drugs.

1 Q. Going to buy drugs. What kind of drugs were y'all
2 going to buy?

3 A. Meth, ice.

4 Q. Meth, ice. Okay.

5 A. Yes, sir.

6 Q. Okay. What happened next? How did you end up staying
7 there then?

8 A. Well, I ended up sitting out there, you know, and
9 talking to them and whatnot and then Heather come from the
10 back room. I had -- I met Heather prior to this. Me and
11 her were friends.

12 Q. Okay. Who are you talking about?

13 A. Heather Hall.

14 Q. Heather Hall?

15 A. Yes, sir.

16 Q. Okay. And who was her dad or step-dad?

17 A. Pops was her -- David Coon was her dad.

18 Q. Coon. Okay. And who else was there?

19 A. Tim Wheeler, her boyfriend.

20 Q. Wheeler was there as well?

21 A. Yes, sir, her boyfriend.

22 Q. Okay.

23 A. And me and Heather --

24 Q. And so what happened next?

25 A. Me and Heather got to talking and catching up. She

1 asked me if I wanted to spend the night the following night
2 and she came and picked me up and I ended up going out
3 there and staying out there a few nights off and on for a
4 couple of months.

5 Q. Okay. For a couple of months?

6 A. Uh-huh.

7 Q. What percentage of your time were you staying there
8 versus staying other places?

9 A. Probably a little more. I was probably there a little
10 more than other places.

11 Q. Okay. But up until the search warrant got done,
12 December of 2015, you were spending most of your nights
13 there?

14 A. Yes, sir.

15 Q. Okay. Tell the ladies and gentlemen of the jury about
16 what was going on there.

17 A. There were people were coming over, a lot of people,
18 every day coming to speak to either Mr. Wheeler or
19 Mr. Coon.

20 Q. They would come to speak to Wheeler or Coon?

21 A. Yes, sir. I would answer the door. There were
22 cameras in the household. I would answer the door if
23 somebody came to the door and then they would ask to speak
24 to one of the two.

25 Q. One of the two?

1 A. Yes, sir.

2 Q. Now let me step you here. What are you talking about
3 with the cameras? What was your role? What were you
4 supposed to be doing there?

5 A. Well, I watched the cameras to see who was pulling up
6 and then I would go to the door if people knocked on the
7 door.

8 Q. Okay. What would typically happen when people came to
9 the door?

10 A. They would ask for Mr. Wheeler or Mr. Coon and then
11 they would go to one of the bedrooms, wherever they were
12 at, and bring them to the kitchen table and speak with
13 them.

14 Q. Okay. Once they made their purchases, would they
15 leave immediately or what would happen sometimes?

16 A. No, sir, some people would come out and hang out in
17 the living room or whatnot. I'm a drug addict. I've
18 gotten high with people who have been over there before.

19 Q. Okay. Would you do drugs with them sometimes when
20 they were there from what they purchased?

21 A. Yes, sir.

22 Q. Okay. Come down here.

23 (Whereupon, the witness steps down from the witness
24 stand.)

25 Q. I want you to show me who lived in which bedroom in

1 this house.

2 A. This being the front door?

3 Q. Yes.

4 A. When you come in, the bedroom off to the right here
5 was Pops', Mr. Coon's.

6 Q. Okay.

7 A. And as you go through, this is the living room, the
8 kitchen, a dining room. You come down this hallway right
9 here and that was where Tim and Heather stayed.

10 Q. Tim Wheeler and Heather Hall stayed, too?

11 A. Yes, sir. And then that room, I had slept in it
12 before, but their dog had puppies and the puppies stayed in
13 this room right there.

14 Q. Okay. All right. Where did -- go back and take the
15 stand.

16 (Whereupon, the witness returns to the witness stand.)

17 Q. Where did you usually sleep, you know, when you were
18 there? Once the third bedroom got occupied with the
19 puppies and all, where did you usually stay?

20 A. On the couch.

21 Q. You slept on the couch in the main area?

22 A. Yes, sir, in the living room.

23 Q. Let me ask you this. This green box right here marked
24 "tools". It's in evidence as State's 23. Have you seen
25 this before?

1 A. Yes, sir.

2 Q. Who have you seen with this box?

3 A. Mr. Wheeler.

4 Q. Tim Wheeler had this?

5 A. Yes, sir.

6 Q. What did you see him take in and out of this box?

7 A. He would carry it around when people came to the
8 house.

9 Q. Okay. Did you ever go into his room and look around
10 in the room there?

11 A. I've been in his room before, yes, sir.

12 Q. Okay. How would he have the methamphetamine that they
13 were selling packaged?

14 A. It was in plastic bags. I saw some in a Ziploc
15 container one time.

16 Q. I'm gonna show you State's 24 and I'd like for you to
17 look at the Ziploc bags in there.

18 A. Yes, sir.

19 Q. Is that consistent with what you had seen there?

20 A. Yes, sir.

21 Q. Okay. What kind of things did you and Heather do in
22 order to assist what was going on there?

23 A. I mean, me and Heather hung out the majority of the
24 time. I mean, we would go to the door. When we'd go
25 grocery shopping, we would buy the Ziploc bags and things.

1 Q. You would buy the Ziploc bags?

2 A. (Nods head.)

3 Q. Okay. How were they utilizing the smaller Ziploc
4 bags? Did you always buy the same size or did you buy
5 different sizes?

6 A. We bought different sizes, but they were both
7 primarily used for that.

8 Q. They were -- okay. What conversations have you
9 overheard between the Defendant, Mr. Wheeler, and Mr. Coon
10 in regard to their drug trafficking?

11 A. I've heard prices of how much a kilo was or whatnot
12 and I heard him saying that the batch of drugs they got
13 before was bad and they wanted a new batch.

14 Q. They got a bad batch and they wanted another batch?

15 A. Yes, sir.

16 Q. How much were they talking about paying for a kilo?

17 A. \$16,000.

18 Q. Okay. Was that -- the batch that they were talking
19 about was bad, was that the disputed batch?

20 A. There were two different occasions. It may have been,
21 I'm not certain, but they -- there were two different
22 conversations I heard about that.

23 Q. Okay. I'm gonna ask you this. I'm gonna show you
24 State's 10 that's in evidence in this case. Have you seen
25 that motorcycle before?

- 1 A. Yes, sir.
- 2 Q. Who rode this bike?
- 3 A. Mr. Wheeler.
- 4 Q. Okay. Let me show you State's 11 in this case. Have
5 you seen the vehicle in State's 11?
- 6 A. Yes, sir. The red truck.
- 7 Q. The red pick-up truck?
- 8 A. Yes, sir.
- 9 Q. Who drove the red pick-up?
- 10 A. Mr. Wheeler.
- 11 Q. Mr. Wheeler drove the red pick-up?
- 12 A. Yes, sir.
- 13 Q. Have you been places with him in the truck?
- 14 A. Yes, sir, I have before. He's picked me up in it
15 before.
- 16 Q. Okay. Among all of the vehicles that were there at
17 the residence, which ones did he operate on a consistent
18 basis?.
- 19 A. The motorcycle that you showed me the picture of and
20 the red pick-up.
- 21 Q. Okay. What, if anything, did you ever see them
22 doing in working on the motorcycles or doing anything?
23 What did you observe there while you were there during
24 your stay?
- 25 A. They worked on them a lot out back. I seen them

1 painting them, putting touchup paint on them or fixing
2 things that were wrong.

3 Q. They would work on the bikes?

4 A. Yes, sir.

5 Q. And you saw them painting those motorcycles?

6 A. Yes, sir.

7 Q. Okay. Now, Ms. Dewitt, the day the search warrant
8 took place you were actually there, weren't you?

9 A. Yes, sir.

10 Q. You got arrested and charged along with everybody
11 else, didn't you?

12 A. Yes, sir.

13 Q. You initially got charged with PWID, correct?

14 A. Yes, sir.

15 Q. Your charges later got upgraded to trafficking the
16 same as everybody else, correct?

17 A. Yes, sir.

18 Q. And you got charged with all the stolen guns and
19 everything else in the -- the vehicles and everything,
20 didn't you?

21 A. Yes, sir.

22 Q. Has anybody made any direct promises to you at this
23 point in time as to what's gonna happen with your charges
24 at this point in time?

25 A. No, sir.

1 Q. You've got an orange jumpsuit on here today.

2 A. Yes, sir.

3 Q. You didn't show up for court last week and you got a
4 bench warrant and you got put in jail, didn't you?

5 A. Yes, sir.

6 Q. And you've been in the custody of the sheriff since
7 that time, haven't you?

8 A. Yes, sir.

9 Q. Ms. Dewitt, back early, like in July of 2015, you
10 actually got a conviction for possession of meth over in
11 Aiken County, didn't you?

12 A. Yes, sir.

13 Q. You got put on probation for that, didn't you?

14 A. Yes, sir.

15 Q. Ms. Dewitt, is it fair to say you've been addicted to
16 meth for a good while, haven't you?

17 A. Yes, sir.

18 Q. Is that basically what led you to being down there at
19 that house, your addiction?

20 A. Yes, sir.

21 **MR. MAYE:** Please answer any questions the defense has
22 for you.

23 **THE WITNESS:** Yes, sir.

24 **MR. THUSS:** May it please the Court?

25 **THE COURT:** Yes, sir.

CROSS-EXAMINATION

1
2 BY MR. THUSS:

3 Q. . Good morning, Ms. Dewitt, my name is Rob Thuss and I'm
4 representing Mr. Wheeler here.

5 A. (Nods head.)

6 Q. You were arrested -- were you arrested on -- pardon
7 me. Were you taken into custody on December 22, 2015?

8 A. Yes, sir.

9 Q. And that was the day that of the -- of the warrant
10 being served?

11 A. Yes, sir.

12 Q. Later that day, did you speak with law enforcement
13 officers?

14 A. Yes, sir.

15 Q. And do you remember who the law enforcement officers
16 were with whom you spoke?

17 A. The name or what division I spoke with?

18 Q. The name or the division.

19 A. I spoke with ATF.

20 Q. ATF?

21 A. Yes, sir.

22 Q. And Edgefield County -- someone from Edgefield County
23 also was present?

24 A. Yes, sir.

25 Q. Did you give them an oral statement that was recorded?

1 A. Yes, sir.

2 Q. Did they ask you several times if you were truthful
3 about the statements that you were giving?

4 A. Yes, sir.

5 Q. At that time had you been charged with anything?

6 A. No, sir.

7 Q. Okay. In that statement, did you say truthfully that
8 nothing was done in front of you?

9 A. Yes, sir, I did say that. I was scared at the time
10 and so I didn't tell the whole truth. Yes, sir.

11 Q. All right. And did you say that Pops had shown -- had
12 showed you guns and they were Pops' guns?

13 A. Yes, sir.

14 Q. Did you say that you had never bought meth from Tim
15 and that Tim had never given you meth?

16 A. Yes, sir, because I never purchased meth from
17 Mr. Wheeler.

18 Q. Did you say that Tim was trying to help you get
19 straightened out?

20 A. Yes, sir, I did.

21 Q. What was -- do you know what Pops' medical condition
22 was?

23 A. I was told he had cancer.

24 Q. Were you told that he was dying from cancer?

25 A. Yes, sir.

1 Q. On the morning of the -- did you tell law enforcement
2 that they -- that day that on the morning of the arrest
3 that you were the first one to notice that there were
4 police outside?

5 A. Yes, sir, I did.

6 Q. Did you tell law enforcement in your statement on
7 December 22nd that you went and you woke up Tim and
8 Heather?

9 A. Yes, sir, I did.

10 Q. Did you tell them that they got their clothes on and
11 waited a while?

12 A. Yes, sir.

13 Q. And did you tell them that you didn't observe
14 Mr. Wheeler take any actions to dispose of, flush or do
15 anything --

16 A. No, sir.

17 Q. -- to destroy any -- any of this?

18 A. No, sir.

19 Q. When were you charged with trafficking meth?

20 A. With the trafficking charge, I just recently received
21 that.

22 Q. Pardon me?

23 A. I just recently received the trafficking charge.

24 Q. Recently?

25 A. Yes, sir.

1 Q. So -- and I'm gonna back up a little bit. After you
2 gave the oral -- truthful oral statement to the police on
3 December 22nd, after that you were -- you were charged with
4 all the same charges as the other defendants except for the
5 trafficking?

6 A. Yes, sir.

7 Q. And so now you're -- you're changing your -- your
8 testimony from what testimony you gave -- pardon me, the
9 statement, the truthful statement, that you gave?

10 **MR. MAYE:** Your Honor, I'm gonna object because that's
11 an opinion statement about the truthful statement. It
12 doesn't --

13 **THE COURT:** I sustain the objection.

14 **MR. MAYE:** Thank you.

15 **THE COURT:** She's given conflicting statements. The
16 jury can hear the testimony, but don't characterize it for
17 them.

18 **BY MR. THUSS:**

19 Q. Let me ask you about your prior record. The
20 conviction for possession of meth, that was a felony
21 conviction?

22 A. No, sir.

23 Q. Okay. So -- but you were convicted for possession of
24 methamphetamine?

25 A. Yes, sir.

(Jennifer Nicole Dewitt - Redirect by Mr. Maye)

1 Q. And you were on probation?

2 A. Yes, sir.

3 Q. When you gave your oral testimony, did you express at
4 that time, on December 22nd, that you were fearful of
5 losing your children?

6 A. Yes, sir, I did.

7 Q. And were you fearful of a parole -- pardon me, a
8 probation violation?

9 A. Yes, sir.

10 Q. And you've admitted that -- that you are a drug
11 addict?

12 A. Yes, sir.

13 **MR. THUSS:** I don't have any more questions.

14 **THE COURT:** Any redirect?

15 **MR. MAYE:** Just a couple.

16 **REDIRECT EXAMINATION**

17 **BY MR. MAYE:**

18 Q. And, Ms. Dewitt, when you talked to them initially,
19 you told them exactly who lived at the residence, didn't
20 you?

21 A. Yes, sir.

22 Q. You told them that Mr. Wheeler rode the motorcycle,
23 the black motorcycle, and the red pick-up truck just like
24 you testified to?

25 A. Yes, sir.

1 Q. You told them at that time that the person that had
2 and carried around the green box in this case was
3 Mr. Wheeler, didn't you --

4 A. Yes, sir.

5 Q. -- during that same interview, the initial one?

6 A. Yes, sir.

7 **MR. MAYE:** That's all. Thank you.

8 **THE COURT:** Okay. You may step down. Yes, sir.

9 (Witness excused.)

10 **THE COURT:** All right. Call your next witness.

11 **MR. MAYE.** I beg the Court's indulgence.

12 Your Honor, with that witness the State of South
13 Carolina rests.

14 **THE COURT:** All right. Very well.

15 All right, ladies and gentlemen. I've got a few
16 things that I need to do as far as legal matters go. I'm
17 gonna let y'all step in the jury room for a few minutes
18 and I'll have y'all out here in a little while. You can't
19 begin discussing the case.

20 (Whereupon, the jury retires to the jury room at
21 10:10 AM.)

22 **THE COURT:** All right. Do we have any motions?

23 **MR. THUSS:** Your Honor, I'd make a motion for
24 directed verdict on the -- on -- especially on the -- the
25 sawed-off shotguns; that there was testimony that those

1 were Mr. Coon's. There's testimony that those were
2 Mr. Con's weapons and I don't believe that there's any
3 testimony that Mr. Wheeler exercised any sort of control
4 or dominion over the weapons; that Mr. Coon has admitted
5 -- or that there's testimony that these were Mr. Coon's
6 weapons.

7 **THE COURT:** Who put that up? Which witness? Where
8 are the indictments? I want to see them. I don't have
9 them committed to memory since there's a dozen. I usually
10 can memorize them.

11 **THE CLERK:** (Handing.)

12 **MR. THUSS:** There was evidence from Agent Prince as
13 to two of the -- two of the sawed-off shotguns that --
14 that looking at them now, Number -- it would be Exhibit
15 Number 52 and Number 50. I think he was charged with all
16 three of -- all these weapons; that Mr. Coon through Agent
17 Prince's testimony said that these were -- Mr. Coon had
18 admitted these were his. There was also testimony from
19 Brian Wade that he had never seen Mr. Wheeler have or have
20 control of these weapons.

21 **THE COURT:** I think he testified he'd never seen him
22 shoot one.

23 **MR. THUSS:** Never seen him shoot. Okay. Never seen
24 him shoot one the day that he was there and there was
25 testimony from Ms. Dewitt just now that -- that Mr. Coon

1 claimed those -- those weapons were his. And I also
2 believe as to this stolen -- I think this Mossberg shotgun,
3 that Agent Prince stated that Mr. Coon had said that that
4 Mossberg shotgun was his also. And there's no testimony
5 concerning Mr. Wheeler and that Mossberg shotgun or the --
6 it will be Number -- State's Exhibit Number 22.

7 **THE COURT:** Is there twelve indictments or just ten?
8 Are there twelve indictments or ten? I've got three drugs;
9 possession of drugs, possession of marijuana, trafficking
10 meth. Three drug charges. I've got four indictments for
11 receiving stolen goods; a camper, a truck, two Harleys.
12 And then I've got three indictments for firearms. Is that
13 all?

14 **MR. MAYE:** I think there are three sawed-off shotguns.
15 I think there's --

16 **THE COURT:** I'm just looking at what's in my hand.

17 **MR. MAYE:** Do what now?

18 **THE COURT:** The Mossberg, I don't have an indictment
19 regarding any Mossberg. I've got a Winchester and two
20 choppers. So if there's not one here, I'm not gonna grant
21 your motion because it's not before me.

22 **MR. THUSS:** We were getting changing indictments, so
23 I'm just -- there were a lot of stuff. There were changing
24 indictments.

25 **MR. MAYE:** And, Your Honor, the only response that I

1 have is certainly he was present the day that the search
2 warrant was issued, the weapons were not locked up. Taking
3 the evidence as presented to the jury in the light most
4 favorable to the jury {sic}, he certainly could have
5 exercised actual or constructive possession. When they're
6 talking about ownership of any of these items, most of the
7 items in the household were stolen. As to who claimed them
8 or claimed ownership, Your Honor, we think at this point in
9 time there's some evidence that the jury can find in this
10 case as to all of the items that were seized at the house
11 given the fact that he was present in the house on the day
12 of the search warrant and the weapons were available for
13 anybody in the house to pick up. There's been nothing
14 testified that any were locked or anybody was prohibited
15 from accessing any of the weapons. The testimony is that
16 weapons were scattered throughout the house. I think
17 there's sufficient direct and circumstantial evidence.

18 **THE COURT:** You're talking too fast and that wasn't
19 answering my question. I want to know about the
20 indictments.

21 **MR. MAYE:** Yes, sir. I'm gonna have to go back and
22 look at the indictment numbers that were called, Your
23 Honor.

24 **THE COURT:** Alright. I found one. It would be
25 Indictment 255 that involves the Mossberg.

1 **MR. MAYE:** And I can't recall if we presented that or
2 not.

3 **THE COURT:** It was in my stack of stuff.

4 **MR. MAYE:** Okay. Thank you. And, Your Honor, I can
5 only say as to the Mossberg shotguns, there were actually
6 two Mossberg pump shotguns. It's not clear as to which he
7 took -- or he's stating that Mr. Coon took ownership of.
8 In the photograph, there's another Mossberg shotgun that's
9 a stocked shotgun with a wooden stock. That's a polymer
10 stocked sawed-off -- I mean, or a shortened Defender-style
11 Mossberg.

12 Again, Your Honor, we just respectfully maintain that
13 he could have exercised either actual or constructive
14 possession of any of the items that were in the house, he
15 was present on the day of the search warrant. We think
16 that creates a jury issue very respectfully, Your Honor.

17 **THE COURT:** Alright. I want to clear up how many
18 indictments I'm supposed to have because I thought y'all
19 said twelve and I wanted to make certain there's twelve
20 or ten or eleven. I appear to have eleven right now. So
21 what am I looking for? I'm gonna talk with the clerk
22 because he and I are in charge of that. So what y'all
23 handed up let's see if we've got that. I'm showing five
24 counts of receiving stolen goods.

25 **MR. MAYE:** And, Your Honor, I have that I called

1 eleven indictments in this case.

2 **THE COURT:** Okay. Well, there's eleven right there.
3 That's making me feel better. .

4 **MR. DRYLIE:** One was nol-prosed.

5 **MR. MAYE:** That's correct. We withdrew one.

6 **THE COURT:** I have eleven.

7 **THE CLERK:** Yes, sir.

8 **THE COURT:** It appears to be three drug charges,
9 three counts of sawed-off shotgun or improper gun, and
10 five counts of receiving stolen goods, one of which is
11 the Mossberg. That makes better sense to me. And that
12 indictment, the Mossberg indictment, is 255.

13 I think it's a factual question. The guns were part
14 and parcel. They were in the house scattered everywhere.
15 Nobody said there was any organization in the house
16 whatsoever other than Bedroom 3 was used for dogs. Other
17 than that it was a mess. I think it's a factual question
18 for the jury to determine who was in possession of the
19 guns, the drugs and the unlawful sawed-off shotguns, so I
20 think that a -- it's a factual question. There's enough
21 to get by directed verdict at this stage, so respectfully
22 I'll deny that on the guns, Mr. Thuss.

23 What else have you got, Mr. Thuss?

24 **MR. THUSS:** Thank you. I understand the Court's
25 reasoning on that, but I have to make the motion.

1 **THE COURT:** Make your motion.

2 **MR. THUSS:** Yes, sir. I'll just make a general motion
3 for directed verdict on the rest of it based on lack of
4 evidence that he had control over the premises or control
5 over the drugs.

6 **THE COURT:** All right. I think there was testimony
7 even just from that last witness that said people came to
8 do some sort of trading, the box was in the possession and
9 control of Mr. Wheeler according to that last witness, and
10 that's enough to give it to the jury. Respectfully, I'll
11 deny that also.

12 All right. What are you gonna do?

13 **MR. THUSS:** I'm going to call --

14 **THE COURT:** Do you want some time?

15 **MR. THUSS:** Mr. Wheeler's already decided to testify
16 and I spoke briefly with Mr. Coon, open door; just told him
17 that I had been relieved as counsel for his daughter and
18 that Mr. Coon -- I mean, Mr. Wheeler was on trial today and
19 that I was gonna ask him about his plea and the statement
20 that he gave, so I'm gonna -- I'm gonna call Mr. Coon and
21 I'm gonna put him up first.

22 **THE COURT:** Okay. All right. Do we need a short
23 break before we bring the jury back in?

24 **MR. MAYE:** Yes, sir.

25 **THE COURT:** All right. I'll get a cup of coffee and

1 come back in in a few minutes.

2 **MR. MAYE:** Thank you, Your Honor.

3 (Recess taken.)

4 **BAILIFF:** All rise.

5 **THE COURT:** Be seated. Bring in the jury.

6 (Whereupon, the jury returns to the courtroom at
7 10:34 AM.)

8 **THE COURT:** All right. Mr. Barnes is the foreman.
9 Mr. Barnes, are you okay with doing that for me?

10 **THE FOREPERSON:** Yes, sir.

11 **THE COURT:** You don't get paid extra, but you can have
12 an extra piece of candy.

13 I got y'all's note to speak a little louder. I've got
14 the microphone cut off right next to me. It echos on me
15 while I'm sitting up here. I'll cut it on when I've got to
16 talk to y'all with my instructions. I'll make certain
17 y'all hear those, but me talking to the lawyers and
18 refereeing, it's okay. I want y'all to hear the testimony
19 of the witnesses rather than my talking with Jacob, so I'm
20 aware of that. When I've got to give my instructions, I'll
21 make certain y'all can hear. I'll probably give you a copy
22 of them also.

23 So, anyway, we're ready to continue. The State has
24 put up all its evidence in its case in chief. We've taken
25 care of some legal issues. It's now the opportunity for

1 Mr. Wheeler through his attorney to present evidence for
2 you to consider also.

3 Mr. Thuss.

4 **MR. THUSS:** May it please the Court, I'd like to call
5 David Coon.

6 **THE COURT:** All right.

7 **THE CLERK:** If you'd raise your right hand and place
8 your left hand on the Bible.

9 (Whereupon, David Coon was duly sworn by the Clerk of
10 Court.)

11 **THE CLERK:** Thank you, sir. You may be seated. State
12 your full name and spell your last name for the record.

13 **THE WITNESS:** David Coon, C-O-O-N.

14 DAVID COON,

15 having been duly sworn, testified as follows:

16 DIRECT EXAMINATION

17 BY MR. THUSS:

18 Q. Good morning, Mr. Coon.

19 A. Good morning.

20 Q. I spoke with you briefly for five minutes or so this
21 morning.

22 A. (Nods head.) Yeah.

23 Q. And I advised you I'm here representing Mr. Wheeler --

24 A. Okay.

25 Q. -- in this trial today.

(David Coon - Direct by Mr. Thuss)

- 1 A. (Nods head.)
- 2 Q. Mr. Coon, you were -- were you tried last week?
- 3 A. Yes, sir.
- 4 Q. And were you tried for trafficking methamphetamines?
- 5 A. Yes, sir.
- 6 Q. 400 grams or more?
- 7 A. Yes. 715 I think it was.
- 8 Q. And were you tried for possession of the sawed-off
- 9 shotguns? Can you see them here on the table?
- 10 A. Yes.
- 11 Q. And were you tried for receipt of stolen goods?
- 12 A. Yes.
- 13 Q. And did that include a camper?
- 14 A. Yes.
- 15 Q. And did it include two Harley-Davidson motorcycles?
- 16 A. Uh-huh.
- 17 Q. And a Mossberg shotgun?
- 18 A. Yeah.
- 19 Q. And a red Chevy pick-up truck?
- 20 A. Yes, sir.
- 21 Q. Basically all the same charges that Mr. Wheeler is
- 22 charged with?
- 23 A. Yes, sir. I pled guilty to all of them. It was all
- 24 mine.
- 25 Q. That it was all yours?

1 A. Yes, sir.

2 Q. And did you give a -- when you said it was all mine,
3 after pleading guilty to each of these -- each of the same
4 charges, did you give a statement to the Court?

5 A. Yes, sir, I did.

6 Q. All right. And what was the substance of that
7 statement?

8 A. It stated to the Honorable Judge Hayes I, David Coon,
9 take full responsibility, accept all the charges for the
10 drugs, the guns and all the stolen vehicles; everything
11 that was there in the house, inside and outside was mine.

12 Q. It was mine?

13 A. Yes, sir.

14 Q. Did you give any statement concerning -- about
15 Mr. Wheeler's responsibility?

16 A. No.

17 Q. Okay. Did you say that the co-defendants --

18 A. Oh, yeah, yeah. The co-defendants, yeah, they didn't
19 have nothing to do with it; that everything there was mine.

20 **MR. THUSS:** I don't have any further questions.

21 **CROSS-EXAMINATION**

22 **BY MR. MAYE:**

23 Q. Mr. Coon, who lived at Rainforest Lane?

24 A. I lived there and my daughter, she had a room there.
25 She frequented there on occasions.

(David Coon - Cross by Mr. Maye)

1 Q. Mr. Coon, you previously told law enforcement when
2 they interviewed you -- let's see. They actually talked
3 to you three times, didn't they?

4 A. Yeah, they did.

5 Q. Uh-huh. And you told them when they interviewed you
6 the first go around that you didn't hang out there at all;
7 that other people lived at the house and that you spent
8 most of your time other places; isn't that right?

9 A. No, I told -- I told them that I spent time away with
10 my girlfriend that just had a baby and that my daughter
11 frequents there on occasion.

12 Q. Now you understand that everything that you told them
13 was recorded and we've got a tape of it?

14 A. Yeah, I understand that.

15 Q. Uh-huh. And you told them -- when they interviewed
16 you, you said you had never seen any of these items before
17 when they interviewed you, didn't you? When you first
18 started talking to them you, you said you'd never seen any
19 of those, didn't you?

20 A. Yeah, yeah, I sure did. I told them that they weren't
21 mine. Yes, I did.

22 Q. No, sir, you didn't. In fact, you told them --

23 A. That's right.

24 Q. Excuse me, let me talk and then you can talk.

25 A. Okay.

1 Q. When they interviewed you initially, you said you had
2 never seen any of these items before and you didn't accept
3 ownership or responsibility for anything; isn't that right?
4 A. Right. Yes, sir. You're right.
5 Q. You lied, didn't you?
6 A. Yeah, I did.
7 Q. Okay. And, in fact, you told them that you had
8 cancer --
9 A. Uh-huh.
10 Q. -- and so if it came down to it and somebody was gonna
11 take the rap for this you were gonna take the rap for it
12 because you had cancer and you didn't care.
13 A. No, I -- yeah, I do got cancer and that is my stuff.
14 I'm not gonna tell a lie. I can't -- I can't put it on
15 nobody else when it belongs to me.
16 Q. Belonged to you and Mr. Wheeler in this case, didn't
17 it?
18 A. No, no. There you go. See, you're putting things in
19 my mouth. No, I said that it belongs to me. Mr. Wheeler
20 didn't have nothing to do with it period.
21 Q. Well, Mr. Coon, it's tough to know when to believe
22 you because when you were trying to get out of this on the
23 front end, you said you didn't have anything to do with it,
24 you didn't know anything about any of this; isn't that
25 true?

(David Coon - Cross by Mr. Maye)

1 A. Yeah, that is true.

2 Q. Okay. And so now that you've been convicted of this
3 and gotten your time, you're gonna try to get your daughter
4 and Mr. Wheeler out of this, aren't you?

5 A. No, I'm gonna tell the truth. It's mine.

6 Q. In fact, you consistently said this was not yours
7 right up until trial because you pleaded not guilty to all
8 of the charges, correct?

9 A. Right.

10 Q. And you tried to suppress the evidence in the case and
11 when you weren't successful and we put all our evidence up
12 and got it all in, then you changed your plea before the
13 jury went out.

14 A. You're absolutely -- you're absolutely right. I
15 wanted to see who had me locked me up. Every bit of that
16 stuff belongs to me. I think I had the right to the
17 confidential informants and all that. I wanted to see
18 personally who had me set up. That stuff belongs to me.

19 Q. Well, if they had you set up and it belonged to you,
20 what you're saying is that they were telling the truth.
21 Why would you be mad if they came up here and told the
22 truth? I mean, you're saying they set you up?

23 A. Yeah, I wanted to see -- I wanted to see who -- who
24 turned State's evidence on me, who turned me in. I'll say
25 that -- I'm not denying that the stuff is mine. It's mine.

1 I sold the dope. The motorcycles are mine, everything's
2 mine, but I wanted to see who had -- who -- who turned me
3 in, you know what I'm saying?

4 Q. Why? If it was yours --

5 A. Just like when you're in school, if you take a test,
6 you know, and somebody accuses you of cheating, you want to
7 see who accuses you. I wanted to see who my accusers were.
8 That's what I wanted to do.

9 Q. Now you said it was all yours, right?

10 A. It's mine.

11 Q. Well, why would you be mad then if they got up here
12 and told the truth?

13 A. I -- I'm not mad. I just wanted to see who it was.
14 You look back -- you know what, I got -- I got tried last
15 week. I got twenty-five years. My -- my max-out date is
16 2040, okay? Every bit of it is mine. I wanted to find out
17 who -- who put me in jail. You -- you know, you get a
18 speeding ticket, you want to know who the cop was, you want
19 to know what's going on. I wanted to know who put me in
20 jail.

21 Q. But you just told the jury up here you weren't mad
22 about it, with any of them?

23 A. I'm not mad. I not mad at all. I wanted to see who
24 put me in jail. That's what I wanted to do. I've got that
25 right. I've got that right to it. Just like you've got

1 the right to write down there some anonymous person. You
2 didn't want me to know. I -- I found out who it was.

3 Q. And you were so mad at Ms. Dewitt when you went down .
4 to the jail you screamed out that you were gonna have that
5 bitch's tongue gut cut out, didn't you?

6 A. You're exactly right. Yeah, I did. I told her that.
7 I told her I've got a hundred dollars in the canteen for
8 the first woman that whipped her ass. I did.

9 Q. Because you were mad at her for telling the truth?

10 A. Yeah. Yeah, I was mad. I was upset. She stayed at
11 my house, eat my groceries. I took her in off the street
12 when she was out there shooting dope. Yeah, I took her in,
13 and then turn around and get treated like that? Yeah, I
14 was a little upset, but not over -- not over -- you know
15 what I'm saying? Yeah, I was a little upset.

16 Q. What vehicles did you drive? Did you drive --

17 A. I drove all of them.

18 Q. Now you drove the -- the Sportster?

19 A. I drove both of the -- I drove both of the
20 motorcycles.

21 Q. Now State's 53 --

22 A. Uh-huh.

23 Q. I mean, you're a biker. You ride motorcycles,
24 correct?

25 A. Yeah. Yes, sir.

1 Q. And that's -- that's an FL Harley. That's an Electra
2 Glide. That's a big Harley, right?

3 A. Yeah.

4 Q. The Sportsters are kind of --

5 A. Yeah, a little smaller.

6 Q. -- the little one? Girls usually ride Sportsters,
7 don't they?

8 A. Yeah, yeah. You're right. You can say that.

9 Q. Yeah. But you don't really care -- if you're stealing
10 them and riding them, you don't care if you're riding a
11 girl's bike or not, do you?

12 A. Like I say, they're mine. I rode both of them.
13 Whether they stolen or I bought them, they're mine. I rode
14 them. Yeah, I rode that bike.

15 Q. Whose license tag is that on the back of this FL?

16 A. I couldn't -- I couldn't tell you.

17 Q. Uh-huh.

18 A. I couldn't tell you.

19 Q. This license tag of Mr. Wheeler's, it's off another
20 bike, isn't it?

21 A. No, unh-unh. I don't know whose -- I don't know whose
22 tag it is. It's probably stolen, too. The bike's stolen.
23 Just stole the tag and put it on there and ride it.

24 Q. It would be somewhat a coincidence if that was a tag
25 that came back to Mr. Wheeler, wouldn't that, on this one?

1 A. It would be. It would be very coincidental.

2 Q. It would be a marvelous coincidence, wouldn't it?

3 A. But it would be -- it would be a more coincidence if
4 it was somebody else's; along with a stolen bike, a stolen
5 tag. You can pull up to any grocery store and get a tag.

6 Q. Well, y'all were chopping these bikes up and painting
7 them out there at the house to try to hide that they were
8 stolen.

9 A. There you go again trying to put words in my mouth.
10 I did that. I did every customized -- I did all the
11 customizing. Wheeler didn't have nothing to do with it.

12 Q. You took these beautiful motorcycles and did this low
13 rent sorry paint job on them.

14 A. See, I don't -- I don't like flashy. I like to be
15 just kind of low -- low -- low key, you know. I don't like
16 all that flashy chrome and all that; a black, flat black
17 ride.

18 Q. You especially like to paint real heavy over the VIN
19 numbers on them, don't you?

20 A. Yeah. Yeah, I do. I mean, you know what? Look,
21 yeah, I do. I really do.

22 Q. Because when they're stolen, that's convenient, isn't
23 it?

24 A. If they're stolen -- you're absolutely right. If
25 they're stolen, I want to spray over it and I'm gonna cover

1 them up so nobody can see them. You're right. You're
2 absolutely right. I did it.

3 Q. How about the red pick-up truck then? Who's driving
4 it?

5 A. I was. You got to have -- hey, rainy days you've got
6 to have something to ride. The truck was mine, too.

7 Q. Well, you weren't even there when they got raided,
8 were you?

9 A. No, I wasn't.

10 Q. But Ms. Hall was there, wasn't she?

11 A. Yes, sir, she was. Like I say, she frequents there.
12 Do you have a daughter? Does she got a bedroom at your
13 house? Even if she's thirty or forty years old, your baby
14 is your baby. You're always gonna have a home or a place
15 for her to rest her head. Am I right or wrong?

16 Q. And you're always gonna try to take the rap for her no
17 matter what trouble she's in, aren't you?

18 A. No. No. No.

19 Q. That's what you told the cops.

20 A. No.

21 Q. You told them that you were -- if it came down to it,
22 you were gonna take the heat for everybody, right?

23 A. It's mine. It's mine. I've gotta take the heat for
24 it. Why would I let somebody else go to jail when the
25 stuff belongs to me, you know what I'm saying? I ain't --

1 I ain't got no reason to tell you no lie. It belongs to
2 me.

3 Q. Well, in the same conversation you were continually
4 telling them that you didn't have anything to do with them,
5 it wasn't any of yours, but if it came down to it because
6 you had cancer you were gonna take it to try to get them
7 out of it?

8 A. No, I told her I got cancer. I said do you know what
9 it feels like to be dying? I've got cancer. That's
10 exactly what I said.

11 Q. In this trailer here --

12 A. Uh-huh.

13 Q. -- all of Mr. Wheeler's mail was there, his billfold
14 was there. They found all of his personal items scattered
15 throughout Bedroom 2 and scattered throughout the house.
16 How do you explain that if he wasn't staying there?

17 A. How do I explain that? I explain it just like this.
18 He was dating my daughter. Like I said, my daughter
19 frequents there on occasions. They don't live there. They
20 come to see me and sometimes they spend the night. He did
21 not live there. My daughter didn't actually, quote, live
22 there. She had a place to stay because I'm daddy and I'm
23 always gonna have a place for my daughter to rest her head.

24 Q. The room's just full of drugs and paraphernalia where
25 they stayed there, Bedroom 2, wasn't it?

1 A. I couldn't tell you. I know there was drugs in -- in
2 Bedroom Number 3. That's where I kept them.

3 Q. You told the police you'd never seen that box, didn't
4 you?

5 A. Yeah, that's my box.

6 Q. But that's not what you told them originally, was it?

7 A. Yeah, I know -- I know what I told them originally. I
8 mean, come on, man. You know, you break in my house, you
9 come kicking in my door. 750 grams. Anybody in their
10 right mind is gonna tell them whatever they think they want
11 to hear, but the stuff belongs to me. Yeah, that's mine.

12 Q. Here's Defendant's 3 and this is the middle bedroom
13 there. Look at all the drugs and money and all that stuff
14 in the bedroom where Ms. Hall and Mr. Wheeler stayed.

15 A. Like I say, you didn't find none in my room. I had it
16 in other rooms. I put it in the other room.

17 **MR. MAYE:** I beg the Court's indulgence.

18 **BY MR. MAYE:**

19 Q. You told law enforcement that Mr. Wheeler was your
20 brother. Is he -- do y'all have the same mother and father
21 or anything like that?

22 A. No, we don't.

23 Q. How is he's your brother?

24 A. He's a friend of mine. He's like a brother.

25 Q. And you'd do anything for him, wouldn't you?

(David Coon - Cross by Mr. Maye)

1 A. Well, I wouldn't say I'd do anything. No, I wouldn't.

2 Q. Well, you'd get up here in front of twelve people and
3 lie about all this.

4 A. Well, I ain't telling a lie in front of twelve people.
5 They can -- you know, I'm telling the truth. I've got no
6 reason to lie.

7 Q. Now because you've already gotten your time.

8 A. No, no, no, no. See, there you go trying to put
9 words in my mouth again. I have no reason to lie. Every
10 bit of that stuff belonged to me. I'm the one that went
11 out and stole it. I'm the one who went and got the dope,
12 I'm the one who sold the dope. I'm the one who rode both
13 motorcycles, you know. I sold dope out of that red
14 Chevrolet truck, I sold dope off the Sportster, I sold dope
15 off the Electra Glide with that tool box strapped to the
16 back. It's mine.

17 Q. With Mr. Wheeler's tag on the back of it. Did you put
18 that on there?

19 A. I -- I don't know whose tag it is to be honest with
20 you. How do you know it's Mr. Wheeler's tag?

21 Q. You know they've got records for that, don't you?

22 A. Well, I -- I guess they do, but I -- like I said, I
23 couldn't tell you whose tag is on the back of the
24 motorcycle. The one didn't have a tag.

25 **MR. MAYE:** I beg the Court's indulgence.

1 BY MR. MAYE:

2 Q. Now when the agents interviewed you, they asked you
3 if you owned any firearms and you replied I do not own any
4 firearms.

5 A. Yeah, I don't own them.

6 Q. You lied to them?

7 A. No, I ain't lied to them. They're stolen. They ain't
8 mine. I don't -- I don't own nothing. I don't own no
9 firearms. They're stolen. I didn't tell you a lie. There
10 you go trying to tell me -- yeah. Okay. They're stolen.
11 They do not belong to me.

12 Q. How old's your daughter?

13 A. My daughter's twenty-three.

14 Q. How old is Mr. Wheeler?

15 A. I don't know. What's that -- what's that -- that's
16 irrelevant. I don't think I need to answer that question.

17 Q. Do you know how old he is?

18 A. Yeah, I know exactly how old he is, dude. You don't
19 need to know. You know. You've got the paperwork. I
20 mean, what's that -- what's does that got to do with it?
21 Age is a number. That's all.

22 Q. They were boyfriend and girlfriend, weren't they?

23 A. Yeah, they was. What are you getting at?

24 Q. Well, where did they get together as boyfriend and
25 girlfriend?

(David Coon - Cross by Mr. Maye)

1 A. Where are you going with this?

2 Q. Where did they get together as boyfriend and
3 girlfriend?

4 A. I don't know. They met. They met. Why? What's that
5 got to do with it?

6 **THE COURT:** All right.

7 BY MR. MAYE:

8 Q. Boyfriends and girlfriends usually get together.

9 **THE COURT:** Hang on.

10 **MR. MAYE:** Excuse me.

11 **THE COURT:** You've got to answer his questions. You
12 can't ask him questions.

13 **THE WITNESS:** Well, he -- okay. Okay. Go ahead.

14 **THE COURT:** This is a courtroom. We're gonna have
15 some order.

16 **THE WITNESS:** Okay.

17 **THE COURT:** Answer his question and you can explain
18 your answer.

19 BY MR. MAYE:

20 Q. If they were boyfriend and girlfriend, where were they
21 getting together as boyfriend and girlfriend?

22 A. I guess they'd go out in the evenings or something or
23 go out for dinner or whatever, have a mixed drink. I don't
24 know.

25 Q. Well, where did Mr. Wheeler live then?

1 A. He lived in Aiken.

2 Q. Where?

3 A. I'm not really sure of the address where he lived.

4 Q. How long had you known Mr. Wheeler?

5 A. I've known Mr. Wheeler for maybe a year or so.

6 Q. And he was like a brother to you and you didn't even
7 know where he lived?

8 A. Yeah.

9 Q. It never occurred to you to ask him, your brother that
10 you see all the time, you know, where do you live, man?

11 A. Yeah. Yeah, like I say, he --

12 Q. You never asked him?

13 A. -- he stayed with me a little bit, he stayed with a
14 friend of his a little bit.

15 Q. Where did your daughter stay when she wasn't staying
16 there?

17 A. With a friend of hers.

18 Q. Well, she was paying money on the lease though on
19 the property. The man was getting the rent from her.
20 Mr. Harmon was getting the rent from her in December.

21 A. That's right. Yes, sir.

22 Q. She was just paying it and wasn't staying there?

23 A. I was paying the rent. I was -- yeah, I'd go by there
24 and give her the rent money to pay it because like I told
25 you I was spending time away with my girlfriend that just

1 had a baby.

2 Q. Two of the sawed-off shotguns -- you eventually said
3 that none of the sawed-offs were yours, right?

4 A. No.

5 Q. That's what you first said.

6 A. No.

7 Q. Are you as sure about that as everything else you've
8 told the jury under oath?

9 A. I told Mr. Prince that the sawed-off shotguns belonged
10 to me. I made canes out of them. I've got a walking cane.
11 I make walking canes out of them. We'll saw them off,
12 we'll weld a stub on the end of it, solder all the parts
13 to where the gun does not work properly, it was
14 non-functionable, and put a rubber stopper on it and take
15 a stock and make a handle out of it and make a walking
16 cane. Y'all took -- y'all took one from the house.

17 Q. You'd also take these walking sticks and blast holes
18 in that van in the front yard, too, wouldn't you?

19 A. That van did not run.

20 Q. Did y'all shoot these with sawed-offs?

21 A. Yeah. No, not a sawed-off. I shot it with a shotgun.
22 I sure did. Yeah, I shot it with a shotgun. Yeah, I did.

23 Q. Well, you initially denied any ownership of those, but
24 you came back on a subsequent interview when you requested
25 they come back and talk to you again and you took ownership

1 of two of them. You said two of them were yours, but the
2 third one you said you'd never seen before. Isn't that
3 what you told them?

4 A. Yeah. Yeah, I had to claim it. They was -- they're
5 mine. They're somebody's. They're mine. They was stolen
6 evidently. A man wanted me to make a cane out of one and I
7 said okay. So, you know, like I say, yeah, I guess they
8 would be mine, considered mine, if -- the way y'all look at
9 it, it would be mine, I guess.

10 Q. Well, you came back a second time and said only two of
11 them were yours, the third one you'd never seen.

12 A. I don't recall that.

13 Q. Well, it's all on tape.

14 A. Well, that's fine it's on tape. I'm telling you every
15 -- everything that was in that house belongs to me; the
16 shotguns, everything.

17 Q. They found one of the sawed-offs in Bedroom 2 there in
18 the middle bedroom of the house.

19 A. Uh-huh. Uh-huh.

20 Q. Is that right?

21 A. I guess. Like I say, I wasn't there. I couldn't tell
22 you. I couldn't tell you where -- you know what I'm
23 saying, where they found what or where they said they found
24 what.

25 Q. You told them that the meth in the green box did not

(David Coon - Cross by Mr. Maye)

1 belong to you and you didn't know who be it belonged to,
2 didn't you?

3 A. That's exactly what I said at first. Like I say,
4 anybody in their right mind would try to -- try to say
5 something to get out of it, but you know what, whenever I
6 -- all the evidence, I mean, at least -- I mean, it's mine,
7 there's no denying it. You found it in my home. It's
8 mine. I mean, how can I deny it?

9 Q. You tried to deny it over and over again --

10 A. Yes, you're absolutely right.

11 Q. -- up until all of the evidence came in against you;
12 isn't that right?

13 A. You're absolutely right. Like I say -- hey, I didn't
14 want to go to jail for twenty-five years. I didn't want to
15 go to prison for twenty-five years. I'd tell you anything
16 you'd want to hear. Did they tell you I told them I'd give
17 them a kilo of meth, too?

18 Q. You tried every way you could to get out from under it
19 yourself, but it didn't work, did it?

20 A. No, there's no way it's gonna work. It's mine. I
21 mean, you found it in my home. You know --

22 Q. And so now you're gonna get up here and try to help
23 Mr. Wheeler out of this by lying now?

24 A. No, I'm not telling no lie. Just like when I was here
25 last week I told the truth. That's all I can do is tell

1 the truth. No matter how bad you don't want to hear the
2 truth, the truth is the truth. It belongs to me. Every
3 bit of it belongs to me. There's no other way around it.

4 Q. It's kind of hard to tell when you're telling the
5 truth because you change it day by day, don't you?

6 A. Well, you know, it's just like you do; you're sitting
7 there telling me things I've said, things I didn't say, you
8 know.

9 **MR. THUSS:** May it please the Court? I think this is
10 repetitive. It's been asked and answered and we're going
11 over the same things.

12 **THE COURT:** I tend to agree with you, Mr. Thuss.

13 **MR. MAYE:** I don't have anything else, Your Honor.
14 I'm done. Thank you.

15 **THE COURT:** Mr. Thuss, any redirect?

16 **MR. THUSS:** Just a couple of questions, please.

17 **REDIRECT EXAMINATION**

18 **BY MR. THUSS:**

19 Q. In your statements that you gave to law enforcement,
20 you were asked about how you felt about the relationship
21 between Mr. Wheeler and your daughter --

22 A. Uh-huh.

23 Q. -- and whether you --

24 A. How I approved of it?

25 Q. -- whether you approved.

(David Coon - Redirect by Mr. Thuss)

1 A. Well, you know, I mean, some things -- it's like this,
2 you know. Mr. Wheeler is a brother of mine, he's a friend
3 of mine, I love him to death. My daughter, I love her to
4 death, but, you know, there's an age difference there. So
5 sometimes with your kids the more you stress something,
6 don't do, don't do, they want to have a tendency to do it.
7 So, you know, I kind of -- I kind of didn't push the issue,
8 you know. I just kind of let it -- let it just go at what
9 it was.

10 Q. And -- and did you -- in that -- in the statement did
11 you say yes, you'd prefer her to be with a doctor or a
12 lawyer?

13 A. Yeah, I did. That's exactly what I told them, you
14 know.

15 **MR. THUSS:** No further questions.

16 **THE COURT:** All right. You may step down.

17 (Witness excused.)

18 **MR. THUSS:** May it please the Court, could I have a
19 recess to discuss before going on?

20 **THE COURT:** Sure. Y'all step in the jury room. I'll
21 have you back out in a couple minutes. You can't discuss
22 the case quite yet.

23 (Whereupon, the jury retires to the jury room at
24 11:01 AM.)

25 **THE COURT:** Okay.

1 (Recess taken.)

2 MR. MAYE: May it please the Court, Your Honor, I
3 don't have any -- if you're gonna make any inquiry of
4 Mr. Wheeler. I don't know if he's testifying. I don't
5 have any problem -- I'm not gonna offer anything on his
6 record if he testifies. I don't know if you want to go
7 through that with him or not, but I don't have any
8 impeachment information if he testifies that I would intend
9 to impeach with him, Your Honor. I don't think anything on
10 his prior record under the rules --

11 THE COURT: That helps.

12 MR. MAYE: -- would have impeachment value.

13 MR. THUSS: Okay. That's what we're -- we're trying
14 to --

15 THE COURT: He just tipped his hand. He said he's not
16 gonna challenge credibility on his prior record. He can
17 challenge credibility, but --

18 MR. THUSS: Right.

19 THE COURT: Okay.

20 (Recess taken.)

21 THE COURT: Are we ready?

22 MR. THUSS: I've discussed this with Mr. Wheeler and
23 -- and he's now decided that he's not going to testify.

24 THE COURT: Okay. Is that -- is that all the evidence
25 you're gonna put up?

1 **MR. THUSS:** That's all that I'm going to have, yeah.

2 **THE COURT:** Are you gonna respond to anything,
3 Mr. Maye?

4 **MR. MAYE:** I may have one reply witness. I'll find
5 out how quickly I can get them here.

6 **THE COURT:** That doesn't leave you much time.

7 (Pause in proceedings.)

8 **MR. MAYE:** Judge, I was gonna have somebody from DMV
9 on the tag that comes back to him that was on one of those
10 bikes and they're going over to get somebody from DMV. I
11 can obviously bring the dispatcher that ran it. I don't
12 know that they're gonna -- whether or not they'll dispute
13 that's a regularly recorded business record. I can
14 certainly have the dispatcher come and testify that it's a,
15 you know, a regularly recorded business record they access
16 through NCIC, but if not I'm gonna get the --

17 **THE COURT:** They may stipulate to it.

18 **MR. MAYE:** I'm gonna show it to them.

19 **THE COURT:** Yeah, if it's just a -- just a DMV record,
20 that wouldn't be a huge deal.

21 **MR. MAYE:** Mr. Thuss, that's the record.

22 **THE COURT:** I think he was discussing it.

23 **MR. MAYE:** I'm gonna either bring somebody from the
24 DMV or in the alternative I'll have the dispatcher come.
25 They ran the tag this morning that's on the car and I'll

1 show you the photograph of it.

2 **THE COURT:** What's that?

3 **MR. MAYE:** It comes back to his name, a 1998
4 Harley-Davidson, [REDACTED] Duncan Road, North Augusta, South
5 Carolina. I mean, that's all I'm waiting on. I'm gonna
6 have them come -- bring somebody from DMV as the custodian
7 of the records or I can call the dispatcher and put them
8 up as the custodian of the record. I don't know if y'all
9 are gonna try to dispute the authenticity. It may delay it
10 for a little while, but I'll get somebody from the DMV.
11 Whatever you want to do on that.

12 **MR. THUSS:** How long will that take?

13 **MR. MAYE:** I can have the dispatcher up here right
14 now.

15 **MR. THUSS:** I mean, I'm fine if it's a competent
16 witness just for --

17 **MR. MAYE:** That's fine. I'll have them bring --

18 **THE COURT:** All right. Here's what I'm gonna do with
19 the jury. I've spoken to Mr. Reel and since we've only got
20 potentially just one more witness, I've got the charges
21 ready. Y'all should know about what they look like because
22 they're essentially Judge Hayes' from last week. You've
23 seen those and you maybe heard about them last week.
24 They're very, very similar. So they should be ready to go
25 and the verdict form, so I don't think there's gonna be --

1 there's no lesser included?

2 **MR. THUSS:** Right.

3 **THE COURT:** So the only thing that -- it shouldn't be
4 a whole lot more to modify with Judge Hayes' charge.

5 **MR. THUSS:** That's fine. Thank you, Your Honor.

6 (Recess taken.)

7 **BAILIFF:** Court come to order, please.

8 **MR. MAYE:** We're ready, Your Honor.

9 **THE COURT:** Good deal. We have our witness here and
10 she's already sitting down. Good deal.

11 (Whereupon, the jury returns to the courtroom at
12 11:27 AM.)

13 **THE COURT:** All right, folks. We put a couple of
14 things on the record and spoke with the attorneys and
15 Mr. Thuss and Mr. Wheeler have now rested on the record
16 and the State intends to call one reply witness and we had
17 to send for that witness and she's already here and sitting
18 down.

19 So, Mr. Mayes, call her name so we know it.

20 **MR. MAYE:** The State would call Brittany Rouse of the
21 Edgefield County Sheriff's Department.

22 **THE CLERK:** Please stand. Raise your right hand and
23 place your left hand on the Bible.

24 (Whereupon, Brittany Rouse was duly sworn by the Clerk
25 of Court.)

1 **THE CLERK:** Thank you, ma'am. Please be seated.
2 State your full name and spell your last name for the
3 record.

4 **THE WITNESS:** My name is Officer Brittany Rouse,
5 R-O-U-S-E.

6 BRITTANY ROUSE,
7 having been duly sworn, testified as follows:

8 DIRECT EXAMINATION

9 BY MR. MAYE:

10 Q. Ms. Rouse, in what capacity are you employed with the
11 Edgefield County Sheriff's Office?

12 A. I'm an Edgefield County dispatcher.

13 Q. You're a dispatcher. As a dispatcher for the county
14 of Edgefield, do you have access to the regularly recorded
15 business records of the South Carolina Department of Motor
16 Vehicles as it relates to vehicle registration in the form
17 of licenses, tags and VIN numbers?

18 A. Yes, sir.

19 Q. You have the ability to access that database of
20 regularly recorded business records?

21 A. Yes, sir.

22 Q. How do you query and -- if you want to run a tag, for
23 example, for a deputy that's out on the road that stops a
24 vehicle, how do you query that database?

25 A. We use an NCIC database and we just run it by

1 whichever state and we put it in and submit it and it comes
2 back to whoever it's registered to.

3 Q. Okay. Let me ask you this. Were you asked in your
4 capacity as a dispatcher this morning to run a South
5 Carolina motorcycle tag and I'm gonna ask you -- I'm gonna
6 show you --

7 MR. MAYE: We'll mark this State's ID at this point in
8 time.

9 (State's Exhibit Number 75 was marked for
10 identification.)

11 BY MR. MAYE:

12 Q. I'm gonna ask you if you queried the database of those
13 regularly recorded business records for a South Carolina
14 motorcycle tag [REDACTED] and I'm gonna show you
15 State's 75 for ID at this point in time. Did you run that
16 query this morning?

17 A. Yes, sir, I did.

18 Q. Okay. What was the return from that query from the
19 regularly recorded business records of the South Carolina
20 Department of Motor Vehicles?

21 A. It came back to a 1998 Harley-Davidson motorcycle
22 registered to a Timothy Wayne Wheeler at [REDACTED] Duncan Road,
23 North Augusta, Aiken County; expires 12 2015.

24 Q. Okay. Let me show you what's been marked State's 53
25 that's in evidence in this case. Can you tell me what the

1 tag number is on the back of that motorcycle?

2 A. Yes, sir. It's [REDACTED]

3 Q. Okay. Is that the same tag that you ran that came
4 back to Timothy Wheeler?

5 A. Yes, sir.

6 Q. Okay. I'm gonna show you State's Exhibit Number 9 in
7 this case. Can you tell me what that shows?

8 A. Timothy Wheeler, [REDACTED] Duncan Road, North Augusta, South
9 Carolina.

10 Q. Okay. Does it appear to be on an envelope?

11 A. Yes, sir.

12 Q. Okay. That tag did not come back to a 2006
13 Harley-Davidson motorcycle, did it?

14 A. No, sir.

15 Q. The VIN number that you have is not [REDACTED]
16 [REDACTED], is it?

17 A. No, sir.

18 **MR. MAYE:** At this point in time, Your Honor, I'm
19 gonna move to admit State's 75 into evidence in this case.

20 **THE COURT:** Any objection?

21 **MR. THUSS:** No, Your Honor.

22 **THE COURT:** All right. It will be admitted as
23 State's 75 without objection.

24 (State's Exhibit Number 75, a DMV tag query, was
25 admitted into evidence.)

1 gonna go ahead and let the lawyers offer their closing
2 summaries to you in this case. The State will go first.

3 **MR. MAYE:** Your Honor, I think under the new rule or
4 that new case, I think I'm required in this case -- I'm
5 gonna do it out of an abundance of caution; that I open on
6 the law and the facts and they're to give their evidence
7 and then if I have anything in reply, but no new matter.

8 **THE COURT:** That's what I understand the new rule to
9 be. We just had a rule change January 5th. It used to be
10 a little different and we've kind of gone back to pick up
11 the old rule and what Mr. Mayes has expressed was he has to
12 open in full, he closes and he can reply to anything that
13 was brought up under State versus Beaty.

14 **MR. THUSS:** Thank you.

15 **THE COURT:** All right. Wait a minute. He goes first.
16 That's -- that's the new rule.

17 **MR. MAYE:** May it please the Court? Ladies and
18 gentlemen, it seems like it's been a long time ago. It's
19 been kind of tedious here. You've seen a mountain of
20 evidence and a mountain of exhibits in this case and we've
21 talked about what an inconvenience this is, but it's
22 vitally important that the twelve of you go back in that
23 jury room and deliberate. As I said at the outset, y'all
24 all live here in Edgefield County and y'all are sitting in
25 a historic courthouse. It's an unusual building. It's

1 unusual in that anything would stick around this long, this
2 first section of it. And, you know, it's interesting the
3 things that sometimes happen in a place like this. I mean,
4 it's so historic.

5 It hasn't been long ago that there was a very elderly
6 lady and she came up here and she was being guided around
7 by two other folks, a woman maybe in her forties and
8 another maybe in her twenties, and they walked all around
9 the building and they looked and folks had no idea what
10 they were doing. They walked around and looked at the
11 building from every angle and finally somebody wanted to
12 find out what in the world they were doing here.

13 This lady actually grew up here in this courthouse
14 because at one time off the back of the courthouse there
15 was a jail and the jailer stayed here and the jailer was
16 her daddy and she grew up here in this building, in the
17 courthouse, she grew up in the jail. She said inmates
18 would come in and out through their living room where they
19 lived, they actually resided here, and it's just hard to
20 believe that that kind of change, you know, has taken place
21 where somebody would actually live up in a jail and a
22 little girl would actually grow up here. She said that she
23 and a disabled man planted a lot of the trees that are here
24 around the courthouse that have now grown up to their full
25 size. It's just interesting how much things have changed.

1 At that time on one tragic day there was a sheriff
2 here and on the same day the sheriff got killed and his
3 deputy got killed and that was it. They had to go raise a
4 posse to deal with what had -- they had to go over to get
5 Saluda and get people, two folks, a sheriff and a deputy.
6 Look around in this courtroom right now here of how many
7 people there are with uniforms. Crane your head down here
8 and look down the hill and look at how many folks there
9 are.

10 Well, were there more people back then? You know,
11 were there fewer people? Is there more of us now, is that
12 how they've got all these folks here? Probably not. We've
13 lost population here. There used to be a lot of folks that
14 lived here in Edgefield County. We've lost population. So
15 it's not that there weren't more people here. Is it that
16 we're any meaner than we once were? Are folks any meaner?
17 That's probably doubtful. Edgefield has got history of
18 where people would get into disputes with one another and
19 they'd take up pistols and duel and shoot each other dead.
20 It hasn't been long ago that men stood on battlefields and
21 hacked each other to death with swords, eyeball to eyeball,
22 so I doubt we're any meaner than we once were, but back
23 then a sheriff and a chief deputy and that was it for
24 everybody that lived here.

25 You know what's the difference? It's not more people

1 and I doubt people are ever even meaner than they once
2 were. Heavy narcotics; methamphetamines, crack, heroin,
3 hard narcotics.. Right there, a bag of human misery. The
4 kind of substance that will have people go out and scour
5 the countryside. Y'all saw here folks coming up here and
6 testifying. Where were they all from? In case you can't
7 recall, some of them came from Aiken, some came from houses
8 in Columbia. These are people throughout this whole area
9 who were hardworking people, who -- one guy came here and
10 wanted to move to South Carolina to get away from crime so
11 he could restore a house. A mechanic who thought that his
12 son was teasing him when he said your camper's gone. These
13 are hardworking folks that lost their property. Why?
14 Because folks are so addicted to what's in that bag of
15 human misery that they forgo everything that they have,
16 they lose everything they have and they would roam the
17 countryside cutting locks, breaking in buildings, going up
18 under people's sheds and taking their camper, stealing
19 their truck, stealing motorcycles from their friends.
20 Anything they could get their hands on to steal and what
21 were they doing with it?

22 Well, there's one thing for sure. On December
23 the 22nd of 2015 all of those stolen goods had accumulated
24 out there at the residence of Mr. Coon, Mr. Wheeler and
25 Ms. Hall, and I guess on a sometimes basis Ms. Dewitt, who

1 was a hanger-on there. All because somebody or several
2 somebodies were so selfish and so mean and had such black
3 hearts that they would dispense this human misery at the
4 expense of other people, and that's what this case is all
5 about. Because seated over there at the defense table in
6 this case, Mr. Wheeler, who was happy and healthy over
7 there, is a person who would dispense human misery that
8 cost so many people so much. They had all these stolen
9 goods there that day. And we're not saying who stole
10 anything because who knows, but we know all of those stolen
11 goods ended up here in Edgefield County out at that
12 residence and we know from Brian Wade how they got there
13 because we know what was going on. It wasn't a secret.
14 Everybody knew; Ms. Dewitt, Mr. Wade.

15 You know, I'm sure that you're gonna hear them get
16 tossed under the bus and oh, they lied this time, they lied
17 that time, they're bad people. But look at them. Here's
18 Mr. Wade who got up and told you in this case -- you know,
19 he told you basically his life story. He said well, you
20 know, I grew up over there in the Valley and things were
21 all right until I started using drugs and started using
22 methamphetamines, and I got out from under it. But, you
23 know what, I asked him in this case, the State asked him,
24 once you start losing meth, do you care about anything
25 else? No. It has got to be some more powerful drug to

1 make people drop every other drug that they're using to
2 start using this and they go out and start roaming the
3 countryside and stealing anything that's not nailed down to
4 trade for it.

5 Look at Mr. Wade. There he went off to the military
6 and got his life together and then ordered food for
7 somebody and gets court marshalled and tossed out of the
8 military. Here's a guy that went from the Valley in Aiken
9 that's gone all over in the world in the military. How
10 stupid. How human, I guess, but he comes back and falls in
11 with his old faces and places, he's already been using meth
12 over there in the Valley in Aiken, and he comes back and
13 gets right into it. And what happens by then? He's living
14 pillar to post stealing what he can steal, living in cars
15 and trading any stolen vehicle that he can get his hands on
16 to Mr. Coon and Mr. Wheeler over here, and he finds out
17 that he can get a better deal rather than over in Aiken
18 County. I guess so because they've got quite an enterprise
19 going here. They've got stolen goods of every type,
20 they've got surveillance cameras, they've got explosives,
21 they've got guns, they've it going on out there. Criminal
22 enterprise central. You can come out there and trade.
23 It's like a pawn shop. You can trade anything you can
24 steal or get your hands on or you can bring cash in there
25 and you leave with meth, you can leave with pills, you can

1 trade stolen guns. Basically it's a pawn shop. One stop
2 shopping.

3 He's gone from being a veteran of our military
4 descended into just going out and being an absolute thief.
5 It's a good thing he got caught because you can tell in
6 this case going to prison was a good thing for him. He got
7 up here and he said it. I'm an addict, it got ahold of me.
8 Nothing I could do. I got caught and I certainly wanted to
9 minimize the negative consequences to myself in this case,
10 and he had meth on him, he had the stolen vehicle, and at
11 that point in time there wasn't much he could do but start
12 telling what he knew, so he told law enforcement over in
13 Aiken, you know, about the stolen vehicles. You heard him.
14 He helped them get some of them back. And he said hey, the
15 drugs I got, I can tell you where they came from and I can
16 tell you where a major operation is going on.

17 And what's he tell them on the front end? He names
18 Biker Tim. Tim Wheeler over here. He names Mr. Coon. He
19 talks about Ms. Hall. He says I've been in there. Of
20 course, they find out and corroborate that he has been in
21 there. They go get a search warrant. He lays it all out
22 to them. Think about the specificity and the information
23 that he gave them there. I was there, we shot guns, we
24 blasted this van.

25 See, that's the thing about the truth. It all fits

1 together. It's been said that no man has a good enough
2 memory to be a successful liar because you can't remember
3 what you've told. If it's not the truth, you can't
4 remember your lies. You listened to Mr. Coon. He has no
5 idea what he said at what time because the truth's not in
6 it and he'll back up and go forwards and backwards and
7 sideway because he can't remember what he said because he
8 lies.

9 He told them they were gonna find explosives. Look
10 at the blasting cap. He told them there was gonna be
11 sawed-off shotguns where they shot up the van. There they
12 are. He said that there was gonna be surveillance
13 equipment. Everybody talked about the surveillance
14 measures that they had. He named the people that were
15 gonna be there. They knew all of that on the front end
16 because he was the confidential informant. And, yes, he
17 was listed on the affidavit as the confidential informant
18 to try to protect him in this case because here are
19 dangerous people with guns, explosives, surveillance
20 equipment who you can see from Mr. Coon who will tell you
21 if you snitch on me or if you tell on me, you're gonna get
22 your tongue cut out. That's the people that they are
23 dealing with.

24 And Mr. Wheeler is right in there in the midst of
25 this. He's staying there. Never mind what they're gonna

1 tell you. Oh, he wasn't living there, you know, he just
2 stayed there from time to time. Look at the amount of dope
3 that's in this case. There's a billfold with \$7,300 and
4 his driver's license. There's mail from all over the
5 place; coincidentally, from the same address that's gonna
6 come back on the tag of the Harley-Davidson that they'd
7 have you believe oh, he didn't have anything to do with
8 that, that's just a magnificent coincidence in this case.
9 Letters that have come from all over the place there, his
10 personal effects.

11 He was living there just exactly like Ms. Dewitt said.
12 She was living there. Another tragic figure if there ever
13 was one. I guess for lack of a better term, not to
14 disparage her because she got up here and did testify for
15 the State, but a meth head. She was over there hanging
16 with these men, these fifty-something year old men because
17 she wanted drugs and it was a place that she could get
18 drugs and one could only imagine the cost that she had to
19 pay in human dignity and self-respect to get drugs out
20 there and hang around. They were running up and down the
21 road. He's got his twenty-something year old daughter
22 living with this fifty-something year old man there in this
23 house. They're all there roped up together using meth,
24 selling meth, trading for stolen goods, a yard full of
25 stolen vehicles. Lord, they can't roll down the road

1 unless they get on something that's stolen from somebody
2 else and it's just all out there. The wrong tags on
3 vehicles, stuff from all over the place.

4 And you heard what Ms. Dewitt said. She said I was
5 took up there. Once I went there to get drugs from
6 Mr. Wheeler and she said my role was once I fell in there
7 was to watch the camera so I could see five, six people a
8 day coming up and down the road there to buy drugs and
9 trade stolen goods for drugs and what I would do is I'd go
10 to the door and that was my role and I'd answer my door and
11 then they'd either ask for Mr. Wheeler or Mr. Coon and
12 they'd go deal with them. Sometimes the customers would
13 come out and, you know, I'd do some with them and that was
14 the tale that she told in this case and she laid out.

15 All the witnesses were consistent. Mr. Coon in this
16 case, he stayed over in the left bedroom. Mr. Wheeler,
17 Ms. Hall. And you can look at the photographs and all
18 of the personal effects and items that he had that
19 corroborated that. All the evidence fits together. They
20 lived in the middle bedroom and then they had some puppies
21 in the third bedroom and they found this big old green box
22 with all those items. And you can look. There's a
23 mountain of evidence here. They've got the green box laid
24 out in these photographs here that show all the contents of
25 it. It's just full of pills, it's just full of 717 grams

1 of finished product of methamphetamine, Xanax tablets. All
2 of that kind of stuff was in that box. And from the outset
3 in this case when Ms. Dewitt started talking she told them
4 about the green box. She told them that Mr. Wheeler in
5 this case was the one that she usually saw with the green
6 box dealing out of it. Over and over again it keeps coming
7 back to him.

8 Now you've seen Mr. Coon in this case get up and tell
9 you, you know, that oh, you know, I'm gonna take this, you
10 know, I'm gonna take it. He told officers that from the
11 start. He said well, you know, if I just can't get out
12 from under this and it comes down to it I'm gonna take it
13 for my daughter, I'm gonna take it for my brother in this
14 case. Well, him getting up and just raising his hand and
15 saying after he contests it and lies and lies and says I
16 didn't have anything to do with this, you know, I don't
17 know anything about this, none of these guns are mine, all
18 of the things that he told the officers on the front end,
19 he goes through that over and over again, I'm not guilty.

20 We start the trial and fight the search warrant. When
21 all of that evidence, a mountain of evidence, comes in
22 against him, this guy with cancer ultimately says okay,
23 you've got me, you finally proved it on me, you know, I'm
24 gonna take it. I'm gonna hold up my hand and take it. But
25 somebody holding up their hand and saying I'm taking this

1 doesn't change the facts. It doesn't erase the fact that
2 all of these individuals were involved in pedaling this
3 human misery at the expense of everybody else here in
4 Edgefield County. It's not like he gets to raise his hand
5 and say I'm taking it, let them free, you know, through
6 some whatever sense of loyalty to his daughter and this man
7 that he calls his brother in this case. He's trying to
8 pull them out from under it and say I'm gonna take it. But
9 you can't be deny history and he can't get up here and lie
10 his way out of it.

11 Why keep secret what he was doing? He wanted to see
12 the people that had snitched on him and find out who they
13 were and that's why he took it to trial and he told you
14 that. And you can see the character and the demeanor of
15 him once he gets caught. He's gonna cut her tongue out.
16 He's gonna get up here and he's gonna take it, hold up his
17 hand. You can't convict Mr. Wheeler of a thing because I'm
18 gonna hold up my hand and I'm gonna erase everything that
19 they've done up until this point of time. It's just not
20 that simple. You don't get to be that indifferent of your
21 fellow man and then just have somebody else wipe the slate
22 clean for you because they're gonna take it.

23 He doesn't have much time left. He's a person with
24 cancer. He doesn't care much about it. He doesn't care at
25 all. Because anybody that can get up here and say that

1 they were threatening witnesses and that sort of thing on
2 the back end and brag about it up here in an open courtroom
3 doesn't much care. He's got twenty-five years, he's got
4 cancer, he's gonna hold up his hand and he's gonna erase
5 everything that they've done in this case. That's what he
6 hopes to do.

7 The judge is gonna go through all of the charges in
8 this case and I'll tell you upfront in this case that they
9 may get up and argue, oh, well, he took or claimed two of
10 these guns here, Mr. Coon says they were his, so don't find
11 him guilty of these. Agent Prince said that he found one
12 of these in the bedroom, a sawed-off shotgun, in this case.
13 You know, do whatever you want with those charges. What
14 we're up here about is the trafficking charge. If you
15 think he deserves any consideration that he wasn't using
16 all these vehicles or he didn't own every one of these,
17 then find him not guilty on those. I don't care. It
18 doesn't make any difference.

19 What we're up here about is trafficking over 400 grams
20 of methamphetamine and you can make sure that you know in
21 this case that Mr. Wheeler was dealing the methamphetamine
22 out of this green box. It keeps coming back to him time
23 and time again. A man with \$7,300 in his billfold. Who
24 other than a meth dealer living in squaller like this is
25 gonna have \$7,300 in cash money in his billfold? So find

1 him guilty of whatever you want to in this case.

2 There's a thing called actual possession and
3 constructive possession. And just because somebody stands
4 up and says oh, this is mine and I'm gonna take it doesn't
5 erase away the fact that they've got this house just full
6 of guns, explosives and everything else. Because when
7 you're a drug dealer and you're a drug trafficker you need
8 to defend your turf. It might be against somebody coming
9 in and trying to rip you off because they know you've got
10 nearly a kilo of methamphetamine here, seven hundred and
11 something grams, I guess three-quarters of it, all of this
12 money on the premises and all, you need guns, you need
13 surveillance equipment because people that are so desperate
14 that they'll go out and roam the countryside might come in
15 there and steal it from you.

16 And old Mr. Coon in this case, you know, they've got
17 explosives set up, everything they can to counter that, and
18 that's why when law enforcement went down there they got
19 ATF, they got the SLED SWAT team, they got all the
20 resources of the sheriff's department. It wasn't just two
21 people here, a deputy and a sheriff here. They gathered
22 people from all over the state to deal with this so that
23 they could descend on them with all of this criminal
24 activity going on and no one get hurt and they did it.
25 They got in there and nobody was able to set off any

1 explosives or jerk up any sawed-off shotguns and shoot
2 anybody, they just got taken into custody.

3 That's what I'm circling back to. There's actual
4 possession of something and constructive possession it.
5 This shotgun is laying right here. Do I own it? Do I
6 possess it? Well, I can sure reach and pick it up.
7 Somebody else within arm's reach of it could sure reach and
8 pick it up. At any point in time that person or whoever's
9 around it exercises any intent to pick it up, they can
10 exercise dominion and control over it. That's constructive
11 possession of an item. And there were weapons throughout
12 this trailer and there's no doubt that they were there in
13 order to defend it either from law enforcement or from
14 somebody coming in to rip them off or from whoever showed
15 up. So anything that's in that trailer that's available
16 to anybody there, they certainly had either actual or
17 constructive possession of it no matter where they were in
18 the house.

19 But, again, if there's any problem with that, a lot
20 of people testified in this case that Pops rode the
21 Sportster in this case and Mr. Wheeler only rode the
22 Electra Glide there, the FL, 54, that Mr. Negron had stolen
23 from him with his tag number on it with his address on it
24 out of the paperwork that he's got there in the house, if
25 he's just guilty of having that stolen vehicle, that's

1 fine. Now he could have driven anything else there on
2 the property or used anything or exercised dominion and
3 control over any of those stolen items, so there's
4 certainly sufficient evidence to convict him of any and
5 all of the things that he's charge with in this case.

6 The sawed-off shotguns, he certainly could exercise
7 dominion and control over them, but if you only get to --
8 if you find that he was only able to exercise dominion and
9 control over the one that was in his bedroom, find him
10 guilty of that one and find him not guilty of the other
11 two. Find him guilty of the one Harley-Davidson and not
12 the other. It doesn't make any difference because, again,
13 it all comes back down to trafficking over 400 grams of
14 methamphetamine. That's what's generated \$7,300 that he
15 had in his billfold that he garnered at the expense of
16 everyone else in this case that was an addict, the people
17 that were there with him, the people that are roaming
18 around through the countryside and trying to steal all of
19 these items in order to bring them in there and trade for
20 that right there, that bag of human misery.

21 Ladies and gentlemen, there's a mountain of evidence
22 in this case. The judge is gonna go through and talk to
23 you about the elements that we've got to prove. You've
24 heard all these tedious questions. The State's got the
25 burden of proof in this case. We've got to show you that

1 it all happened in Edgefield County. That's why we talked
2 over and over about that. We asked witness after witness
3 did all of these events take place in Edgefield County.

4 On the trafficking, the judge is gonna charge you,
5 trafficking is so expansive; aids, abets, conspires. You
6 don't have to actually be the one holding it, but if you're
7 assisting, aiding, abetting or conspiring with somebody.
8 Just like Ms. Dewitt. She was going and getting plastic
9 bags and furthering this enterprise, she was standing at
10 the door. She's guilty of trafficking because when you're
11 talking about that level of drugs, the people that are
12 aiding, abetting, assisting, providing a place for it,
13 being helpers in it, they're just as guilty of trafficking
14 as the principals, the main people, like Timothy Wheeler,
15 the man with the green box. That's the trafficking charge.

16 The other one, the drug charge he has, is the Xanax
17 and you just have to look at the quantity he had and the
18 fact that there were all these other drugs there, there was
19 all this testimony about how this is just grand central
20 station because he's charged with the Schedule IV drug
21 Xanax, possession with intent to distribute, and that's
22 one of the things the judge is gonna talk to you about.
23 There's possession, just merely having something, and
24 possession with intent to distribute. There are certain
25 factors that go into it and the judge will talk to you

1 about that. If you've got over a certain quantity or
2 weight of different substances, you know, if there's other
3 evidence like somebody's got scales or there are multiple
4 baggies of some kind, there's all kinds of evidence that
5 can make a difference in between merely possessing
6 something and possessing it with intent to distribute.

7 In this case, there's a lot of evidence certainly of
8 possession with intent to distribute. There's the direct
9 testimony from Ms. Dewitt and Mr. Wade in this case that
10 they had these items because you could go in and you could
11 trade whatever stolen goods or money that you brought in
12 there and you could get pills, you could get meth. They
13 had pills, they had marijuana. That's the difference the
14 State's talking about in mere possession of it and
15 possession with intent to distribute. You look at all of
16 the evidence that's come in in this case. The testimony
17 of people that were directly telling you yeah, they were
18 distributing these items. That's evidence that these items
19 were possessed with the intent to distribute.

20 Because one of the other charges is the marijuana and
21 they found some marijuana in this case and you heard the
22 chemist get up here and tell you yeah, you know, two bags
23 weighed out about the same weight and, you know, it's up to
24 you decide whether he possessed it or possessed it with
25 intent to distribute in this case. The State submits to

1 you the only evidence in this case was they were possessing
2 all of these things with the intent to distribute. Now
3 they were using some of it themselves, but they would
4 certainly swap or trade or sell anything that they had on
5 them and there's ample testimony in the record.

6 We come back down to the three sawed-off shotguns in
7 this case. Could Mr. Wheeler have exercised dominion and
8 control over those shotguns if somebody showed up there to
9 rip them off or law enforcement came? You decide. There's
10 three of them. Mr. Coon's trying to tell and they'll argue
11 to you oh, Coon said two of them were his. Now one time he
12 did. Sometimes he said none of them are mine, but it just
13 depends on what serves his purposes, so you decide. On the
14 possession or having these sawed-off shotguns, the judge is
15 gonna tell you, you know, if they're under twenty-six
16 inches in overall length or the barrel length is less than
17 eighteen. Well, you know, we've proven it to you and
18 that's why you've got all these pictures from ATF and the
19 scale in these and the measurements. This basically shows
20 you somebody took these guns, and you can look at these
21 photos that ATF made where there are big, nice, full-size
22 hunting weapons and what they would have looked like
23 originally, and then they've got them how they were sawed
24 off so they could be concealed and throw out a wide pattern
25 of shot being cut down like this and hidden. That's why

1 those weapons are illegal, why they're against the law, if
2 you take a hunting weapon and cut it down to something
3 that's deadly and could be concealed. You decide which of
4 those two he's guilty of on the sawed-off or the possession
5 of an unlawful weapon.

6 All of the stolen goods in this case. Well, this
7 camper sitting out there, we don't know if he was using the
8 camper or not. It really doesn't make any difference. You
9 make up your mind whether or not he was guilty of that.

10 The Mossberg pump shotgun that the fella said that all
11 of his stuff got stolen and one of them was stolen, you
12 decide whether or not he's guilty of possessing that. The
13 weapons were scattered throughout the house. If he could
14 exercise dominion or control or had active or constructive
15 possession of that weapon at any time, find him guilty or
16 not guilty on that. Just use your judgment.

17 All of the items, the vehicles. The red pick-up
18 truck. Now there's certainly evidence in this case.
19 There's testimony directly in here that he was the one that
20 was driving the red stolen Chevrolet pick-up truck that the
21 old gentleman from Columbia had stolen from him, the one
22 with the custom wheels on it, and y'all will have the
23 photos of that in there. You know, there's certainly
24 testimony in there that he had this. And they may argue
25 to you oh, we can't prove that he knew it was stolen.

1 Everything on the property was stolen there.

2 They got these Harley-Davidson motorcycles that were
3 -- you heard the testimony of what -- the condition that
4 they were in to start with and they're trying to paint them
5 out there and cut them up and chop them up so nobody will
6 recognize them, that the original owners won't recognize
7 them, and so they're out there spray painting them like
8 Ms. Dewitt said and covering up the VIN numbers and working
9 on them and trying to change them around so nobody -- but
10 there's ample evidence in this case. Finally, on the
11 little Harley-Davidson, you find that he was in possession
12 of those stolen goods, that little one, or not. The one
13 that he was riding and he's got his tag on there, he
14 certainly had possession of that.

15 Just consider all of the evidence in this case. Think
16 about what people's motives are here. Come back with a
17 verdict that speaks the truth. If you do that, the twelve
18 of you have done all that anybody could ask for. I
19 appreciate your close attention.

20 **THE COURT:** Mr. Thuss.

21 **MR. THUSS:** May it please the Court?

22 **THE COURT:** Yes, sir.

23 **MR. THUSS:** Ladies and gentlemen, Mr. Wheeler at the
24 start of this trial has pled not guilty and he's pled not
25 guilty to all of these charges. He has pled not guilty to

1 these drugs, he's pled not guilty to these sawed-off
2 weapons, and he's pled not guilty to any of the stolen
3 property that you've heard about in the last day or so of
4 testimony.

5 You've heard -- well, let me go back. There was a
6 search warrant executed on December 22nd and Mr. Wheeler
7 was present along with two other people. Why didn't he
8 flush the meth -- if he knew that police were outside, as
9 Ms. Dewitt testified she told him, and he woke up and he
10 had time to put on his clothes and wait before the police
11 to come in, if he knew these drugs were there in Bedroom
12 Number 3, why didn't he dispose of them? Wouldn't anybody
13 in that position have tried to dispose of that? It's a
14 crystal substance they can flush right down the toilet. It
15 wouldn't take quite a minute.

16 You heard the testimony about the -- about the
17 sawed-off shotguns and -- and the Mossberg and from more
18 than Mr. Coon. You've heard others talk about whether
19 they'd seen Mr. Wheeler having them, using these, holding
20 them, doing anything with them. And you've heard the
21 testimony -- you've heard it, Mr. Wheeler does not receive
22 mail -- there's no mail, there's nothing that showed that
23 Mr. Wheeler was -- was a resident. He was dating the
24 daughter of Mr. Coon and you'll have to decide whether or
25 not that he had the -- if he was a guest there, if he was

1 staying there in and out, or whether or not he was there
2 and in a position to -- to have access to everything in
3 the house there. Use your common sense, use your practical
4 experience about it, about these sorts of things. We
5 don't know because we've seen a broad picture of a lot of
6 testimony, but we don't know with certainty how long
7 Mr. Wheeler had been staying there, if he had been in and
8 out, if he -- I mean, there are holes in this and I can
9 paint a broad picture of it, but I -- I just try to stick
10 to arguing the facts that I heard and whether they were
11 refuted, whether they were inconsistent or whether the
12 testimony is clear to the legal standard that the judge is
13 gonna instruct you that you have to apply.

14 There are two witnesses who testified, Brian Wade and
15 Ms. Jennifer Dewitt. You've heard about their backgrounds,
16 you've heard about -- in Brian's -- Brian Wade's case, you
17 heard about his history and his giving false information in
18 the past. In Ms. Dewitt's case, you've heard about her
19 giving an oral statement on December 22nd when everything
20 happened, when the bust happened that day, and you've --
21 you've heard what she said at that time before she was
22 charged with any crimes and now you've heard about what
23 she's decided to say last Thursday when she gave a
24 statement and testimony Mr. Coon's trial after she had been
25 charged with trafficking methamphetamine.

1 You'll have to decide what to believe. There's
2 uncertainty about how -- how much time Mr. Wheeler spent
3 there apart from -- well, Ms. Dewitt testified that she saw
4 Mr. Wheeler carrying a toolbox, this box, this ammo box
5 with "tools" written on it, and -- but I don't believe that
6 we heard any testimony that she or Mr. Wade saw him taking
7 drugs out of this box and we don't know what was in this
8 toolbox when she saw him carrying it around because we
9 didn't have specific testimony about when she saw him
10 carrying this around. If you believe her. If you believe
11 her testimony.

12 Mr. Wade's testimony concerning Mr. Wheeler's
13 involvement with the drugs was that after having
14 established a relationship with Mr. Coon and coming there
15 over a period of time making dealings with Mr. Coon that
16 he came there on December 6th, fifteen, sixteen days
17 before drugs were found in this box when the -- when the --
18 the day of the search, and his statement, if you believe
19 Mr. Wade, was that after the end of the conversation
20 between him and Mr. Coon about fronting drugs and all that
21 Mr. Wheeler came with a quarter ounce of methamphetamine
22 and handed it to Mr. Coon.

23 That, I think, was -- was Mr. Wade's testimony. So
24 if you can get past the fact that Mr. Wade has -- he's a
25 drug addict and he's gotten in trouble and turned over

1 information to try to help himself out on his charges and
2 the sentence that he's received and that he's given
3 evidence -- given false information in the past, if you
4 believe that, then what it shows is that Mr. Wheeler might
5 have -- Mr. Wade might have seen him with seven grams in
6 his hand, but not -- and that was back on December 6th and
7 not this quantity of methamphetamine because the drugs
8 were not found in Mr. Wheeler's actual possession on the
9 day that the bust occurred. The drugs were in Bedroom
10 Number 3 where the puppies were being kept and where Ms.
11 -- Ms. Heather Hall's belongings were, not a bedroom that
12 there's been any testimony that Mr. Wheeler used or went
13 into.

14 Now I can -- I just can't help but thinking that if
15 he knew those drugs were in that room and he had time the
16 morning of the bust, why didn't he get up before the police
17 came in and dispose of it? Ms. Dewitt, who was a State's
18 witness, admitted that, admitted that he didn't take any
19 action. It wasn't like the police came with a no-knock
20 warrant and knocked down the door and came in. They pulled
21 up, Ms. Dewitt noticed them, she woke Mr. Wheeler up, he
22 took his time putting on clothes and then -- and then the
23 police came into the house.

24 Mr. Harmon who owns the property didn't know who
25 Mr. Wheeler was. Even though he comes out there to collect

1 rent and do inspections, he didn't know who Mr. Wheeler
2 was. And you heard -- you heard the testimony, you heard
3 it, Mr. Wheeler had money in his wallet, but I questioned
4 Investigator Young because I've got money laying -- or
5 money that was found in this box, an indeterminate amount
6 of money, showing hundred dollar bills on top and then
7 there's money laying around on the floor and then there's
8 an amount of money in Mr. Wheeler's wallet, and it looks
9 like it's a thick wad of money, but because the money -- I
10 have questions about the -- how the total amount of money
11 that they're trying to attribute to Mr. Wheeler was come
12 up with because it's clear that there -- it appears that
13 they're saying that all the money was Mr. Wheeler's, but
14 it's clear that there were sums of money that were found
15 with these drugs.

16 Mr. Wheeler -- it's admitted into evidence,
17 Mr. Wheeler's documents, none of them that -- none of them
18 that have addresses here, but there's one in particular, a
19 green receipt, that showed that Mr. Wheeler was making
20 child support payments. Well, if Mr. Wheeler couldn't keep
21 large sums of money in the bank because he was afraid it
22 was gonna --

23 **MR. MAYE:** Your Honor, that's arguing facts not in
24 evidence. I object to that.

25 **THE COURT:** You're arguing facts outside of the

1 evidence.

2 **MR. THUSS:** But there are other reasons why a person
3 could have large sums of money on -- on their person. So
4 I'm -- I'm not going to belabor my argument. I would like
5 for you to listen to the law that -- that the judge charges
6 you now and take care about considering what was actually
7 put into evidence, weigh the credibility of the witnesses,
8 and render a decision on this case. Mr. Wheeler is
9 asserting that he is not guilty and that -- that these
10 drugs found on December 22nd were not his and that he was
11 -- in fact, he was merely present at that location because
12 of his relationship with Mr. Coon's daughter, Heather Hall.
13 Thank you.

14 **THE COURT:** All right, Mr. Mayes. Reply?

15 **MR. MAYE:** Very briefly, Your Honor.

16 Ladies and gentlemen, y'all use your common sense. If
17 one would expect that the SLED SWAT team and ATF and the
18 sheriff's office when they had information that they were
19 going out there to serve a search warrant on people with
20 explosives and booby traps and sawed-off shotguns and the
21 defensive measures that they had in place, if one would
22 guess that they gave these folks time to turn around
23 backwards in the case or get rid of any evidence, that
24 would be a serious underestimation of the level of force
25 that they were bringing there. They didn't gather all

1 those folks up to go and make a causal knock on the door.
2 You can bet in this case if they thought anybody was trying
3 to get rid of that evidence out there in that doublewide
4 mobile home, they would have got a backhoe and lifted that
5 up before they let that happen. You can bet on that.

6 In this case, this box over here in the corner of the
7 house, they said oh, he wasn't doing anything wrong in this
8 case, you ought to find him not guilty because he didn't
9 know anything about this, he would have gotten up out of
10 the bed there with all those officers around and he would
11 have just gotten rid of all this stuff. All these big old
12 huge bags of drugs, they've got drugs and stolen goods and
13 items, how big of a toilet would it take to flush away all
14 that evidence that was throughout that house and scattered
15 right and left and up and down? Drugs everywhere in the
16 house. All this here, but scattered.

17 Look at the photographs of the underside of the bed up
18 there where he was; drug paraphernalia, sawed-off shotgun,
19 explosives, weapons. How's he gonna get rid of any of
20 that? He wouldn't have had time to turn around backwards
21 in this case. And, ladies and gentlemen, it's quite a
22 stretch to think that the SLED SWAT team and ATF and the
23 sheriff's department would have let them get rid of a thing
24 in this case or do one thing where they could pick up a
25 weapon or hurt somebody in this case.

1 All that we ask that you do is use your common sense
2 and come back with a verdict that speaks the truth. Thank
3 you.

4 **THE COURT:** Okay, folks. My instructions are coming
5 hot off the press. Anyway, I know most of them. I like
6 to make a written copy of them. I read some of them, I
7 tell you some of them, then I give the balance of the
8 written to Ms. Johnson and she keeps them in her record.

9 Anyway, it will take about thirty minutes, maybe a
10 little less, to read these instructions to you. By that
11 time lunch should be here and then we'll send you back to
12 the jury room and once y'all begin deliberations y'all can
13 eat and deliberate or eat and then deliberation. You're on
14 own time, all right?

15 (Pause in the proceedings.)

16 **THE COURT:** All right, ladies and gentlemen of the
17 jury. Mr. Barnes, thank you for being the foreperson.
18 The State of South Carolina has charged the Defendant,
19 Mr. Timothy Wayne Wheeler, with the crime of -- several
20 indictments. To my count, there's five counts of receiving
21 stolen goods, two counts of possession with intent to
22 distribute illegal narcotics, one count of trafficking
23 methamphetamine, and three counts of possession of illegal
24 or improper firearms.

25 Please bear in mind that he's pled not guilty. Can

1 y'all hear me? Am I loud enough right now? I can hear
2 the echo of the microphone. He's pled not guilty and by
3 that plea has requested the State prove its case beyond a
4 reasonable doubt.

5 As I told you in my opening instructions, a defendant
6 comes into court clothed with a presumption of innocence
7 and this presumption entitles him to a verdict of not
8 guilty unless and until it is dispelled by all of the
9 evidence presented by the State satisfying you of his
10 guilt beyond a reasonable doubt of the offenses charged.

11 I tell you, and I'll define what a reasonable doubt is
12 momentarily, but the State must prove all of the elements
13 in each of the indictments beyond a reasonable doubt and
14 each of those indictments stand separately. There's
15 eleven. There could be five one way, six the other, seven
16 and four, eleven and zero, two and nine. It does not
17 matter. They all stand independently and you are to
18 consider them independently.

19 Now I told you earlier that y'all would have to accept
20 the law as I am instructing it to you here today, so I tell
21 you that if you have an understanding or an idea what the
22 law is or what you heard it might be, read somewhere what
23 it is and it disagrees with the law as I'm instructing it
24 currently, you must dissociate your misunderstanding and
25 accept the law as I am giving it to you here today.

1 I mean, for instance, we had a -- a change in the law
2 of how the closing statements go as recently as January 5th
3 and the lawyers complied with that change by summarizing
4 their cases under the new rule. So the law changes. We
5 accept those changes and it's my job to keep up with the
6 changes and so I am instructing you on the law as I
7 understand it currently. Now if I make a mistake in the
8 instruction of law, there's another time and another place
9 that that mistake can be considered and, if necessary,
10 corrected. But for our purposes today you must accept it
11 as I am giving it to you currently.

12 In all criminal prosecutions, the State bears the
13 burden of proof and they must prove each and every element
14 to the extent of proof called beyond a reasonable doubt
15 before a finding of guilt may be held. The same
16 constitution which makes me the instructor of the law and
17 the ruler on the legal issues presented during the trial
18 makes you as a group the finders of fact and more or less
19 the judges of the facts. In order to judge and find facts
20 from the evidence which is presented, you must necessarily
21 evaluate and judge the credibility of the evidence and
22 testimony which has been presented to you.

23 Now credibility is believability. You can use
24 anything in your collective group's common sense to
25 evaluate whether someone's telling the truth or is not

1 telling truth. Some other things that you can consider,
2 if not obvious from the beginning, would be that you can
3 task and take into consideration the manner and the
4 appearance of the witnesses who testified; were they
5 straightforward? Were they hesitant in answering? How
6 did a witness come to know the facts to which he or she
7 testified? What was their ability to recollect the facts
8 to which they testified? Is there some reason a witness
9 would want to give testimony which would help or hurt one
10 side or the other? In other words, did the witness have
11 a bias or a prejudice towards one side or the other? Was
12 the testimony of the witness strengthened or weakened by
13 other testimony or other evidence? You as a group may
14 believe as much or as little of the testimony provided as
15 you deem appropriate. You can believe one witness against
16 several, several witnesses against one. You can believe
17 part of a witness's testimony and disbelieve the rest.
18 Whatever you in your collective judgment determine to be
19 believable and credible is what you're to do. The fact
20 that testimony is not contradicted or controverted does
21 not mean you must accept it. You still determine the
22 credibility of who testified.

23 Several of the witnesses' past criminal record was
24 presented to you or asked questions about. You can
25 consider those prior records only on the issue of their

1 believability, but not on their -- for any other reason.

2 There were a couple of witnesses qualified as expert
3 witnesses. Expert witnesses are persons who have
4 experience, training, education in certain fields of
5 expertise to which they can offer opinions in that field
6 of expertise. Now I tell you you do not have to accept an
7 expert witness's opinion because it's not undisputed. You
8 can consider it just as you do with the other testimony of
9 the other witnesses who were not experts. If you do not
10 believe the expert had sufficient training and expertise,
11 then you can disregard that opinion in its entirety. It
12 is your job to determine the facts based upon all of the
13 testimony and evidence presented to you in this trial. You
14 do not have to consider an expert's opinion more believable
15 because of the fact they're an expert.

16 Now as the factfinders, the twelve of you
17 collectively, I observed you -- noticed you listening
18 carefully to the testimony and evidence. Weighing evidence
19 is entirely a mental process. You must weigh this evidence
20 in the jury room using your good judgment and your common
21 sense. The evidence which convinces you of the truth
22 regardless of where it came from, whether the State or the
23 defense, your objective is to find the truth and find the
24 true facts.

25 Generally in trials there are two types of evidence.

1 There's direct evidence and there's also circumstantial
2 evidence. Direct evidence is basically eyewitness
3 testimony; that I saw, I smelled, I observed someone do
4 this or that. Now circumstantial evidence is slightly
5 different. It is proof of a -- several other facts, a
6 chain of facts and circumstances, indicating the existence
7 of yet another fact. Our law makes no distinction between
8 either the weight or value to be given to either direct
9 testimony or circumstantial evidence. There's no greater
10 degree of certainty required of circumstantial evidence
11 than that of direct evidence. You should weigh all of the
12 evidence in the case. I tell you, however, that to the
13 extent that the State relies upon circumstantial evidence
14 all of the circumstances must be consistent with one
15 another and when taken together point conclusively to the
16 guilt of the accused beyond a reasonable doubt. If any of
17 those circumstances just portray the Defendant's behavior
18 as suspicious, then the proof the State has offered has
19 failed. Thus, if after weighing all of the evidence,
20 whether it be direct, circumstantial, photographs,
21 anything, if you have a reasonable doubt that the
22 Defendant's not guilty, you'll be required to find him not
23 guilty.

24 What is a reasonable doubt? A reasonable doubt is the
25 kind of doubt which causes a reasonable person to hesitate

1 to act. A reasonable doubt may arise from evidence which
2 is in the case or from the lack or absence of evidence in
3 the case. Proof beyond a reasonable doubt leaves you
4 firmly convinced of the Defendant's guilt. It is the
5 kind of doubt which a person can assign a reason if the
6 assignment can be done reasonably and firmly. I charge you
7 further the Defendant in this case is entitled to every
8 reasonable doubt that may arise and what that means is if
9 you have any doubt during the trial you're required to
10 resolve that doubt in the Defendant's favor.

11 I'll tell you the fact that y'all as a group had a
12 full and free discussion of the issue of guilt or innocence
13 does not automatically create a reasonable doubt in this
14 case. You must make a determination of whether or not a
15 reasonable doubt exists. If the State's not met that
16 burden, then the Defendant is entitled to a verdict of not
17 guilty.

18 Criminal intent is a necessary element of the crimes
19 charged here. Criminal intent is matter which must be
20 determined from the jury from the circumstances surrounding
21 the situation. There's no way to prove to a mathematical
22 certainty that a criminal intent exists. There's no way
23 medical science can dissect a person's brain to determine
24 what he had in mind. Our law says that criminal intent
25 may be inferred from the circumstances shown to have

1 existed both before and after the fact. Criminal intent
2 is a state of mind that operates jointly with an act or
3 omission in the commission of a crime. It is a mental
4 state of conscious wrongdoing. You must determine what
5 the Defendant intended to do based upon the circumstances
6 shown to have existed and I tell you the State must prove
7 intent beyond a reasonable doubt.

8 All right. The specifics on the indictments. As I
9 told you, there are eleven. I'm gonna define those. The
10 ones that are similar charges, the charges and instructions
11 will be the same.

12 Mr. Wheeler's charged with possession with intent to
13 distribute marijuana. In order to sustain a conviction on
14 that offense, the State must prove that the Defendant
15 possessed with intent to distribute that drug. Possession
16 means the Defendant had both the power and intent to
17 control the disposition or use of the marijuana.
18 Possession may be actual or constructive. Actual
19 possession means it was in physical custody of the
20 Defendant. Constructive possession is slightly different.
21 It means that the Defendant had dominion and control or
22 the right to exercise dominion and control over the drug
23 or over the property with which the drug was found. Mere
24 presence at the scene where the drug was found is not
25 enough to prove possession. Actual knowledge of the

1 presence of the marijuana is strong evidence of its intent
2 to control its distribution and use. The Defendant's
3 knowledge and possession may be inferred when a substance
4 is found on the property under Defendant's control. This
5 inference is simply an evidentiary fact to be taken in
6 consideration by you along with the other evidence and you
7 give the weight on that evidence that you decide -- you
8 decide it deserves.

9 The State must also prove beyond a reasonable doubt
10 that the Defendant intended to distribute the marijuana.
11 The term distribution means to deliver other than by --
12 distribute means deliver other than by administering or
13 dispensing the drug. Intent may be shown by the acts and
14 conduct of the Defendant and other circumstances from
15 which you may naturally and reasonably infer intent.

16 In determining whether the Defendant had the intent to
17 distribute marijuana, you can consider the circumstances
18 surrounding the alleged possession. You can consider the
19 amount of the substance that was to have allegedly been
20 possessed, the manner in which it was possessed, the place
21 in which it was allegedly possessed and any other factors
22 which you would consider to be important. You must find
23 that the Defendant did not intend to have the marijuana
24 solely for his own use.

25 The State must also prove that the substance at issue

1 was marijuana. I tell you also the possession of
2 twenty-eight grams or more of marijuana creates an
3 inference that the Defendant intended to possess with an
4 intent to distribute the marijuana. This inference does
5 not relieve the State from proofing beyond a reasonable
6 doubt that the Defendant intended to distribute. It is
7 also an evidentiary fact to be taken into consideration
8 along with the other evidence of his intent.

9 Now the same instruction on the possession of the
10 controlled -- Jacob, will you print that up for me on the
11 Xanax and alprazolam, that controlled substance?

12 (Pause in the proceedings.)

13 **THE COURT:** All right, folks. I'm gonna tell you
14 also the Defendant's charged with possession with intent to
15 distribute alprazolam or Xanax; one's generic and one's a
16 drug store name. In order to prove that, the State must
17 prove beyond a reasonable doubt that he had actually
18 possessed the Schedule IV controlled substance with the
19 intent to distribute. Possession, the same instruction
20 will apply. The State must prove beyond a reasonable doubt
21 that he had both the intent and power to control the
22 distribution of the controlled substance, he had the
23 ability to control where -- either actual or constructive
24 where the drug was found. The State must prove that he
25 possessed with intent to distribute in the same fashion as

1 the marijuana instructions; he had possession, either
2 actual or constructive. Actual means it was in their
3 physical custody. Constructive possession means he had
4 dominion and control or the right to exercise dominion or
5 control over the area where the drugs were found. The
6 intent to distribute may be shown by the acts and conduct
7 of the parties and any other circumstances which -- from
8 which you may naturally and reasonably infer intent. I
9 tell you the State must prove those elements beyond a
10 reasonable doubt also with regard to the possession with
11 intent to distribute controlled substances.

12 Also the Defendant is charged with trafficking
13 methamphetamine. In order to sustain a conviction for
14 trafficking methamphetamine, the State must prove the
15 Defendant knowingly sold, manufactured, cultivated,
16 delivered, purchased, brought into this state, provided
17 financial assistance or otherwise aided, abetted,
18 attempted or conspired to sell, manufacture, cultivate,
19 deliver or purchase or bring into the state, and was --
20 or was knowingly in actual or constructive possession or
21 knowingly intended to become in actual or constructive
22 possession of the methamphetamine. The State must prove
23 beyond a reasonable doubt that the substance at issue here
24 was methamphetamine. The State must also prove in order
25 to sustain a conviction for trafficking that the amount of

1 the methamphetamine or any mixture containing
2 methamphetamine was 400 grams or more.

3 Mr. Wheeler is also charged with three counts of
4 possession of an unlawful firearm. In order to sustain a
5 conviction for that offense, the State must prove beyond
6 a reasonable doubt the Defendant stored, kept or had in
7 possession or permitted another to store, keep, possess or
8 have in possession a sawed-off shotgun. I instruct you
9 that the definition of possession is above. A shotgun
10 means a weapon designed or redesigned, made or remade, and
11 intended to be fired from the shoulder and designed or
12 redesigned and made for the use intended of the explosion
13 of a fixed shotgun shell to fire from a smooth bore barrel
14 a number of ball shot or single projectiles with each pull
15 of the trigger. This term includes any such weapon which
16 is readily restored to fire a fixed shotgun shell but does
17 not include an antique firearm. A sawed-off shotgun means
18 a shotgun having a barrel or barrels less than eighteen
19 inches in length or a weapon made from a shotgun which has
20 been modified and has an overall length of less than
21 twenty-six inches or a barrel or barrels less than
22 eighteen inches in length. The State must prove those
23 elements beyond a reasonable doubt in order to sustain a
24 conviction.

25 I also charge you that the Defendant, Mr. Wheeler, is

1 charged with five counts of receiving stolen goods. On
2 each of those indictments the State must prove beyond a
3 reasonable doubt that Mr. Wheeler bought, received or
4 possessed goods, chattels or other personal property and
5 that he knew or had reason to believe that the property
6 was stolen. Now whether the Defendant knew or had reason
7 to believe the property was stolen may be shown by direct
8 or circumstantial evidence, which I've already defined for
9 you earlier. The State may prove the Defendant knew or
10 had reason to believe the property was stolen by showing
11 the Defendant knew facts that would make a reasonable
12 person believe that the property was stolen.

13 All right. Several general instructions on the law
14 and I'm almost done. When a crime is committed by two
15 or more people who act together in committing the crime,
16 the act of one is the act of all. A person who joins
17 with another to commit an unlawful act is criminally
18 responsible for everything done by the other which
19 happens as a probable and natural consequence of the acts
20 done in carrying out the common plan or purpose. Now I
21 tell you the act of one is the act of all or, as is
22 sometimes said, the hand of one is the hand of all.

23 Prior knowledge that a crime is going to be committed,
24 without more, is not sufficient to make a person guilty of
25 that crime. Mere knowledge that the other person's going

1 to commit a crime, even if the Defendant in this case was
2 present when the crime was committed, is not sufficient to
3 convict him as a principal. Guilt as a principal may be
4 shown by actual or constructive presence at the scene as
5 a result of a prior arrangement. Thus, finding a prior
6 arranged plan or common scheme is necessary for finding
7 guilt as a principal. The State must prove beyond a
8 reasonable doubt by competent evidence the theory that the
9 hand of one is the hand of all.

10 A principal in a crime is the one who either actually
11 commits the crime or was present aiding, abetting or
12 assisting in the commission of a crime. When a person does
13 an act in the presence of another or with the assistance of
14 another, the act is done by both. When two or more acting
15 as a common plan are present at the commission of a crime,
16 it does not matter who actually commits the crime. All are
17 guilty. The hand of one is the hand of all. Present at
18 the commission means sufficiently near to aid, abet and
19 assist in the commission of a crime. However, I do tell
20 you and caution you that mere presence at the scene of the
21 crime is not sufficient to convict one under the theory of
22 aiding and abetting.

23 Intent is a necessary element of this crime for there
24 must be a common scheme or design or intent to commit that
25 crime and the crime must have been committed pursuant

1 thereto with the person aiding and abetting by some over
2 act. Intent means intending the result which actually
3 occurred, not accidentally or involuntarily. The intent
4 may be shown by the acts and the conduct of the Defendant
5 or any other circumstances which you may reasonably and
6 naturally infer intent. The State must prove those
7 elements beyond a reasonable doubt.

8 I instruct you also that mere presence at the scene
9 is not sufficient. A defendant's presence where a crime
10 is being committed or mere association with a person who
11 commits a crime does not make him an accomplice or an aider
12 or abettor of the person committing the crime. It is the
13 burden upon the State to prove every element of the crimes
14 charged. So after reviewing all of the evidence presented
15 you find that the State has proven the Defendant was only
16 present at the scene and they have not proved beyond a
17 reasonable doubt any other participation in the crime, then
18 you must find him not guilty. Our law is that proof at
19 the scene of the crime is not sufficient to find someone
20 guilty.

21 Now in this case also the Defendant has contended
22 there's evidence before you indicating that someone else
23 other than he may have committed these crimes and that
24 evidence raises a reasonable doubt with respect to his
25 guilt. In that regard, I tell you and instruct you that

1 a defendant in a criminal case has a right to rely on any
2 evidence produced at trial that has a rational tendency
3 to raise a reasonable doubt with respect to his guilt. I
4 instructed numerous times that it is the State's burden of
5 proving the Defendant's guilt and it never shifts to the
6 Defendant to disprove or produce evidence that proves his
7 innocence. It is the State's requirement to show evidence
8 proofing guilt beyond a reasonable doubt. If the evidence
9 only raises a strong probability that someone else other
10 than the Defendant committed the crime, you must decide
11 whether the State's proven the Defendant's guilt beyond a
12 reasonable doubt, not whether the other persons may have
13 committed a crime.

14 Now, importantly, Mr. Wheeler chose to exercise his
15 constitutional right to not testify. He has not testified
16 in this trial. I'll tell you that in every crime -- in
17 every case tried in South Carolina that I'm aware of when
18 a defendant chooses to exercise that constitutional right
19 to not testify, that is his decision. The fact that he
20 chose to exercise that right indicates that he thinks the
21 State must prove his guilt. It also requires you to only
22 consider the evidence the State presented in the case and
23 the other evidence the Defendant presented through other
24 testimony. You're not to take anything, any inference,
25 any supposition, any guesswork in what he may or may not

1 have said should he have chosen to testify. The fact that
2 he chose to not testify should not be discussed in the
3 jury room. You must decide the case based on what's been
4 presented, all right? So I emphasize to you you're not
5 to discuss his exercising his constitutional right not
6 to testify. That's his decision. It's the State's
7 responsibility to prove its case.

8 Some of you took notes, some of you didn't, and
9 that's fine. When you begin doing your deliberations if
10 y'all start discussing some fact, whatever it may be, and
11 a note-taker says well, I remember the gentleman said
12 thus and so about the red truck, for instance -- and I'm
13 not commenting on the evidence, it's not my job to have
14 opinions or ideas on the evidence presented, but if a
15 note-taker says something about the red truck, a
16 non-note-taker says well, I remember him testifying to
17 thus and so, slightly different, a note-taker's notes does
18 not trump a listener's memory. You're all on equal footing
19 whether you took notes or not, so a person who recollects
20 the testimony because he was staring them down and
21 listening to exactly what was said and recollects it one
22 way does not override or overrule or outvote someone who
23 took notes. So everyone's on equal footing whether they
24 took notes or not.

25 Now, Mr. Barnes and ladies and gentlemen of the jury,

1 I remind you you don't get called upon to serve as jurors
2 very often. It's your duty to find a true and just
3 verdict. I am confident that you will follow my
4 instructions, you will go to the jury room deliberate and
5 not consider anything outside the courtroom. You should
6 only consider the evidence received and my instructions
7 to you in reaching a unanimous verdict on all of the
8 indictments.

9 All right. I'm about done here. What I've got to
10 do next is I've got to talk to the lawyers to make certain
11 my instructions were complete. There were numerous
12 indictments. They may have an idea that, judge, you
13 glossed over this aspect of the law, will you please give
14 additional instructions on this aspect or that aspect. I
15 will consider those requests here momentarily and, if
16 necessary, I'll bring you back in here. Assuming my
17 instructions were full and complete, I'll send the verdict
18 form and the evidence to the jury room with you. I'm
19 gonna hold the guns here in the courtroom. If you want
20 them in the jury room, we'll send them back there and once
21 you're done examining them, looking at them, we'll bring
22 them back out because sometimes the guns just get in the
23 way, it makes some people nervous, some people it don't.
24 If you want to see them, you can see them, they'll be made
25 available to you, but I don't want them in the jury room

1 during the entire deliberation, while you're eating lunch.
2 It's just a little more than necessary.

3 Now if you have any questions about the law, write it
4 down and hand it to the bailiff. She'll bring to me, I'll
5 discuss it with the lawyers and we'll try to figure a way
6 to respond to your question. If you want to take a break
7 -- I'm assuming lunch is here, Mr. Reel.

8 **THE CLERK:** The lunch is back there, but it's
9 everybody's lunch that was ordered, so they'll have to --

10 **THE COURT:** Okay. They'll have to sort some of the
11 stuff out.

12 Okay. Now once you begin deliberations, it's up to
13 y'all, the time. If you want a break and somebody wants
14 to step outside and have some fresh air or whatever, stop
15 deliberations. If somebody wants to step in the restroom,
16 stop deliberations. Only when all twelve of you are there
17 do you deliberate. So if you need a break, you don't ask
18 for it, it's on your time. So if you want to take a break,
19 just tell the bailiff and we'll take about ten minutes to
20 step outside or walk around the block or whatever. Don't
21 let anybody talk to you about the case. It's just you
22 twelve.

23 Now the two alternates, I'm gonna send y'all to the
24 jury room now with the other twelve. As soon as they start
25 deliberating, I'll pull you out. Now the jury I had last

1 week did something I had not heard of before, but I had
2 three alternates and they said judge, can we eat lunch with
3 the alternates and then start deliberations, and I said
4 sure, that was a reasonable request, so that's what they
5 did. Y'all are up to y'all. If you want to go ahead and
6 start eating and deliberating once you get the evidence,
7 it's up to you.

8 So if you need more instructions, write me a request
9 as to what you want to hear. If you have a question about
10 anything else, just write a request on that. If you need
11 to hear testimony again, we can replay it. Ms. Johnson
12 needs a little time to find what you need.

13 But, anyway, go to the jury room. I'll let you know
14 when you can started deliberating and the bailiff or
15 Mr. Reel will help y'all sort your lunch out and get the
16 ones that don't belong in there. My lunch is back there,
17 too. So y'all head to the jury room. Don't begin
18 discussing the case until I let y'all know.

19 (Whereupon, the jury retires to the jury room at
20 12:47 PM.)

21 **THE COURT:** All right. Any deletions or suggestions
22 on the instructions from the State or defense?

23 **MR. MAYE:** None from the State, Your Honor. Thank
24 you.

25 **MR. THUSS:** Not from the defense.

1 **THE COURT:** Very well.

2 All right. What I normally do, and y'all might have
3 experienced it if you've been in court in front of me, if
4 the jury asks what is such and such or can we have a copy
5 of what you read to us, I generally give it to them. I
6 don't give it to them right now, but if they ask for
7 something in writing, they get what's off my instructions.
8 So we'll hang onto this and whatever they ask for, even if
9 it's the entire instruction, I'm gonna give it to them,
10 okay?

11 **MR. MAYE:** Your Honor, I certainly consent to any of
12 that, but isn't it something -- isn't there some case, and
13 I don't know, you'd know way better than I do, if they just
14 ask for part of the charge, you've got to give them all of
15 it?

16 **THE COURT:** No, I actually don't do it that way. I
17 give them the part they -- the part they want.

18 **MR. MAYE:** That's fine.

19 **THE COURT:** If they just want reasonable doubt, I give
20 them a copy of reasonable doubt.

21 **MR. MAYE:** I have no objection to whatever you do.

22 **THE COURT:** Some judges hand it out ahead of time and
23 let -- let the jury read through them.

24 **MR. MAYE:** No objection from the State. Thank you,
25 Your Honor. We'll go through the exhibits.

1 **THE COURT:** Okay.

2 (Pause in the proceedings.)

3 (Whereupon, the alternate jurors were dismissed.)

4 (Whereupon, the evidence and the verdict form was
5 given to the jury at 1:15 PM.)

6 **BAILIFF:** All rise.

7 **THE COURT:** All right. Everybody here?

8 All right. Let's bring the jury in, please.

9 (Whereupon, the jury returns to the courtroom at
10 1:43 PM.)

11 **THE COURT:** All right. Mr. Barnes, have y'all reached
12 a verdict?

13 **THE FOREPERSON:** We have, Your Honor.

14 **THE COURT:** Is it unanimous?

15 **THE FOREPERSON:** It is, Your Honor.

16 **THE COURT:** All right. Will you hand it to the
17 bailiff, please.

18 **THE FOREPERSON:** (Handing.)

19 **THE COURT:** All right. Mr. Reel, publish the verdict.

20 **THE CLERK:** Will the Defendant please stand.

21 In the case of State of South Carolina, County of
22 Edgefield, the State versus Timothy Wayne Wheeler,
23 Defendant, we the jury find as follows: Trafficking
24 methamphetamine, guilty. Possession with intent to
25 distribute marijuana, guilty. Possession with intent to

1 distribute a Schedule IV controlled substance, guilty.

2 Three counts of possession of an unlawful firearm:
3 2016-GS-19-247, guilty; 2016-GS-19-246, guilty;
4 2016-GS-19-245, guilty.

5 On five counts of receiving stolen goods;
6 2017-GS-19-74, guilty; 2017-GS-19-75, guilty;
7 2016-GS-19-258, guilty; 2016-GS-19-256, guilty;
8 2016-GS-19-255, guilty.

9 Mr. Foreperson, ladies and gentlemen of the jury, if
10 that is your verdict, please indicate by raising your right
11 hand. All hands were raised.

12 **THE COURT:** All right. Anything further from the
13 jury, Mr. Thuss?

14 **MR. THUSS:** No, Your Honor.

15 **THE COURT:** All right.

16 All right, folks. I appreciate y'all's service.
17 Y'all are done. I'd like to step back in the jury room
18 and talk to y'all momentarily. So let's step back in the
19 jury room and then I can dismiss you or you can come back
20 in here for the sentencing portion. We'll do that this
21 afternoon, okay?

22 Let's go back to the jury room.

23 (Whereupon, the jury was excused at 1:45 PM.)

24 **BAILIFF:** All rise.

25 **THE COURT:** You may be seated.

1 Folks, I was looking up sentences. Does everything
2 carry ten years except potentially the possession of the
3 vehicles worth less than \$5,000?

4 **MR. MAYE:** The insurance thing I'm not sure about.
5 The PWID, Schedule IV, I'm not positive on that one.
6 PWID marijuana and PWID Schedule IV, I'll have to look
7 that up.

8 **THE COURT:** Obviously the trafficking carries a lot.

9 **MR. THUSS:** Judge?

10 **THE COURT:** Yes, sir.

11 **MR. THUSS:** And I'm not sure -- I don't know that I
12 renewed my motion for directed verdict at the -- at the end
13 of the trial and I wanted to make sure I did renew that
14 before sentencing basically on the same grounds that I made
15 earlier.

16 **THE COURT:** All of your grounds for directed verdict
17 at the close of the State's case are renewed post your case
18 and post verdict and so you're protected on the grounds
19 that you've outlined fully for your client's benefit.

20 **MR. THUSS:** Thank you. And, Your Honor, I also want
21 to make a motion for a new trial also.

22 **THE COURT:** All right. Understanding that the Court
23 heard the case and accepted the evidence and the jury has
24 considered the evidence and reached a unanimous verdict,
25 the Court is very, very hesitant going behind the jury's

1 verdict considering the verdict being unanimous, so. It
2 was definitely a question of fact, they considered it, and
3 I would respectfully deny that motion.

4 Do we have sentencing sheets ready, Mr. Maye?

5 **MR. MAYE:** Your Honor, I do have sentencing sheets on
6 all of these charges here and I'll hand them up.

7 **THE COURT:** All right. Mr. Maye, I heard all of the
8 facts of this enterprise going on. Tell me Mr. Wheeler's
9 prior record now.

10 **MR. MAYE:** Your Honor, Mr. Wheeler, he does not have
11 an extensive criminal prior history, Your Honor. I've got
12 going back to 1987 it looks like he's got a possession of
13 marijuana and a possession of paraphernalia out of Florida.
14 The only more contemporary charges that I see on him, Your
15 Honor, he's got a South Carolina charge of carrying a
16 pistol. It looks like that occurred in 2014. He's got
17 some kind of misdemeanor thing about driving without a CDL
18 and then he's got a driving without a license and a DUI,
19 Your Honor, it looked like. That's his only other South
20 Carolina record. That was prior to 2014, Your Honor. His
21 prior record is not extensive, Your Honor. This was just
22 such a -- a major criminal enterprise. The sentence on the
23 trafficking I think speaks to the gravity of it. It's the
24 most finished product that any of us have certainly ever
25 seen. I mean, sometimes we'll get batches when people are

1 making meth, but having finished ice at 717 grams, that's
2 staggering. It is certainly for us in Edgefield. They
3 might see that in Florida or other bigger trafficking
4 states, but that's the most any of us have ever encountered
5 in any one location.

6 **THE COURT:** It is a bunch.

7 Okay. Mr. Thuss, let me hear from you anything you've
8 got in mitigation on these things. I think your primary
9 focus for the Court would be the trafficking understanding
10 that range is twenty-five to thirty.

11 **MR. THUSS:** Yes, Your Honor.

12 **THE COURT:** My hands are kind of tied between those
13 two numbers.

14 **MR. THUSS:** Understood. Your Honor, Mr. Wheeler
15 doesn't have an extensive criminal history at all. That
16 unlawful possession, I think, was a misdemeanor. No felony
17 convictions that I'm aware of in his background. He's
18 fifty-four years old now. He did serve honorably in the
19 United States military in the U.S. Army and in the Marine
20 Corps and received an honorable discharge in 1997. He
21 has --

22 **THE DEFENDANT:** 1987.

23 **MR. THUSS:** 1987. He has two sons living in Florida.
24 He's divorced and has two sons who are young adults and
25 they're doing well in life and he had a working career as a

1 -- you know, until all this occurred in recent -- recent
2 times. His only other family is in Pennsylvania. He lost
3 his mother a couple of years ago and just while he was
4 incarcerated in the detention center he lost his father.
5 He has no mental conditions we're aware of and -- and
6 that's the -- that's the gist of his background, Your
7 Honor.

8 **THE COURT:** Stand up. Can I ask him something?

9 **MR. THUSS:** Yes, Your Honor.

10 **THE COURT:** Mr. Wheeler, how did you get involved in
11 this stuff?

12 **THE DEFENDANT:** I was in the wrong place, sir.
13 There's no question. A huge mistake. I've never
14 trafficked or sold a drug in my life. I did do
15 recreational there for about a year, that was a mistake,
16 but I've never trafficked a drug in my life. I didn't know
17 the drugs were present at that amount. It doesn't matter
18 now, but I don't -- I don't know what else to say.

19 **MR. THUSS:** Your Honor, I'll say that with his time
20 served and the 85 percent on this that the -- if he
21 receives the minimum, then he'll be in his seventies before
22 he would be eligible to be released.

23 **THE COURT:** When was he arrested? On the 22nd of
24 December? So he's got roughly thirteen months' credit?

25 **MR. THUSS:** Uh-huh.

1 **THE COURT:** Did you find that sentence range,
2 Mr. Maye, on the possession of a Schedule IV -- Schedule
3 II?

4 **MR. MAYE:** Your Honor, we will retrieve our sentencing
5 sheets.

6 **THE COURT:** Just so y'all can see, the drugs because
7 they're all specified, that's my cheat sheet for the drugs.
8 There's so many out there and so many different ranges,
9 that's why I asked for that. Give me that book.

10 **MR. MAYE:** Schedule IV is not more than three years
11 and/or not more than \$3,000, Your Honor. PWID Schedule IV,
12 not more than three. And the PWID marijuana first is zero
13 to five, so it would be not more than three, even on
14 Schedule IV, and zero to five years and/or zero to \$5,000
15 on the PWID marijuana first.

16 And I do concur, Your Honor. The possession of a
17 sawed-off is not more than ten years and/or not more than
18 \$10,000.

19 And, Your Honor, I have possession of stolen goods,
20 two thousand to ten thousand, not more than three years
21 and/or not less than a thousand. So the Harley-Davidson,
22 two to ten, would be not more than three years. And the
23 Mossberg shotgun, Model -- 12 gauge model, less than
24 \$2,000, not more than thirty days or not more than a
25 thousand.

1 **THE COURT:** It sounds like time served to me on that
2 one. All right.

3 All right. I don't have all the details of the
4 indictments filled out, but I'm pretty close.

5 All right. Considering all of the facts presented by
6 the State and the verdict of the jury, on the trafficking
7 meth the sentence is twenty-five years. He gets credit for
8 days earned since December 22nd of 2015.

9 The others, the receiving stolen goods more than
10 ten -- there's only one. I didn't get that. I'm sorry.
11 Receiving stolen goods, two to ten, there should be three
12 of those; is that right? Actually four counts of receiving
13 stolen goods between two and ten. On all four of those,
14 three years, credit for days served since December 22nd of
15 '05. On the one less than that, thirty days, credit for
16 time served. That sentence has already been satisfied.

17 On the guns, the sawed-off shotguns as well as the --
18 on each of those, five years, all to run concurrent. There
19 were three shotguns that were unlawful weapons.

20 The possession of marijuana, also five years.
21 Possession with intent to distribute controlled substance,
22 Schedule IV, three years. All those nonviolent sentences
23 to run concurrently. Everything is running under the
24 twenty-five year violent. That's a serious conviction and
25 a violent offense. Anything else?

1 **MR. MAYE:** None from the State, Your Honor. Thank
2 you.

3 **THE COURT:** All right. Anything else, Mr. Thus?

4 **MR. THUSS:** No, Your Honor.

5 **THE COURT:** All right. I need some help with the
6 sentencing sheets. I didn't fill in the exact sentence of
7 everything and verify with the CDR code on those. I filled
8 out the balance of it, so.

9 **MR. MAYE:** Yes, sir, Your Honor. I'll take care of
10 that. Thank you.

11 **THE COURT:** If you will do that.

12 **MR. MAYE:** Thank you, Your Honor.

13 **THE COURT:** All right. We're off the record.

14 (Whereupon, the proceedings were concluded for
15 January 18, 2017, at 2:14 PM.)
16
17
18
19
20
21
22
23
24
25

C E R T I F I C A T E

I, Stacy S. Johnson, Official Court Reporter for the Eleventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of the proceedings had and the evidence introduced in the trial of the captioned case in Circuit Court on the 17th - 18th day of January, 2017.

This transcript may contain quoted material. Such material is reproduced as read by the speaker.

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

April 4, 2017

1st Stacy S. Johnson
STACY S. JOHNSON
CIRCUIT COURT REPORTER

FORM 5

STATE OF SOUTH CAROLINA)
)
 County of Edgetfield)
)
Timothy Wayne Wheeler #371128)
 Full name and prison number (if any) of Applicant)
)
 v.)
)
 State of South Carolina)
)
)
)

IN THE COURT OF COMMON PLEAS

2020-CR-19-086

APPLICATION FOR
POST-CONVICTION RELIEF

2020 MAR 23 PM 1:48

EDGEFIELD COUNTY
CLERK OF COURT
CHARLES L. REEL

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Lee Correctional Institution

2. Name and location of Court which imposed sentence Court of General Sessions
County of Edgetfield

3. Name(s) of co-defendant(s) (if any) David Walter Coon, Heather Hall,
and Jennifer Dewitt

4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2016 - GS - 19 - 251 Trafficking methamphetamine
 - (b) Note: Do not know the others

(c) _____

5. The date upon which sentence was imposed and the terms of the sentence:

(a) January 18th, 2017 25yrs mandatory-minimum

(b) (Note: Do not know the others)

(c) _____

6. Check whether a finding of guilty was made:

(a) after a plea of guilty _____

(b) after a plea of not guilty _____

(c) after a plea of nolo contendere _____

7. Did you appeal from the judgment of conviction or the imposition of sentence?
yes - judgement of conviction

8. If you answered "yes" to (7), list:

(a) the name of each Court to which you appealed:

i. The State of South Carolina - Court of Appeals

ii. _____

iii. _____

(b) the result in each such Court to which you appealed:

i. Direct Appeal - Affirmed

ii. _____

iii. _____

(c) the date of each such result:

i. August 28, 2019

ii. _____

iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. Affirmed pursuant to Rule 220(b) SCAR

ii. _____

iii. _____

9. If you answered "no" to (7), state your reasons for not so appealing:

(a) _____

(b) _____

(c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) Unable to properly answer without legal
- (b) representation as well as a total lack of
- (c) legal knowledge.

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) Unable to properly answer without legal
- (b) representation as well as a total lack of
- (c) legal knowledge.

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? No
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
- (d) any other petitions, motions or applications in this or any other Court? ~~No~~ Yes

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

- (a) the specific nature thereof:
 - i. Motion For Directed Verdict
 - ii. Motion for a new trial
 - iii. _____
 - iv. _____

- (b) the name and location of the Court in which each was filed:
 - i. Court of General Sessions - County of Edgetfield
 - ii. _____
 - iii. _____
 - iv. _____

(c) the disposition thereof:

- i. Not sure if any exists
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. Not sure if any exists
- ii. _____
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. Do not know of any
- ii. _____
- iii. _____
- iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

Not that I'm aware of

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. _____
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised:

- i. _____
- ii. _____
- iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

- (a) Unable to properly answer without
- (b) legal assistance.
- (c) _____

17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? _____
- (b) your trial, if any? Yes
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?
Unsure

18. If you answered "yes" to one or more parts of (17), list:

- (a) the name and address of each attorney who represented you:
 - i. Robert R. Thuss Esquire - 7001 St. Andrews Rd # 193
Columbia SC 29212
 - ii. John Strom - South Carolina Indigent Defense
Div of Appellate Defense* (Replaced midway through)
 - iii. Taylor Gilliam - South Carolina Indigent Defense
Div of Appellate Defense
- (b) the proceedings at which each such attorney represented you:
 - i. Trial
 - ii. Direct Appeal
 - iii. Direct Appeal

19. State clearly the relief you seek in filing this application:

Assure legally what I can and cannot do. Also
there has been significant changes/modifications to
drug trafficking sentences as of July 19 2019 by Atty Gen office

20. Are you now under sentence from any other court that you have not challenged?

Absolutely not

STATE OF SOUTH CAROLINA)
County of _____)

VERIFICATION

I, Timothy Wayne Wheeler, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Timothy Wayne Wheeler

SWORN to and subscribed before me this 20
day of MARCH, 2020.

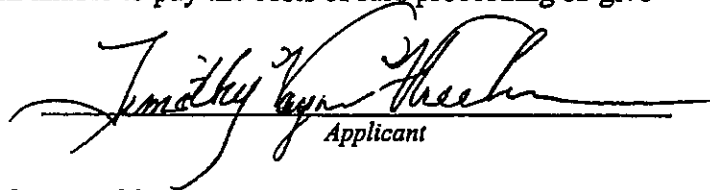
Debra Eastwood (L.S.)
Notary Public

My Commission Expires: 3/3/2026

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, Timothy Wayne Wheeler, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.



 Applicant

SWORN or affirmed to and subscribed before me this 20 day of MARCH, 2020.



 Notary Public

My Commission Expires: 3/3/2024

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF EDGEFIELD	)	FOR THE ELEVENTH JUDICIAL CIRCUIT
)	
)	
Timothy Wayne Wheeler, SCDC #371128,	)	Case No. 2020-CP-19-0086
)	
Applicant,)	
)	
v.	)	RETURN AND MOTION FOR
	)	A MORE DEFINITE STATEMENT
	)	(COUNSEL APPOINTED)
State of South Carolina,)	
)	
Respondent.)	
)	
)	

In response to the post-conviction relief (PCR) action commenced by Timothy Wayne Wheeler (Applicant) on March 23, 2020, the State makes this return:

I. FACTS & PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Edgefield County Clerk of Court. During its April 2016 term, the Edgefield County Grand Jury indicted Applicant for three counts of possession of an unlawful firearm (2016-GS-19-0245, -246, -247); one count of possession with intent to distribute (PWID) a schedule IV controlled substance (2016-GS-19-02444); one count of trafficking methamphetamine (2016-GS-19-0251); one count of PWID marijuana (2016-GS-19-0250); three counts of receiving stolen goods (RSG) (2016-GS-19-0255, -0256, -0258). Applicant was subsequently indicted for two additional counts of RSG (2017-GS-19-0074, -0075) during the Edgefield County Grand Jury’s January 2017 term.

On January 17, 2018, Applicant proceeded to a jury trial before the Honorable Eugene C. Griffith, Jr. Robert R. Thuss, Esquire (Counsel) represented Applicant. Assistant Solicitors Ervin J. Maye and Douglas W. Fender, II, prosecuted the case.

A. Pre-Trial

Prior to trial, Counsel moved for a continuance and to be relieved as counsel due to a potential conflict with representing both Applicant and his co-defendant, Heather Hall (Hall). (R. 301–08). During a pre-trial chambers discussion about the motion, the circuit court inquired about any pending plea offers, and the solicitor indicated the State had offered Applicant a negotiated sentence of twenty-two years, and Hall a negotiated sentence of five years. Counsel informed the court Hall wanted to take the plea offer, but she was “tied” to Applicant, who did not want to accept the plea offer. The solicitor then indicated a stand-alone plea deal with Hall would be contingent on her testifying against Applicant at trial

The solicitor informed the court the State was ready to proceed with Applicant’s case alone if the court determined there was a dual representation conflict, and Hall’s testimony was not required for the trial to go forward. The court then asked Counsel if he was ready to proceed on Applicant’s case, and give Hall an opportunity to obtain independent counsel. Counsel stated he had discussed the situation with Applicant, but had been unable to communicate with Hall. He also stated he was not previously aware about the contingency with Hall’s plea offer, and he was concerned about Hall for several reasons, including her relationship with Applicant, and he did not know “how well she can exercise judgment at her age.” (R. 8–13).

Based on the discussion, the court ultimately relieved Counsel as counsel for Hall, and stated Hall could either get a private attorney or a new attorney would be appointed for her. The court also gave Counsel an opportunity to talk to Applicant about whether he wanted to proceed with the trial. When court reconvened, Counsel did not indicate Applicant had any concerns about proceeding with the trial, and stated they were prepared to proceed. After jury selection, the court informed Hall, who was seated at the defense table with Applicant and Counsel, that Counsel had

been relieved as her counsel, and she would have the opportunity to obtain another retained counsel, or the court would appoint one for her. (R. 12–17; 42–43)

B. Summary of Evidence Adduced at Trial

During his opening statement, Counsel stated Applicant did not live at the residence where the contraband (drugs and illegal weapons) was found, but he was present when law enforcement executed a search warrant and seized the contraband. He also stated Applicant was in a relationship with Hall, who lived at the residence with her step-father (David Coon), and Applicant was at the residence just to help Hall care for Coons, who had serious health issues.¹ (R. 65–68).

Brian Wade (“Wade”) testified he stole vehicles and traded them for drugs at the residence where Applicant, Hall and Hall’s step-father lived. He also testified he entered into an agreement with Applicant and Coon in December 2015 for them to front him methamphetamine, which he would sell and return the profit to them in exchange for increasing amounts of methamphetamine, and Applicant was the one who actually gave him the methamphetamine. He also saw multiple firearms at the residence, a surveillance system, and was told explosives were planted around the perimeter of the property in case anything happened. (R. 69–80; 85–90). Counsel vigorously cross-examined Wade about the details of his testimony, as well as his own criminal conduct and his dealings with law enforcement in connection with the case. (R. 90–107).

Jennifer Dewitt (“Dewitt”) testified she stayed at the residence with Applicant, Hall and Coon off and on over a period of months prior to December 2015, and was present when law enforcement executed the search warrant at the residence. During the time she stayed at the residence, she personally observed Applicant meeting with people who came to purchase drugs,

¹Coon pled guilty to trafficking methamphetamine and various other charges the week before Appellant’s case was called for trial, and was sentenced to twenty-five years incarceration.

and heard Applicant and Coon discussing the price of a kilo of drugs, as well as some bad drugs they had purchased. (R. 189–98). Counsel then vigorously cross-examined her about prior inconsistent statements she gave to law enforcement, her own criminal activities and her reasons for cooperating with law enforcement. (R. 199–203).

At the close of the State’s case, Counsel moved for a directed verdict on all charges, arguing the State failed to prove Applicant ever had dominion and control over the firearms, drugs and stolen property found at the residence. The court denied the motion, finding there was sufficient evidence to submit the case to the jury. (R. 204–210).

Coon testified he was responsible for everything found in the residence, and Applicant and Hall had nothing to do with it. He admitted on cross-examination that he originally told law enforcement he had never seen the seized contraband or stolen property found at the residence, but if anyone was going to take the fall for it, he would because he had cancer and did not care. (R. 212–33).

D. Verdict & Subsequent Proceedings

On July 18, 2017, the jury convicted Applicant as indicted. Judge Griffith sentenced Applicant to concurrent terms of twenty-five years’ imprisonment for trafficking meth, three years for each RSG charge, three years for PWID marijuana, five years for each weapons charge, and five years for PWID a schedule IV controlled substance.

Applicant filed a timely notice of appeal. Appellate Defender Taylor Gilliam perfected Applicant’s appeal by filing a brief with the Court of Appeals on the following issues:

- I. Whether the trial court reversibly erred by failing to hold an on-the-record colloquy with Applicant to determine whether Applicant knowing, intelligently, and freely waived his right to conflict free representation where Applicant and his co-defendant were represented by the same retained attorney.

Following briefing, the Court of Appeals affirmed Applicant's convictions and sentences. *State v. Wheeler*, 2019-UP-307 (S.C. Ct. App. filed August 28, 2019). The case was remitted back to the circuit court on September 13, 2019. Applicant commenced this PCR action on March 23, 2020.

II. CURRENT APPLICATION

Applicant does not include any allegations in his application. Rather, he states "unable to properly answer without legal assistance."). Applicant requests relief as follows:

"Unsure legally what I can and cannot do. Also there has been significant changes/modifications to drug trafficking sentences as of July 19, 2019 by Atty Gen Office."

Attached to this return and incorporated by reference are the Edgefield County Clerk of Court records regarding the subject convictions; Applicant's records from the South Carolina Department of Corrections; a full and complete record of Applicant's direct appeal, including the trial transcript; and the records of the current PCR action. The State reserves the right to amend this return upon receipt of any relevant materials.

III. MOTION FOR A MORE DEFINITE STATEMENT

Because Applicant failed to include any allegations in his application, the State requests Applicant, through counsel, provide allegations on which this action is based and include specific claims and facts to support such allegations. *See* S.C. Code Ann. § 17-27-50 (2014) (requiring an applicant to "specifically set forth the grounds upon which the application is based"); *see also Welch v. MacDougall*, 246 S.C. 258, 260, 143 S.E.2d 455, 456 (1965) (stating it is incumbent upon an applicant to make at least a *prima facie* showing entitling him to relief before an evidentiary hearing will be scheduled and held); Rule 8(a)(2), SCRCPP (requiring all civil pleadings to include "a short and plain statement of the facts showing that the pleader is entitled to relief"); Rule

71.1(d), SCRCPP (“Counsel shall insure that all available grounds for relief are included in the application and shall amend the application if necessary.”). Accordingly, the State moves to require Applicant to provide a more definite statement of his allegations of pursuant to Rule 12(e), SCRCPP and the Post-Conviction Procedure Act.

IV. ANY FUTURE AMENDMENTS AND INVOCATION OF DISCOVERY PROCESS

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. *See* Rule 11, SCRCPP. *Pro se* filings will not be considered at the PCR hearing. The State reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to the State pursuant to *Love v. State*, 428 S.C. 231, 834 S.E.2d 196 (2019), or, alternatively, the State will request a continuance in the matter. *Id.*, 428 S.C. at 245, 834 S.E.2d at 203 (Kittredge, J., dissenting) (“If, however, the proposed amendment . . . would truly prejudice the State, the better course of action would be to continue the matter and thus remove any possibility of prejudice resulting from the belated amendments.”).

If Applicant fails to file a timely and responsive amended application setting forth specific allegations for relief, the State reserves the right to move to dismiss this allegation or claim. S.C. Code Ann. §§ 17-27-10 to -160; Rule 71.1, SCRCPP; *see also* Rules 15(a)-(b), SCRCPP. The State reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to the State. *See* Rule 15(a), SCRCPP.

Pursuant to S.C. Code Ann. § 17-27-150, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless granted leave from the Court upon a showing of good cause. Furthermore, the State requests that all potential exhibits

and materials used to produce potential expert witness testimony be sent to the State well in advance of the evidentiary hearing. The State reserves the right to request a continuance and oppose witness testimony and exhibits that are withheld until the last minute resulting in undue prejudice to the State.

V. GENERAL DENIAL

Each and every allegation contained within the application not expressly admitted, qualified, or explained in this return is hereby denied.

[Conclusion and signature on following page]

VI. CONCLUSION

WHEREFORE, the State respectfully requests this Court grant its motion for a more definite statement as set forth in section III. The State requests Applicant, through counsel, amend the application to provide allegations on which his post-conviction relief application is based. Until Applicant files an amended application, Applicant has not shown sufficient cause to warrant an evidentiary hearing on this application. The State respectfully requests this Court to only schedule a hearing after an amended application is so filed.

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

LILLIAN L. MEADOWS
Assistant Attorney General

By: s/LillianMeadows
ATTORNEYS FOR THE STATE
Office of the Attorney General
P.O. Box 11549
Columbia, S.C. 29211

November 12, 2020

EDGEFIELD COUNTY
CLERK OF COURT
CHARLES L. REEL

STATE OF SOUTH CAROLINA)
2022 OCT -7 AM 9: 20)
COUNTY OF EDGEFIELD)

COURT OF COMMON PLEAS
FOR THE 11TH JUDICIAL CIRCUIT
Case No.: 2020-CP-19-086

Timothy Wayne Wheeler, #371128)
)
Applicant,)
)
v.)
)
State of South Carolina.)
_____)

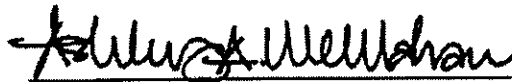
**AMENDED POST-CONVICTION
RELIEF APPLICATION**

The Applicant, by and through his undersigned attorney, hereby amends his PCR application filed on March 23, 2020 to add the following:

1. Ineffective Assistance of Counsel of Robert R. Thus.
 - a. Failure to object to Solicitor's closing statement to the jury on page 269, lines 17-25
 - b. Failed to adequately discuss the conflict issue between representing Mr. Wheeler and his co-defendant.
 - c. Failure to fully explain constructive possession/conspiracy/hand of one is the hand of all.

Furthermore, Applicant requests that he be permitted to amend his PCR application to conform to the evidence presented at the PCR hearing should any new or unaddressed issues arise during the course of the hearing that have not been specifically addressed in the Application. See Simpson v. Moore, 367 S.C. 587, 627 S.E.2d 701 (2006); see also Love v. State of South Carolina, 428 S.C. 231, 834 S.E.2d 196 (2019); SCRCF Rule 15(b).

Respectfully submitted,



ASHLEY A. MCMAHAN, ESQUIRE

MCMAHAN LAW, LLC

PO Box 50536
Columbia, SC 29250
803-219-1110

SC Bar No. 71676
ATTORNEY FOR APPLICANT

October 4, 2022

EDGEFIELD COUNTY
CLERK OF COURT
CHARLES L. REEL

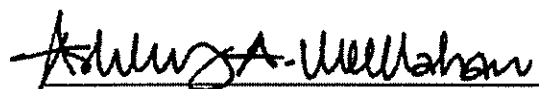
2022 OCT -7 AM 9:20

CERTIFICATE OF SERVICE

I certify that I have served this document via email to:

Taylor Z. Smith
Assistant Attorney General
[REDACTED]

This 4th Day of October, 2022.



ASHLEY A. MCMAHAN
Attorney for Applicant

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	FOR THE 11 TH JUDICIAL CIRCUIT
COUNTY OF EDGEFIELD	)	Case No.: 2020-CP-19-086
Timothy Wayne Wheeler, #371128)	
)	
Applicant,	)	AMENDED POST-CONVICTION
	)	RELIEF APPLICATION
v.)	
)	
State of South Carolina.)	

The Applicant, by and through his undersigned attorney, hereby amends his PCR application filed on March 23, 2020 to add the following:

1. Ineffective Assistance of Counsel

- a. Failure to adequately cross examine investigator about items seized from the home, especially regarding testimony about a brown jar that was actually a green vase. *See* Tr. p. 153, lines 20-25.

Furthermore, Applicant requests that he be permitted to amend his PCR application to conform to the evidence presented at the PCR hearing should any new or unaddressed issues arise during the course of the hearing that have not been specifically addressed in the Application. *See Simpson v. Moore*, 367 S.C. 587, 627 S.E.2d 701 (2006); *see also Love v. State of South Carolina*, 428 S.C. 231, 834 S.E.2d 196 (2019); SCRPC Rule 15(b).

Respectfully submitted,

ASHLEY A. MCMAHAN, ESQUIRE

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SC Bar No. 71676

ATTORNEY FOR APPLICANT

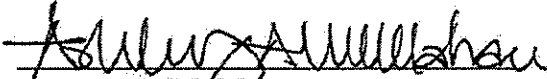
March 22, 2023

CERTIFICATE OF SERVICE

I certify that I have served this document via email to:

Taylor Z. Smith
Assistant Attorney General
[REDACTED]

This 22nd Day of March, 2023.


ASHLEY A. MCMAHAN
Attorney for Applicant

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I N D E X

Description Page No.

MONDAY, APRIL 3, 2023

Applicant's Case in Chief

Timothy Wayne Wheeler, Applicant

Direct examination by Ms. McMahan. 6

Cross-examination by Mr. Smith 27

End of Applicant's Case in Chief

Respondent's Case in Chief

Robert Rutland Thuss, Esquire

Direct examination by Mr. Smith. 29

Cross-examination by Ms. McMahan 47

Re-direct examination by Mr. Smith. 57

End of Respondent's Case in Chief

Closing Remarks by Ms. McMahan. 59

Closing Remarks by Mr. Smith. 60

Certificate Page. 62

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E X H I B I T S

<u>No.</u>	<u>Description</u>	<u>I.D.</u>	<u>Ev.</u>
S-1	Conflict of Interest Document		35

1 PROCEEDINGS.

2 THE COURT: Mr. Wheeler, I have a few things to go over
3 with you first before we hear the merits of your application.

4 THE APPLICANT: Yes, ma'am.

5 THE COURT: I'm Judge Curtis, sir. Let me just pull up
6 my notes on your case real quick.

7 THE CLERK: One moment, your Honor. I'm just trying to
8 (inaudible).

9 THE COURT: So, Mr. Wheeler, this is your day in court,
10 and I'm glad to hear your PCR action, but I want to go over a
11 few things with you before we go forward. You understand in
12 a PCR case, I can do one of two things. I can either grant
13 the PCR, or deny it.

14 So if I grant your PCR application, I cannot reduce
15 your sentence. All I can do is send your case back as if the
16 trial had never happened. And that means all the same
17 charges can be -- you can be tried on all the same charges.
18 It means the State is not required to offer you any plea
19 offers or anything like that. It means that you could
20 conceivably go back on retrial and receive a harsher
21 sentence, or a longer sentence than the sentence that you
22 received. And you understand that?

23 THE APPLICANT: Yes, ma'am.

24 THE COURT: If I were to deny the PCR application, then
25 that means you'll just continue to -- and -- and that's fine.

1 He -- he's -- it doesn't matter if you're standing or
2 sitting, you can sit. That's fine. If you -- if I deny the
3 PCR, it means that you'll just continue to serve out the
4 remainder of your term.

5 So I want to make sure before we go forward -- but I
6 understand you got a 25-year sentence, and I'm not trying to
7 minimize that. But these were concurrent sentences, and you
8 understand that on retrial, it's possible that you could get
9 a longer sentence, and that the trial judge on retrial could
10 give you consecutive sentences, which would result in a
11 longer sentence than what you're currently serving.

12 THE APPLICANT: Yes, ma'am.

13 THE COURT: And you -- do you want to go forward with
14 your application today?

15 THE APPLICANT: Yes, ma'am.

16 THE COURT: Okay. And you discussed this with
17 Ms. McMahan, the consequences of going forward today?

18 THE APPLICANT: Yes, ma'am.

19 THE COURT: Okay. I just wanted to put that on the
20 record before we get started. And, Ms. McMahan, I'm -- I
21 don't know if there's anything you want to say before we...

22 MS. MCMAHAN: Judge, this is 2020-CP-19-0086. It's
23 Timothy Wayne Wheeler versus the State. His PCR is out of
24 Edgefield County. And at this time, we would like to call
25 Mr. Wheeler to the stand.

1 TIMOTHY WAYNE WHEELER, APPLICANT,
2 being duly sworn, testified as follows:
3 THE CLERK: State your full name for the record.
4 THE WITNESS: My name is Timothy Wayne Wheeler.
5 THE CLERK: You may have a seat, please.
6 THE WITNESS: Thanks.

7 DIRECT EXAMINATION

8 BY MS. MCMAHAN:

9 Q. Are you Timothy Wayne Wheeler?
10 A. Yes, ma'am.
11 Q. Did you file this PCR application?
12 A. Yes, ma'am.
13 Q. And who was your prior attorney?
14 A. Mr. Thuss.
15 Q. Did you have any other attorneys before Mr. Thuss?
16 A. No, ma'am.
17 Q. Did you -- were he -- was he appointed or
18 retained?
19 A. Retained.
20 Q. So when were you arrested?
21 A. It was December 22, 2015.
22 Q. And when was your trial?
23 A. At the end of January 16th.
24 Q. So you went to trial within two months of being
25 arrested?

1 A. No, that would've been -- because the 15th -- I'm
2 sorry, the 17th, because I was there a year -- a little over
3 a year in the county.

4 Q. So 2017?

5 A. Yes, ma'am. I apologize.

6 Q. Did you have any bond hearings while you were
7 sitting there?

8 A. Yes, ma'am.

9 Q. And were they denied or what happened?

10 A. Denied.

11 Q. They were always denied?

12 A. Four.

13 Q. You had four bond hearings?

14 A. Yes, ma'am.

15 Q. And at what point did you retain Mr. Thuss?

16 A. It was a long time.

17 Q. Was it shortly after you got arrested?

18 A. Within a couple months, I believe. Yes, ma'am.

19 Q. Did you have a plea deal for a few months before
20 then, or...?

21 A. No, ma'am.

22 Q. And when was the first time you guys met? Do you
23 remember? Did he come see you at the detention center?

24 A. He came -- he came to the detention center. Yes,
25 ma'am.

1 Q. What did you guys talk about that first time you
2 met with him? Do you remember?

3 A. Just that he was going to -- we were kind of
4 feeling through if he was going to represent me, and then we
5 figured that out, and that was basically it. Kind of talked
6 about the charges a little bit.

7 Q. Did he tell you what you were charged with?

8 A. When? In that first meeting? I -- I believe so.

9 Q. But in -- in subsequent meetings also, did he talk
10 to you about what you were charged with?

11 A. Yes.

12 Q. Did he tell you what kind of sentence you were
13 facing?

14 A. Initially, I don't think he really knew.

15 Q. You don't think he initially knew what the -- you
16 were facing?

17 A. No. Because it -- it was kind of back-and-forth
18 on -- on talking with the solicitor regarding plea deals. I
19 don't think he offered more than one or two, though. And
20 they...

21 Q. What are your recollections of what the plea deals
22 were?

23 A. I know that -- Mr. Thuss and I had talked about it
24 one time. He brought up that it would be five for Heather,
25 my co-defendant, and -- and 10 for me, and 17 for Mr. Coon,

1 my other co-defendant. And then it was 22 on 25.

2 Q. So let's go back to a little bit about what
3 Mr. Thuss was meeting with you and talking to you about. So
4 did he come and -- and talk about discovery or anything with
5 you?

6 A. We -- we did talk about discovery. I -- I didn't
7 see at all, but he brought the -- the parts that he thought
8 were pertinent to the case.

9 Q. What were those parts? Do you remember?

10 A. Pictures -- some pictures of the drugs, of the
11 drug box. I can't remember if guns were part of it because I
12 -- I had a couple legal handguns at the time. So statements
13 -- a couple of the statements made by Coon, by -- I guess,
14 arresting officers or officers who took part, some of their
15 statements.

16 Q. This was a situation where there was a house where
17 there was some drugs being sold, right?

18 A. Yes, ma'am.

19 Q. And you were involved because you were dating the
20 guy's daughter?

21 A. That's correct.

22 Q. Okay. And that other, that would be Mr. Coon?

23 A. Right. I didn't live at the residence.

24 Q. Where were you living?

25 A. I was living in Aiken.

1 Q. Where was Heather and Mr. Coon living?

2 A. At -- at that residence.

3 Q. At that residence?

4 A. That's correct.

5 Q. So in your conversation with him, you said one of
6 the first offers that you got was the -- 10 for you, 17 for
7 Coon, and five for Heather? What -- did you want to take
8 that offer, or what was the situation about that?

9 A. Well, he wasn't -- he wasn't -- it -- it wasn't
10 set in stone from the way I interpreted it.

11 Q. Okay. What was your understanding of that? Is
12 that what he was going to ask the solicitor for?

13 A. I -- I -- I could be wrong. I -- I thought it was
14 what the solicitor offered to Mr. Thuss.

15 Q. Okay.

16 A. I don't think Mr. Thuss asked for that. And I
17 think it was in -- it was very -- in passing or in brief from
18 how he explained it to me.

19 Q. Okay.

20 A. We never heard much after that about it.

21 Q. Did you say while having a conversation about you,
22 you would be willing to take that type of plea officer?

23 A. We didn't really talk about it.

24 Q. Well, you just heard about from Mr. Thuss just
25 briefly?

1 A. Yes, ma'am.

2 Q. And you said there was another offer about 22 on
3 25?

4 A. I believe so. And that was the morning of the
5 trial, probably 10 minutes before it began.

6 Q. What was your conversation about that? Were you
7 interested in taking up?

8 A. No. It wasn't really much of a conversation. He
9 just brought it up, and kind of agreed with me.

10 Q. Which was what?

11 A. Not to take.

12 Q. Okay. Did he tell you why not to take it?

13 A. No.

14 Q. You went to trial on January 2017. Were you all
15 -- how far in advance were you all -- did you all know that
16 you were going to go to trial that day?

17 A. I -- I found out they took my co-defendant, Coon,
18 the week prior. They picked that up from what I understand.
19 They took him in because he -- he was going to get a bond.
20 So, Ervin Maye -- the solicitor, took him up, and then they
21 took me that week after it. I didn't have a whole lot of
22 warning on that, that I remember or recall.

23 Q. Do you remember how many times you might have met
24 with Mr. Thuss just before trial?

25 A. Just before trial?

1 Q. Uh-huh.

2 A. Within that year, you mean?

3 Q. Yeah.

4 A. I would say four to five times.

5 Q. Do you remember what you guys were talking about?

6 Did he discuss a trial strategy or anything with you?

7 A. No, we didn't ever discuss the trial strategy that
8 I recall. Just kind of what I faced, and the fact that...

9 Q. So Mr. Thuss also represented Heather, right?

10 A. Yes.

11 Q. Did you guys ever meet alone with Mr. Thuss, or
12 was it always together?

13 A. We met alone as well.

14 Q. Okay. Did you ever meet together with Heather?

15 A. We did -- we did.

16 Q. Okay. And was she out on bond?

17 A. She was.

18 Q. Okay. So she could meet with him at times where
19 you necessarily could not?

20 A. Right.

21 Q. Okay. And -- and so did you have a discussion
22 with him about that -- you know, that he represented you and
23 Heather, there may be a conflict between the two of you?

24 A. No. Because I -- I really didn't understand it.
25 And then, it was brought up that morning of -- he did -- he

1 did bring it up as far as conflict. He was unsure about it.

2 And the judge ruled that morning on it of the trial.

3 Q. The judge said that somebody else was going to be
4 appointed for Heather?

5 A. Yes.

6 Q. Or another attorney was going to do that?

7 A. Yes.

8 Q. Did that kind of take you by surprise, that whole
9 situation about the conflict?

10 A. To the degree it is, yes, because I -- I wasn't
11 really familiar with a -- a conflict of interest exactly what
12 it truly meant in a criminal court of law or any other. I
13 just...

14 Q. Okay. Was -- did he ever -- did Mr. Thuss give
15 you a document to sign about understanding the conflict and
16 all that kind of stuff?

17 A. He did.

18 Q. Do you remember him explaining to you in detail
19 kind of what your document was about?

20 A. Just -- I -- I don't know about detail, but he
21 explained kind of what --

22 Q. Okay.

23 A. -- what I was signing.

24 Q. Okay. And -- and you were -- you signed it
25 willingly?

1 A. Yes, I did. I was -- yes.

2 Q. And so, let's just kind of get to some of your
3 issues. You got, like -- one was -- you know, that Mr. Thuss
4 didn't object to the solicitor's closing argument. On Page
5 269, Line 17 through 25.

6 A. Okay. Yes, ma'am. I'm now on it.

7 Q. Was there some reference to huge bags of drugs,
8 and --

9 A. There was.

10 Q. -- about the house? Was there some reference at
11 one point to like some very, I guess bombs, or...?

12 A. Explosive.

13 Q. Explosives?

14 A. Yeah, explosives, C4. Yeah, he referenced that
15 quite a bit through this -- through -- through the trial --

16 Q. Mr. --

17 A. -- many times.

18 Q. -- Mr. Maye did?

19 A. Yes.

20 Q. Did anybody ever testify about any explosives
21 being buried in the property?

22 A. No.

23 Q. Okay.

24 A. The one -- Mr. Wade -- I guess initially that's
25 how they got the -- the search warrant, is he was saying that

1 he witnessed C4, and explosives, and...

2 Q. So the investigator had said they had said, and
3 that was the basis of search warrant?

4 A. Just from Mr. Maye's interview with Wade. They
5 never saw anything.

6 Q. Okay.

7 A. There wasn't -- there wasn't any found.

8 Q. So he's just basing that on this conversation --
9 Mr. Maye's conversation with the officer about what the
10 officer alleged about?

11 A. And, Wade -- Mr. Wade, the -- one of the -- that
12 testified for the prosecution.

13 Q. Okay.

14 A. He -- he -- he got -- I guess he got arrested on
15 the 15th of December. And he called -- I guess, the Aiken
16 County, or -- or the investigators, and they went from there.
17 And then seven days later, they came in with the search
18 warrant.

19 Q. Okay. And did you -- did he have a conversation
20 with you about the fact that constructive possession, like,
21 hand of one, hand of all, that you were kind of involved in
22 all this because you were involved with Heather, or anything
23 like that?

24 A. Mr. Thuss?

25 Q. Yeah.

1 A. We didn't have big conversation about -- I'm just
2 trying to think --

3 Q. It's okay if you don't remember.

4 A. I -- I -- I truly don't. I -- I -- we -- we
5 discussed -- I believe, "Hand of one, hand of all," which
6 meant, I guess, I had constructive and -- and I don't -- I
7 don't truly know to this point what exactly it means.

8 Q. Okay. So you remember a conversation about it,
9 but you don't really remember what it means, or -- or, like,
10 ultimately what the "Hand of one, hand of all" meant?

11 A. Just the fact that I was there, so I'm guilty.

12 Q. Okay.

13 A. That's pretty much how it was explained.

14 Q. And did you know Mr. Wade?

15 A. No, I had never met Mr. Wade.

16 Q. Okay. Was he mentioned at all in the discovery at
17 all?

18 A. The statement that Mr. Maye went and got from him
19 while he was in jail.

20 Q. Okay. That's the only time that he was ever
21 referenced? There was never any items of Mr. Wade ever found
22 at the property?

23 A. Not -- not that I'm aware of.

24 Q. Okay. I'm sorry, dude. I need to make a record
25 of you of this hearing.

1 A. Yes, ma'am.

2 Q. And throughout today, I've been pretty bad about
3 making sure I'm near a microphone. So I'm trying to make
4 sure I do that for you. Okay. So you never met Mr. Wade.
5 And as far as the discovery that you went through from the
6 police or anything, there was no mention of Mr. Wade from the
7 police?

8 A. Not -- not to me.

9 Q. Just from Mr. Maye's conversation with Mr. Wade?

10 A. His statement that I saw in discovery.

11 Q. Okay. And that was -- Mr. Maye had gone to talk
12 to him and gotten that statement, is that right?

13 A. Yes, ma'am. As far as I know, I don't -- as far
14 as I know, he went to jail to talk to him.

15 Q. Okay. And who's Jennifer Dewitt?

16 A. She was another co-defendant.

17 Q. Okay. And did you feel that Mr. Thuss adequately
18 addressed her testimony?

19 A. I don't feel that it was addressed.

20 Q. What issues with her testimony did you feel
21 weren't addressed adequately?

22 A. Well, I -- I -- I didn't even know Jennifer Dewitt
23 maybe for a period of a couple months. And -- and just her
24 testimony alone was not -- was not truthful.

25 Q. What particularly wasn't truthful about it?

1 A. The fact that she sat at a -- at a TV monitor, and
2 -- and watched vehicles come down a driveway when -- in fact,
3 that's an impossibility. The driveway is -- went out from
4 the road and was wooded on the way down. And she said there
5 were security cameras, which in fact, is not true. That he
6 had one over the front door, so when you came to the front
7 door -- you could probably see out a little bit off the
8 steps. But that -- that was the only camera that he had.
9 She stated she stayed up all night and watched the camera. I
10 -- and I was not there, even close to all the time. It was
11 the holidays, so I was there -- you know, frequently through
12 the holidays.

13 Q. But you -- like -- but you didn't really have any,
14 like, close relationship with Jennifer?

15 A. No, ma'am.

16 Q. And you still don't know who Brian Wade is?

17 A. No, ma'am.

18 Q. And did you talk about all that with Mr. Thuss?

19 A. I did.

20 Q. And what kind of conversations were you guys
21 having about that?

22 A. Just the fact that I -- I mean, I just told him
23 the truth, that I didn't -- I didn't know him. Most of his
24 testimony was about David Coon. He brought me up on the --
25 the one point that he saw me hand a bag to Mr. Coon when he

1 was in the house. And that we -- we fired weapons together,
2 which is -- which is just not true.

3 A. So Mr. Wade testified that you guys -- you and
4 Mr. Coon had fired weapons together?

5 A. With him.

6 Q. With Mr. Wade as well?

7 A. Yes, ma'am.

8 Q. And that you had somehow handed off a bag of drugs
9 to Mr. Coon?

10 A. Yes. To give it to Mr. Wade. Yes, ma'am.

11 Q. And Investigator Rose, who testified, did you feel
12 like Mr. Thuss adequately addressed his testimony or his...?

13 A. Investigator Roosevelt?

14 Q. Yeah, I'm sorry. Roosevelt. Did you feel that
15 Mr. Thuss adequately addressed some inconsistencies in his
16 testimony with him?

17 A. He did address the -- the -- the money
18 inconsistency. There -- there was another big inconsistency
19 with -- with money that was found that was claimed to be in a
20 -- a locked brown type of box. And it was a -- a green vase,
21 which was Heather's, that had 300 and some odd dollars in it,
22 in our room -- in that room Number 2 or bedroom.

23 Q. But there was some inconsistency about whether it
24 was a vase or a jar, right?

25 A. No. It was -- it was a vase. It was a green

1 flower vase because they said it was sealed, and I -- I
2 didn't -- I don't -- I don't know anything about a sealed
3 round box.

4 Q. Okay.

5 A. Anywhere.

6 Q. But there was a green flower vase that was never
7 really addressed in his --?

8 A. It wasn't in the -- I -- I saw something about a
9 round bottle that had money in it. Maybe they were referring
10 to it in the chain of custody like that.

11 Q. And your fingerprints were never found on that
12 box, though? They -- they were --?

13 A. On the green box?

14 Q. Yes.

15 A. The drug box? No, ma'am, they said another set
16 was found, but they didn't say it in court. Mr. Thuss had
17 told me that outside of the courtroom.

18 Q. Mr. Thuss didn't cross them about the fact that
19 there was somebody else's prints on that box?

20 A. No, ma'am.

21 Q. And I know we talked about the explosives in
22 closing, but Mr. Maye addressed that in his opening as well,
23 didn't he?

24 A. Yeah. All -- all -- all through it, he talked
25 about massive explosives, and crack, and heroin, and -- yeah.

1 Of -- of which there was none that I'm aware of.

2 Q. Is there anything else you want to tell the Court
3 today that I didn't bring up for your PCR?

4 A. Just the fact that I -- I don't -- when there was
5 nothing along the lines of "explosives found," when I wasn't
6 charged with any of them, and they continually bring it up --
7 and I don't know, but it would seem like he almost -- he led
8 the jury, and it was just highly prejudicial. It was...

9 Q. And it wasn't objected to in closing, right?

10 A. No, it wasn't objected to at all --

11 Q. Was there an issue --

12 A. -- in the trial.

13 Q. -- was there an issue about the amount of money in
14 a wallet?

15 A. Yeah, they said that there was over \$7,300 in my
16 wallet.

17 Q. So part about the -- the issue is that
18 Mr. Thuss didn't bring up the fact that there was \$7,300 in a
19 wallet?

20 A. Not that I recall. No, ma'am.

21 Q. But you wouldn't even have been able to close the
22 wallet?

23 A. No, I don't see how you could even fit it in
24 there.

25 Q. So, logically it was never brought up? That it's

1 completely logical--?

2 A. It -- it was brought up about the fact that the
3 amount of money that Investigator Roosevelt said that he
4 found, or they found, that was incorrect as well. And he
5 just alluded to the fact that "We're all human, we make
6 mistakes." So he kind of seemed as though he admitted to
7 making mistakes.

8 Q. So he was -- Investigator Roosevelt was testifying
9 that there was money found, and he kept saying incorrect
10 amount?

11 A. That's correct.

12 Q. And then in his response, it was, "Well, I'm human
13 I make mistakes"? Was that what he said?

14 A. "We -- we all make mistakes." Yes, ma'am.

15 Q. Is anything else you want Judge Curtis to know
16 that I didn't bring up?

17 A. Just that things missing in, like, the chain of
18 custody. Where -- where -- where my -- my phone went.

19 Q. Okay.

20 A. It was beside the nightstand when they came in
21 that morning.

22 Q. So you never got back anything from the phone, or
23 anything like that?

24 A. No. And then, my mother's will and testament was
25 there too. Documents that I had received not too long before

1 that I had with me. Because I only had two or three items
2 with me.

3 Q. You don't know where that went?

4 A. No, ma'am. I sure don't.

5 MS. MCMAHAN: I beg the Court's indulgence?

6 THE COURT: Sure.

7 THE WITNESS: Thank you, your Honor. (Inaudible).

8 BY MS. MCMAHAN:

9 Q. Did Mr. Thuss ever point out to the jury or --
10 throughout the trial that the mail that you received wasn't
11 at that house where the drugs were?

12 A. He did.

13 Q. He did?

14 A. He did point that out, that I remember.

15 Q. Okay.

16 A. He utilized the mere presence. Here (inaudible)
17 at the bottom.

18 Q. Do you feel like he added what we addressed with
19 Ms. Dewitt, that she had several statements that she had
20 made?

21 A. No. Because the statements that were made
22 initially completely changed when they had her appear for my
23 co-defendant's trial the week before.

24 Q. She had a couple inconsistent statements?

25 A. Yeah. I -- I -- yes, ma'am. It appeared to me

1 she did. There were things she talked about that were
2 completely false. My discovery too, I didn't receive all of
3 my discovery.

4 Q. So one of the issues is that you didn't get all
5 the discovery from Mr. Thuss?

6 A. Yes, ma'am. There were just -- there were no
7 objections to statements that Mr. Maye made. Guns found
8 throughout the house. The house was a mess. All -- and it
9 -- it just wasn't true. It wasn't -- not -- well, not -- not
10 when I was there. And the jury heard all that testimony.
11 They stated that that money that was found as well was in a
12 sealed-type box, or jar, or something, which that wasn't the
13 case. It was just a green flower vase.

14 Q. Okay.

15 A. Just a regular flower vase.

16 Q. But that wasn't brought out on cross-examination
17 (inaudible)? It was actually a green flower vase
18 (inaudible)?

19 A. That's correct. In her bedroom. Of course, she
20 was -- at the time, she -- she had been convicted of meth
21 charges, and I guess she had some children. And Wade was
22 also -- he was a convicted felon, and he had a -- a rap
23 sheet.

24 Q. Was this rap sheet brought up when he was
25 testifying?

1 A. To a small degree. I think is -- he just --
2 Mr. Thuss asked him -- you know, "Had you -- had you been
3 convicted of -- of crime or crimes?"

4 Q. Okay.

5 A. And again, like you said, there was no objections
6 to any of the (inaudible) comments like that on Page --

7 Q. So you're looking at Page 245?

8 A. Correct.

9 Q. The comments that were made about the heavy
10 narcotics?

11 A. Yes, ma'am.

12 Q. That's Line 2 and 3, when there was no heroin or
13 crack found, and there was no testimony about that?

14 A. None. And there was no objections, or...

15 Q. Or stealing motorcycles? There was no testimony
16 about stealing motorcycles either?

17 A. Just from -- not -- not really stealing. Well --
18 I mean, they brought it up. Stealing from friends.

19 Q. Yeah.

20 A. Yeah. And -- and I'll be perfectly honest. With
21 -- with the motorcycle that I had ridden at that time, he
22 owned -- Thuss --

23 Q. Coon?

24 A. -- Coon owned -- my motorcycle was down getting
25 repaired. It was in his shop. So -- I mean, like an idiot,

1 I took a -- a license plate, and I put that on that
2 motorcycle to ride it while mine was down. I had no other
3 form of transportation. But that ended up being a stolen
4 motorcycle.

5 Q. But you weren't aware of that, though?

6 A. No, ma'am. I wasn't aware it was stolen.

7 Obviously I wouldn't have put a license plate on it, and --

8 Q. Yeah. And ridden it?

9 A. -- and ridden it. So...

10 Q. Anything else?

11 A. No, ma'am.

12 Q. Anything else that we haven't addressed yet? Take
13 your time.

14 THE WITNESS: Thank you, your Honor.

15 THE COURT: Sure.

16 THE WITNESS: I just got lines down.

17 BY MS. MCMAHAN:

18 Q. Then even in Mr. Maye's reply, there weren't any
19 objections from Mr. Thuss about him referencing all the
20 explicits and (inaudible) either, right?

21 A. Just -- just from an ineffective standpoint, I
22 just felt like -- you know, the failure to institute -- you
23 know, a legitimate trial strategy to pursue inconsistencies
24 in the State's witnesses. I -- I don't even think -- I'm
25 aware that he interviewed Coon before he put him on the stand

1 longer than -- than five or 10 minutes. And -- and I know
2 Mr. Thuss did the best that he felt he could. It was just --
3 it was -- it was inadequate, I felt.

4 Q. So the issue about mere presence, about you just
5 merely being there, that was never brought up?

6 A. It -- mere presence was brought up, and -- and the
7 judge explained it. But to go into it? No, it really wasn't
8 -- it wasn't argued -- argued.

9 Q. But he didn't -- he didn't argue it really?

10 A. No.

11 Q. Point it home in closing or anything?

12 A. No. You know, failure to investigate mitigating
13 evidence -- really every -- any evidence at all from an
14 investigative standpoint, I don't know that Mr. Thuss did an
15 investigation other than to -- to talk to Edgefield County.

16 Q. Okay. Anything else you want Judge Curtis to know
17 right now by your case?

18 A. No, ma'am.

19 MS. MCMAHAN: Those are the only questions (inaudible).

20 MR. SMITH: Your Honor, may I have just a moment to
21 speak with Ms. McMahan?

22 THE COURT: Sure.

23 CROSS-EXAMINATION

24 BY MR. SMITH:

25 Q. Mr. Wheeler, you testified about different plea

1 offers that you said Mr. Thuss told you about?

2 A. Yes, sir.

3 Q. Did you want to take any of those offers?

4 A. Did I want to take any of them?

5 Q. Plead guilty, yes.

6 A. We didn't know it was set in stone at the time.

7 Q. No. Did you want to plead guilty?

8 A. Did I want to plead guilty?

9 Q. Yes.

10 A. No, because I didn't know if that -- if it was
11 truly on the table.

12 Q. Okay.

13 A. It was just more or less in passing brought up.
14 So it wasn't, "He's willing to do this, Mr. Wheeler, right
15 now. If you take 10, Heather's going to take five, and
16 Coon's going to take 17." "No, sir." It just wasn't put --
17 it was just -- Mr. Thuss kind of telling me he -- I -- I
18 guess Mr. Maye just briefly said "Five, 10, and 17." Now
19 after that fact, I never heard another thing about it. And
20 that's what --

21 Q. The thing that was mentioned in passing, is that
22 something you wanted to take?

23 A. No, but I -- I really didn't even consider it. So
24 I -- I'd have to say "No" at this point because I felt I was
25 -- I was innocent. I'm innocent.

1 Q. And you testified earlier about chain of custody
2 concerns. And when you did that, you referenced your cell
3 phone, and I think you said your mother's last will and
4 testament. Are those the things you were talking about that
5 you were concerned about?

6 A. There just seemed to be some things missing, yes,
7 sir, that I just wondered where they went.

8 Q. Okay. So when you brought that up --?

9 A. The wallet they showed in -- in my discovery, a
10 couple of 20s, a 10 and a -- and a 1, was the only picture I
11 saw in discovery. I -- I never saw a picture in discovery
12 with \$7,300 in it anywhere, anytime. No, sir.

13 MR. SMITH: Okay. No more questions. Thank you.

14 THE COURT: Anything else?

15 MS. MCMAHAN: I have nothing further.

16 THE COURT: Thank you, sir. You can step down.

17 THE WITNESS: Yes, ma'am. Thank you, your Honor.

18 MR. SMITH: Your Honor, I'm calling Mr. Thuss.

19 ROBERT RUTLAND THUSS, ESQUIRE,

20 being duly sworn, testified as follows:

21 THE CLERK: Thank you. Please be seated in the witness
22 stand.

23 DIRECT EXAMINATION

24 BY MR. SMITH:

25 Q. Am I pronouncing your name correctly? Thuss?

1 A. It's Thuss.

2 Q. Thuss?

3 A. Thuss, yes.

4 Q. Okay. Can you tell me about your legal
5 experience?

6 A. I was -- I'm a graduate of South -- University of
7 South Carolina, law school. It was a class of 2000, and I've
8 been practicing for myself -- in practice since 2000.
9 Practicing some family courts, and civil court -- civil
10 litigation, and some criminal court.

11 Q. Sure.

12 A. Not too much transactional stuff anymore. Mostly
13 -- mostly litigation.

14 Q. Okay. How did you come to be involved in
15 Mr. Wheeler's case?

16 A. I -- somebody -- I don't think it was one of
17 Mr. Wheeler's friends, but somebody -- a friend of a friend
18 -- I think, made the referral to -- to Mr. Wheeler, and --
19 and that's how I first contact -- I first contacted him. I
20 believe I saw him at -- at the -- he was in the detention
21 center, and they had been -- he had been denied bond. I
22 think Heather Hall had been denied bond too. She was a
23 co-defendant.

24 And they first contacted me about representing them to
25 -- to move to have the bond -- you know, of Circuit Court

1 motioned for them to have the bond reviewed, the bond denial
2 by the Magistrate -- Magistrate Court reviewed in Circuit
3 Court. So that was my initial purpose for representing them
4 both.

5 Q. Okay. Can you tell me -- I'm going to come back
6 to the two of them, but can you tell me about the facts of
7 the case as you remember them?

8 A. Well, yeah. There had been a -- as Mr. Wheeler
9 testified, they had been arrested, I think it was in December
10 2015. The police had raided the house that was owned by
11 Mr. Coon. Ms. Heather Hall, his daughter, was present when
12 the -- when the police raided the house. Ms. Dewitt was
13 present when they raided the house. Mr. Wheeler was present
14 when they raided the house. Mr. Coon was not present. He
15 was in a hotel room near Aiken. And -- but he was -- I think
16 they had a warrant for him and -- and arrested him around the
17 same time.

18 And they found -- I think they found drugs and weapons
19 with him in the hotel room. They found the 700 and -- about
20 730 grams of methamphetamine at the house where the -- where
21 the bust occurred, and -- and other weapons, and things along
22 those lines. So that led to the arrest of the people who
23 were living in the house on charges of trafficking
24 methamphetamine, and some -- and possession of firearms also.

25 Q. Can you tell me, were you concerned at all about

1 representing both Mr. Wheeler and Ms. Hall at the same time?

2 A. When that -- when that idea presented, when --
3 when we started thinking about the idea, I -- I investigated
4 whether it was ethically something that I could do. I read
5 all the -- the most current case law, and I -- I knew there
6 had to be a -- a written -- some written document waiving
7 conflict of interest in explaining the nature of it.

8 And so, when I drafted that -- what turned into be the
9 -- a conflict of interest document that I presented to
10 Mr. Wheeler and Ms. Hall, and reviewed with them, I -- I
11 wrote that, anticipating what the issues could be, and -- and
12 what would -- what would happen if something arose. So --
13 and -- and when I drafted that, I drafted it based on our
14 State Supreme Court's most recent decisions -- weighing in on
15 -- or Court of Appeals' decisions and that -- that were
16 relevant to -- to the conflict of interest.

17 MR. SMITH: Can I approach, your Honor?

18 THE COURT: Yes.

19 BY MR. SMITH:

20 Q. Mr. Thuss, that document that I'm handing to you,
21 marked as State's 1, is that the document you were just
22 referring to?

23 A. Yes, it is.

24 Q. Okay. And can you tell me what provisions you put
25 in this document?

1 A. The provisions?

2 Q. Yes.

3 A. The provision was -- was explaining the nature of
4 the represent -- of the dual representation representing both
5 of them, the amount of the -- of the fee for the
6 representation, and an explanation of: That I would have to
7 -- have to treat them both equally. And anything that one
8 told me, I would -- I would disclose to the other client.
9 And that if a dispute arises between the two of them, that I
10 -- that I would have to withdraw from the representation.

11 And in this case, we discussed what would happen if
12 there was a conflict, and we agreed that I would continue to
13 represent Mr. Wheeler.

14 Q. Okay. When you say "We agreed," does that mean
15 that Mr. Wheeler agreed with that plan?

16 A. Yes.

17 Q. Okay. And is that his signature at the bottom of
18 the second page?

19 A. Yes.

20 Q. Okay. Did you review this document with him, or
21 did you just hand it to him to sign?

22 A. No, we read through it, and -- paragraph-by-
23 paragraph.

24 Q. Did he ask you the questions about what it meant?

25 A. I don't remember. If he -- if he had, I would've

1 entertained those questions and answered them.

2 Q. Okay. Did you have any reasons to believe that he
3 did not understand what it meant to sign a document like
4 this?

5 A. No.

6 Q. Okay. Whose idea was it originally for you to
7 (inaudible)?

8 A. I don't remember.

9 Q. Okay.

10 A. I -- I don't think I would have gone into -- I
11 don't think I would have approached a representation with
12 that in mind, but I don't remember.

13 Q. Did you ever meet with either Ms. Hall or
14 Mr. Wheeler outside the other's premises?

15 A. Yes, but when I initially -- yes, I did. But I
16 also met with them during the time together when Ms. Hall was
17 still in the detention center prior to -- prior to making
18 bond.

19 Q. Say if you met with one of them outside of the
20 prison, the information you learned during that conversation,
21 would you have shared it with the other?

22 A. Yes.

23 MR. SMITH: Okay. So the -- and, your Honor, I would
24 offer this as State's 1 into evidence.

25 THE COURT: Any objection?

1 MS. MCMAHAN: Only is one -- and so, as I believe the
2 only person that can testify that's Mr. Wheeler's signature
3 is Mr. Wheeler. Just based on the questions that have been
4 asked.

5 MR. SMITH: Okay. Is that Mr. Wheeler's signature at
6 the bottom of the second page?

7 THE COURT: Well -- I mean, he can testify whether
8 Mr. Wheeler signed it -- I mean, they were together at the
9 time.

10 MS. MCMAHAN: But that wasn't the testimony. All he
11 said was that it was Mr. Wheeler's signature. There was no
12 testimony given as to whether or not he was present at the
13 time Mr. Wheeler signed it.

14 MR. SMITH: I can ask that question.

15 BY MR. SMITH:

16 Q. Mr. Thuss, did you observe Mr. Wheeler sign the
17 bottom of the second page?

18 A. Yes.

19 MR. SMITH: Okay.

20 MS. MCMAHAN: I have no objection, your Honor.

21 THE COURT: It's admitted.

22 (State's Exhibit Number 1 admitted into evidence.)

23 BY MR. SMITH:

24 Q. Okay. Mr. Thuss, did you -- how many times did
25 you meet with Mr. Wheeler?

1 A. It was -- I think Mr. Wheeler represented four or
2 five. I think it was probably double that. We went up on --
3 on bond to try to get him a bond. I -- I took him back two
4 or three -- three, or -- three times, at least, after he was
5 denied bond, because the case was -- for the first few months
6 of the case, I was being told that the -- the -- it could be
7 -- could move to federal court. And we kept waiting to see
8 if ATF or the feds were going to pick it up.

9 And it wasn't until the fall that I received some news
10 that it was not going to be picked up by the feds. So we --
11 and -- and if you can read -- I mean, there's a record of me
12 making motions. It's part of the court records. That orders
13 -- orders on bond orders denying bond. And then in December,
14 we began to get a lot of information about the confidential
15 informant, mid-December. And -- and so, that's -- things
16 heated up then.

17 And -- and I wrote a memorandum in support of my motion
18 to be relieved once I -- I saw that there was an actual
19 conflict pending on this. And I -- and that memorandum
20 details everything that was happening up to that point, and
21 what I could see coming, because I was -- I asked for a
22 continuance, and I asked to be relieved from representing
23 Heather. So -- but I think it was -- it was more than -- you
24 know, four or five times. It was -- you know, at least
25 eight, if not -- if not more than that.

1 Q. Okay. In your meetings with Mr. Wheeler, did you
2 review the discovery with him?

3 A. Yes.

4 Q. Okay. Did you explain to him the significance of
5 the things in discovery?

6 A. Yes.

7 Q. Do you recall if there were photographs of the
8 cash seized from the home in discovery?

9 A. Yes. There were some 300 photographs turned over.
10 It seems like there were about 300 of them. They were -- I
11 have the files -- I mean, I have those. They were turned
12 over electronically. And actually, this was before -- I had
13 gotten some of that discovery before Ms. Hall was released on
14 bond. And I remember bringing my computer in, and having
15 them both in a room at the detention center, and showing them
16 all the photographs, going through all those things with my
17 computer, and them sitting both next to me.

18 And I also discussed mere presence, constructive
19 possession, the defenses. And even if there was a -- an
20 issue of suppression because of potential staleness of the --
21 of the of the initial warrant that we were just -- that we
22 discussed throughout -- throughout the time that we were --
23 that I was representing him.

24 Q. Did you discuss with Mr. Wheeler the fact that
25 cash was removed from -- seized from his wallet in the house?

1

2 A. That cash was removed?

3 Q. Seized from his wallet.

4 A. I -- I don't remember. I -- I mean, if it was an
5 issue that -- if the money was an issue, I think that we did
6 discuss it.

7 Q. And you testified about -- that you discussed mere
8 presence with him. What did you tell him about mere
9 presence?

10 A. That it was a -- it was -- I mean, it was a
11 constructive possession case. And he had -- he was not a
12 resident of the property. And his argument was that he was
13 involved with Mr. Coon's daughter, Heather. They were in a
14 relationship, and he was staying over there as her guest.
15 And so, the -- that he was -- he was not involved in the --
16 in the offense that he -- that mere presence was a defense to
17 the constructive possession.

18 Q. Did you talk to him about accomplice liability?

19 A. Yes.

20 Q. What about conspiracy?

21 A. I don't remember. I don't know that -- that --
22 that they were charged with it. It might have come up in the
23 course of just talking about the case generally. I'm -- you
24 know, I'm familiar with conspiracy.

25 Q. I might ask you about some specific things that

1 happened at trial. Do you happen to have the copy of the
2 trial transcript?

3 A. I don't think I do.

4 Q. All right. Will you look at Page 245? Okay. Do
5 you see where the -- will you agree with me that this is the
6 solicitor's closing argument?

7 A. This is -- this would be Mr. Maye's closing.

8 Q. And do you see on 245 where he references heavy
9 narcotics, methamphetamines, crack, heroin, and hard
10 narcotics?

11 A. Yes.

12 Q. And you didn't object there? At the time of
13 trial, did you find that objectionable to closing?

14 A. I don't believe I -- I did find it objectionable.
15 I -- he was making a lot of general statements part of his
16 closing.

17 Q. About Edgefield County?

18 A. Yes.

19 Q. Do you recall if there was testimony at trial
20 about explosives being found throughout the home?

21 A. I don't remember.

22 Q. Okay.

23 A. I mean...

24 Q. If you'll look at Page 269.

25 A. Okay. On the explosives -- I mean, explosives,

1 let me -- just to make sure that -- I do remember that there
2 were allegations that the place was booby trapped, or
3 something like that, but they never -- that's -- I think that
4 was one of the informants' claims, or it could have been
5 related to the warrant -- the initial arrest warrant. I just
6 -- but it -- it really -- I don't believe it -- I don't
7 remember it being an issue during the trial of the case.

8 Q. So on Page 269, you see where the solicitor refers
9 to the unlikelihood that Mr. Wheeler would've been able to
10 dispose of evidence before officers entered the home?

11 A. I think so. In the center paragraph? Middle --
12 middle paragraph?

13 Q. In the bottom paragraph.

14 A. Bottom paragraph? Yes.

15 Q. Okay. Did you find that objectionable at the
16 time?

17 A. Yes, I believe that was -- some of that was
18 objectionable. And I -- and -- and I recall there was one
19 comment that -- that Mr. Maye made that I did not object to.
20 And it would've been -- it -- it would -- it was -- it was
21 related to the question of whether or not there -- whether
22 there was time to -- for someone who was in the house, and
23 there were drugs there, they knew the police were outside,
24 could -- if they had time, why wouldn't they have just
25 flushed the drugs to avoid them being there?

1 Because we had already established from Ms. Dewitt's
2 testimony that was -- that was not disputed. It had
3 established that Dewitt had testified that the police came
4 and knocked, and that she had -- that she went and got
5 Mr. Wheeler up and Ms. Hall up, and that they got dressed,
6 took the -- they didn't rush to get dressed, they took their
7 time. And then after several minutes, or something like
8 that, they answered the door.

9 So I had argued to the -- to the jury that: Why --
10 wouldn't someone in that position have just flushed the
11 drugs? They had time to. So I should have objected to, I
12 think Ervin Maye saying that -- I am not sure if it was this
13 statement, but he made some statement that -- that SWAT and
14 all them wouldn't have waited. They would not have given
15 someone that much time to come in.

16 So I -- I felt that was something that I -- I should
17 have objected to, and did not.

18 Q. Okay. And what -- what would've been your
19 objection?

20 A. That it had already been established that there
21 had been several minutes between when the police knocked on
22 the door, before they finally entered the house, and that
23 Mr. Maye's -- and I'm not sure if it was this passage, but
24 there was some passage, and there were -- Mr. Maye was
25 basically saying something like -- to the jury -- to the

1 jury, "Do -- do you believe they would've -- SWAT would've
2 waited that long before they entered?" Or something along
3 those lines. But I -- I didn't object to it when that
4 statement was made.

5 Q. Could you look at Page 201 with me?

6 A. 201?

7 Q. Right.

8 A. Okay.

9 Q. Okay. And is this your cross-examination of
10 Ms. Dewitt?

11 A. Yes.

12 Q. Okay. And do you see there -- are you
13 cross-examining her on this issue of Mr. Wheeler's actions
14 while the officers were trying to raid the home?

15 A. Yes.

16 Q. Okay. Did you discuss a trial strategy with
17 Mr. Wheeler?

18 A. Yes.

19 Q. Okay. And tell me about that discussion.

20 A. Well, prior -- I sat -- I sat through the trial
21 that Mr. Coon, the co-defendant, was tried the week before
22 Mr. Wheeler. And I sat and watched that -- that trial. And
23 so, part of the -- what I had been prepared to make a
24 suppression argument, I heard the public defender who
25 represented Mr. Coon make that argument, and -- and I heard

1 the -- the State's response to it. So that -- that
2 suppression argument that I had been prepared to raise in his
3 trial, I didn't -- we didn't make it. Because it was -- had
4 already lost the week before.

5 We were prepared to -- you know, put up the -- you
6 know, we understood that it -- that it was going to be a
7 constructive possession case and a mere presence case. So we
8 were going to establish that he wasn't a resident there, and
9 that we could -- that the drugs that were found were located
10 in a different room. This -- cross-examine and impeach
11 Dewitt, cross-examine and impeach Wade, and we believe that
12 Mr. Coon -- we already believed that he was going to come and
13 testify that all the drugs were his, and that -- which he did
14 -- which he did do.

15 And so -- you know, our -- that -- that our -- that was
16 our strategy, that Mr. Coon was going to say that those were
17 his drugs, not Mr. Wheeler's, and impeach Wade, impeach
18 Dewitt.

19 Q. Okay. Did you discuss all of that with Mr. Coon
20 or before he testified?

21 A. With Mr. Coon?

22 Q. Yes.

23 A. I don't remember.

24 Q. All right.

25 A. But I knew that was -- that had been in -- that

1 had been something that -- that we -- that we believed was
2 going to happen. That -- that -- that's what
3 Mr. Coon would do for -- for several months.

4 Q. And that is what he did, right?

5 A. That is what he did, yeah.

6 Q. Do you recall discussing with Mr. Wheeler any
7 issue about whether the cash was found in a vase or a jar?

8 A. I don't remember. I -- I --

9 Q. Okay. You felt there was any significance in it?

10 A. I mean, it's been five years -- six years, and I
11 -- I -- it -- I don't -- I just don't remember it being a
12 substantial -- I mean, a -- a -- a major point, but I just
13 don't recall.

14 Q. Okay. Do you recall anything in discovery about
15 fingerprints on a box found at the residence?

16 A. Oh, yeah. We -- yeah. We -- we were waiting to
17 see what -- what -- because we knew that the State had them,
18 and they were going to dust them, so we were waiting to see
19 what sort of -- of fingerprints would -- would -- would come
20 back when we finally got that from the State.

21 Q. Did you consider putting that into evidence
22 yourself at trial?

23 A. Yes. Yeah.

24 Q. Okay.

25 A. But after the State rested, at that point, I

1 talked with Mr. Wheeler about him taking the stand, and he
2 wasn't comfortable. And so, we did not -- he did not
3 testify. So I -- I -- I don't remember if I -- if I
4 cross-examined the State's witnesses on the fingerprints or
5 not. If I didn't, then I -- I didn't.

6 Q. Okay. Do you recall the results of that
7 fingerprint analysis?

8 A. Yes. They -- they did not find a positive. They
9 did not -- they did not find Mr. Wheeler's fingerprints.

10 Q. Did Mr. Wheeler tell you that he wanted to plead
11 guilty?

12 A. Never.

13 Q. Okay. Did you receive any plea offers in this
14 case?

15 A. Sometime in the fall of '16. Probably in that
16 timeframe. Again, things were kind of in limbo in terms of
17 the -- the State moving forward because they were waiting to
18 see if the feds were going to pick it up. But I did get some
19 discovery, but -- and I had made motions to get Mr. Wheeler
20 out on bond several times. I've been back to court for that.
21 But there really weren't any plea offers from Mr. Maye.

22 We heard -- I heard at some point, that Mr. Coon had
23 been -- I didn't learn this until after the fact. He had
24 been offered something like 15 or 17, and -- but Mr. Coon
25 did not accept that offer. And so, that -- it never made it

1 to -- an offer like that never made it to me.

2 Mr. Maye was going to make an offer for Mr. Wheeler.
3 I think he did make an offer of 17 to Mr. Wheeler after that.
4 Initially, he thought Mr. Coon was the principal, and the --
5 and -- with the -- with the drugs. But he said that after --
6 as time went on, that he -- he came to believe that
7 Mr. Wheeler was more involved, and he -- I think he offered
8 17 to Mr. -- he was going to offer 17 to Mr. Wheeler.

9 I mentioned that to Mr. Wheeler. He rejected that. I
10 said to him, "Hey, let me" -- I couldn't even pursue it
11 because I -- I thought, "Well, maybe if I can start -- we can
12 start off at 17, maybe I can work the State down to get the
13 numbers lower." But I -- I really believed that Mr. Wheeler
14 felt that Mr. Coon was going to take the charges, and that
15 was going to provide him relief, except Mr. Coon had his own
16 way of doing things, and -- which we were not in control of.

17 Q. Okay. So Mr. Wheeler did not indicate to you that
18 he wanted to take that offer, right?

19 A. He -- he indicated he did not want to take that
20 offer. And then prior to trial, just on the week or so
21 before trial, when -- after -- during the time when Mr. Coon
22 was up the -- was being tried, and I asked Mr. Maye about it,
23 and he said "22." And that was -- you know, shortly --
24 shortly before Mr. Wheeler's trial was scheduled to start.

25 MR. SMITH: Okay. Just one moment.

1 THE COURT: Uh-huh.

2 BY MR. SMITH:

3 Q. Okay. That -- the last offer you mentioned of 22
4 years, did Mr. Wheeler accept that?

5 A. No, he didn't accept that.

6 MR. SMITH: Okay. No more questions. Thank you.

7 CROSS-EXAMINATION

8 BY MS. MCMAHAN:

9 Q. Mr. Thuss, I'm just confused about a couple
10 things. I think at one point, you discussed that your trial
11 strategy was that you guys were going to address the fact
12 that the drugs were found in a completely different room than
13 the room that Mr. Wheeler and Heather were in. You were
14 going to cross and impeach Mr. Wade and Mr. Dewitt, and then
15 Coon were -- was going to testify the drugs were his.
16 Mr. Smith had asked you, "Did you discuss that with Coon?"
17 My question is: Did you discuss that with Mr. Wheeler?

18 A. Oh, can you -- can you --?

19 Q. Sure. At some point, you said your trial strategy
20 was that there were drugs found in different rooms, and then
21 you were going to cross and impeach Mr. Wade and Mr. Dewitt,
22 and that Coon was going to testify the drugs were his.
23 Mr. Smith asked you, "Did you discuss that with Coon?" Did
24 you discuss that trial strategy with Mr. Wheeler?

25 A. Oh, yes. Yeah. I mean, from the beginning, we

1 knew that our defense was "The constructive possession, mere
2 presence," and that Mr. Coon was going to take the charges.
3 But Ms. Dewitt was also going to be a favorable witness. And
4 we didn't know that she had changed her testimony until a
5 couple of weeks before the trial, and we didn't know as much
6 about Mr. Wade's testimony until a few weeks before the trial
7 also.

8 Q. Do you recall if Mr. Wade or Ms. Dewitt testified
9 in Mr. Coon's trial the week before?

10 A. I think they both did.

11 Q. So you had kind of an idea of what they were
12 already going to testify to since you had watched them?

13 A. Yes.

14 Q. Did you called Mr. Coon as a witness?

15 A. I did.

16 Q. So then you wouldn't have preserved your final
17 argument, right? Because you presented the case?

18 A. Yes.

19 Q. And so, earlier, you -- you were talking about the
20 fingerprints on the box, and that it didn't match
21 Mr. Wheeler's fingerprints, right?

22 A. Yes.

23 Q. But you didn't bring that up?

24 A. I don't remember. If I didn't -- if it's not in
25 the record, then I didn't.

1 Q. But you also didn't bring it up during your
2 case-in-chief as well?

3 A. Right -- right. Because we -- apart -- I didn't
4 bring it up with Mr. Coon when he testified.

5 Q. Okay. But you didn't call anybody to come from
6 the police department, or anybody who had run those prints
7 through (inaudible) to show that those prints did not belong
8 to Mr. Wheeler on the (inaudible)?

9 A. No, I hadn't called anybody. I don't believe.
10 No.

11 Q. And when I say the box, I'm talking about the
12 green ammo box.

13 A. The green ammo box. Right.

14 Q. And after that was where most of the drugs were
15 found, right?

16 A. Yes.

17 Q. And so, when Mr. Maye's going on about all these
18 huge bags of drugs that were found everywhere, they were only
19 found in that green ammo box, but the exception of maybe some
20 drugs that were (inaudible)?

21 A. That -- that could be. Yeah, that could be.

22 Q. So there weren't huge bags of drugs just laying
23 around the house, right? It was just in the ammo box?

24 A. There was -- the methamphetamine was found in the
25 ammo box, right. That's -- I -- I don't recall, but the

1 others, but...

2 Q. But Mr. Maye in his closing, talking about these
3 huge bags of drugs everywhere, and there's drugs all over the
4 house, and there are bags of human misery, but there was no
5 objection to that because the drugs were only found in the
6 ammo box, right? There weren't huge bags of drugs just
7 laying around the house when they went in?

8 A. No, I don't believe they were huge. No.

9 Q. Do you recall if Judge Griffith was the trial
10 judge for Mr. Coon as well?

11 A. Yes. Oh, no, he was not. I don't believe he was.
12 There was a different judge on the bench.

13 Q. So you could have made that motion to suppress in
14 front of a different judge, possibly?

15 A. Yes.

16 Q. Okay. Do you recall who the judge was with
17 Mr. Coon?

18 A. No.

19 Q. So there would've been a possibility that maybe
20 Judge Griffith might have granted it?

21 A. Probably not.

22 Q. A different judge?

23 A. No.

24 Q. Just based on the way the public defender argued
25 it, you felt that it wasn't going to be a viable motion to

1 make?

2 A. Right. And I heard the -- I heard the response
3 from the State also.

4 Q. And that was the motion in regards to the search
5 warrant delay, right?

6 A. Right.

7 Q. Do you recall any testimony, or anybody speaking
8 about explosives being buried or booby trapped around the
9 yard?

10 A. I don't recall.

11 Q. So any reference to that by Mr. Maye in his
12 closing should have been objected to, since there was no
13 testimony about it?

14 A. I don't know.

15 Q. Earlier you said you did go over significant issue
16 -- the significant discovery, and that you showed him the 300
17 photos on your computer. What were the significant parts of
18 the discovery in your opinion?

19 A. The -- from what perspective? I mean, you...

20 Q. Well, that's what I'm -- you said -- Mr. Smith
21 asked you, "Did you go over the significant issues of
22 discovery with Mr. Wheeler?" And you said "Yes"?

23 A. Yes.

24 Q. So I'm asking: What were the significant issues of
25 the discovery?

1 A. When the case began, the issues were whether the
2 State could prove those were his drugs, that he was
3 trafficking. So -- again, it was a constructive possession
4 case, and we were going to -- so we were -- we were -- we
5 knew the drugs had been found in the house. We knew who was
6 in the house, and we knew where things were. So we went over
7 all -- you know, the physical part of it.

8 This is where Tim's -- Tim and Heather were staying.
9 Mr. Coon had a room, in what was in -- what was his -- in his
10 room, I think -- and then the statements from Dewitt. We
11 went over the witness statements from -- from Dewitt, which
12 was favorable to Mr. Wheeler, I think, her first statements
13 were, and that she didn't change when until -- she heard we
14 had affidavits, and then she changed her story in December,
15 and was also charged with trafficking meth for the first
16 time, three or four weeks before trial too.

17 Q. Oh, so she had gotten picked up on a charge for
18 trafficking meth while this --?

19 A. No, they hadn't charged her --

20 Q. Oh, okay.

21 A. -- for the trafficking. But three --

22 Q. But they finally charged her?

23 A. -- they finally charged her. Yeah. They -- she
24 had been charged with something lighter.

25 Q. Do you recall if she was getting a deal to testify

1 regarding that?

2 A. I questioned her about that. I don't know what
3 she -- what she event -- eventually, she received a -- some
4 sentence, I believe, but she wasn't subsequently convicted of
5 trafficking meth.

6 Q. Did you make any type of motion with the State,
7 like, to reveal the deal or anything?

8 A. No, I just questioned them about it, but they
9 denied there was one. You know, I -- I --

10 Q. And so, you -- did you hear what Mr. Wheeler said
11 about the plea offer that he didn't know if it was written in
12 stone or not? Do you recall if what Ervin had told you in
13 passing the 17 was actually an offer?

14 A. It was.

15 Q. Okay.

16 A. Bu before that, it was -- when the case first
17 began, it was shaping up like Mr. Coon was the principal, and
18 they -- and that Mr. Maye's view of the case changed over
19 time.

20 Q. Was there any discussion with Mr. Maye, or
21 Mr. Maye ever approached you about Mr. Wheeler testifying in
22 Mr. Coon's case, or anybody else's case?

23 A. Mr. -- I think Mr. Maye was -- would be -- would
24 have been asking that Mr. Wheeler testify against Mr. Coon,
25 perhaps. Or Ms. -- or if Ms. Hall testify -- when they

1 talked about -- started talking about a sentence for her,
2 that she would be willing to testify against Mr. Wheeler or
3 Mr. Coon.

4 Q. But she didn't testify in Mr. Wheeler's trial,
5 right?

6 A. No.

7 Q. And do you recall what happened to her case? Do
8 you know?

9 A. No. I think she -- I think she did take a plea,
10 and maybe had -- maybe was given, like, a three-year sentence
11 or some -- three to five, I don't remember. Yeah. Go ahead.

12 Q. And so -- let me just start back over with the
13 waiver. I assume that State's Exhibit 1 that was entered,
14 correct? Is that correct? And did you go over each
15 paragraph with him about what each paragraph said, or did you
16 just kind of leave it with them, and -- and ask them to read
17 it?

18 A. We went over what each paragraph said. I don't
19 remember if they -- I just don't remember if I -- if they saw
20 it prior to us executing it, or -- or not.

21 Q. So they may have just gotten it that day, and kind
22 of -- you went over it with them?

23 A. Yes. But we had discussed it, and -- and I
24 would've explained that there were issues related to doing
25 this bill representation before that day. I would've talked

1 it -- we -- we talked it through.

2 Q. And so, I think -- and I apologize since I was
3 (inaudible) a little bit. I think Mr. Smith had asked you
4 something about, if there was information that you got from
5 one, you would share it with the other?

6 A. Right.

7 Q. And -- but then something happened -- something
8 happened, I guess, the trial date or something that you had
9 moved to be relieved. I'm sorry, could you explain all that
10 to me again? I guess you moved to be relieved on Heather?

11 A. I moved to be relieved on Heather.

12 Q. And you said you wrote a memo about it?

13 A. Yes, it's in the record.

14 Q. Okay. And who is Brian White -- I mean, exactly?

15 A. Who is he?

16 Q. Yeah.

17 A. I -- you know -- he ended up being the
18 confidential informant.

19 Q. So he's the one that apparently had made a buy at
20 that house?

21 A. That's what -- that's what he -- I believe that's
22 what he said. He were -- I -- I don't -- I don't remember if
23 he said he made a buy there, but we were trying to -- to --
24 we knew -- I think we knew early on in the case that someone
25 who was in Aiken County Detention Center gave law enforcement

1 a tip. And we -- I researched who -- what -- who was in
2 Aiken County at the time. We talked about who it could have
3 been who -- who they knew -- who either Tim or Heather knew
4 who could have tipped off the police.

5 Q. Is there any information you've learned from
6 Heather that would've been detrimental to Mr. Wheeler?

7 A. I don't know, but I -- I don't think so. Nothing
8 comes to mind.

9 Q. Well, if she had the possibility of being called
10 as a witness at some point, did you have a discussion with
11 her about that, or at Mr. Wheeler's trial, prior to being
12 relieved?

13 A. About her being a witness in Mr. Wheeler's trial?
14 I probably would've discussed any number of scenarios and
15 possible -- foreseeable possible things that have -- that
16 would have occurred. That's how I think. That's how I
17 prepare.

18 Q. So like in law school classes, when we come up
19 with all the different scenarios of what could possibly be
20 done, and then you talk about it? I get it.

21 A. Yeah. But I -- I've got practical experience of
22 having done this a while. And so, when I see an issue, I --
23 I begin looking -- I begin looking for relevant -- well, what
24 would be the relevant facts? What would be the possibilities
25 of -- of -- of how things could come out in the course of the

1 dispute? So...

2 Q. Is there anything that Mr. Wheeler told you on his
3 own that was detrimental to Heather?

4 A. Not that I recall -- I mean, they were a couple,
5 and they were close. They were -- they identified themselves
6 as being fiancés.

7 Q. Did they have an identical defense?

8 A. Well, I didn't say the -- the extent that -- yeah,
9 they -- they were pretty much the same defense as
10 constructive possession, mere presence. This was not their
11 stuff.

12 Q. And -- and the drugs themselves weren't really
13 found in a room that particularly belonged to anybody,
14 correct?

15 A. Right. There was a room that they called -- they
16 had puppies in, or dogs in. So yeah, that's where the drugs
17 were.

18 MS. MCMAHAN: Court's indulgence?

19 THE COURT: Uh-huh.

20 MS. MCMAHAN: Nothing further.

21 THE COURT: Anything further, Mr. Smith?

22 RE-DIRECT EXAMINATION

23 BY MR. SMITH:

24 Q. Do you happen to have a copy of the fingerprint
25 report with you?

1 A. It would take -- it would take me a minute to
2 look. I don't --

3 MR. SMITH: Your Honor, may I have a copy for
4 Mr. Thuss?

5 THE WITNESS: I -- I don't. See, some of my records
6 are hybrid, some are electronic, and not everything is paper.
7 So -- but let me look.

8 MR. SMITH: And, your Honor, may I say one thing? The
9 fingerprint issue is not something that I had advanced notice
10 of, so that's why I just wanted to see it -- to see for
11 myself.

12 THE COURT: Sure.

13 THE WITNESS: No. I don't -- I don't have a paper copy
14 of that.

15 BY MR. SMITH:

16 Q. Okay. Do you recall why you decided to withdraw
17 your suppression motion after seeing Mr. Coon's trial? I
18 know it's discussed in the record, I'm just curious if you
19 remember.

20 A. I just -- I withdrew it. I heard -- I heard the
21 motion being argued the week before, and -- I mean, the cat
22 was out of the bag. If I had had a chance to make that
23 argument without the State knowing it was coming, I -- I -- I
24 would have felt better. But after it was a -- had already
25 been argued, and I heard how the affiant -- who the officer

1 who gave an affidavit to support the -- the warrant
2 testified, it was not going to be a winner.

3 MR. SMITH: Okay. No more questions. Thank you.

4 THE COURT: Thank you, sir. You can step down.

5 THE WITNESS: Okay.

6 MR. SMITH: The State rests, your Honor.

7 THE COURT: Okay. Anything you all want to say in
8 conclusion before we adjourn?

9 MS. MCMAHAN: Judge, just briefly. I think -- again,
10 I've just asked that you read the record as a whole before
11 making your final decision. I -- I believe the issue --

12 THE COURT: I'm sorry, I didn't --

13 MS. MCMAHAN: -- regarding the finger --

14 THE COURT: -- I didn't hear that last part.

15 MS. MCMAHAN: If you could please read the entire
16 transcript before you make a decision, I would appreciate it.
17 Also, I think the issues about the fingerprints, and the fact
18 that they weren't raised, and that there were no fingerprints
19 of Mr. Wheeler's found on the ammo can that contained the
20 drugs are relevant.

21 The fact that Mr. Maye's clothing -- closing was sort
22 of -- kind of lighting a fire when addressing, like, huge
23 bags of drugs, and -- and -- you know, speculating on a bunch
24 of things that were never brought upon during the trial, or
25 addressed, they weren't objected to, that kind of thing. I

1 just -- I think once you kind of get into all that, I -- I
2 believe -- you know, post-conviction release should be
3 granted.

4 THE COURT: Thank you.

5 MR. SMITH: Yes, your Honor. I'll just touch on some
6 issues. The first would be that there's evidence that came
7 out at trial that Mr. Wheeler was not just in the home, but
8 actively participating in the trafficking. That he actually
9 made drug sales himself, that he discussed it, that he
10 patrolled the property while armed, to prevent people from
11 coming on. So it's not just a case where there were drugs in
12 the home, there was direct evidence of his participation in
13 the crimes.

14 As to the issues of objecting to the closing argument,
15 Ms. Dewitt gives one statement in response to Mr. Thuss's
16 question about how long it took for the door to be answered.
17 That's a slightly confusing answer. But I also think -- you
18 know, that it's not clear from the record how long it took
19 for the officers to gain entry to the home, but they
20 certainly had ATF, bomb squad, and SWAT there.

21 So I think that -- you know, that could be a reasonable
22 inference that they gained entry into the home relatively
23 quickly. Particularly when they still found drugs and
24 explosives. There was testimony that they found explosives
25 in the home. That -- I think all of that can lead to an

1 inference that there wouldn't have been enough time for all
2 the evidence to have been disposed of. And even if it wasn't
3 improper comment, that's not the sort that's still infected
4 the trial, that it deprived Mr. Wheeler of a fair trial.

5 I think he's covered the conflict of interest issue.
6 And I'll also point, your Honor, to the appellate opinion.
7 The Court of Appeals also address this issue in a per curium
8 opinion. And the issue about the fingerprints on the box.
9 Even if that's true, it's not the sort of thing that would've
10 changed the result of trial when there's evidence that he
11 participated in -- in the drug sale. And -- unless your
12 Honor has a specific question, that's -- I'll -- I'll leave
13 it there.

14 THE COURT: Okay, thank you. I'll certainly take it
15 under advisement and look carefully at all the materials
16 before I give a ruling.

17 MS. MCMAHAN: Thank you, Judge.

18 THE COURT: Thank you.

19 MR. SMITH: Thank you.

20

21 (THERE BEING NOTHING FURTHER, THIS HEARING CONCLUDED AT

22

3:53 P.M.)

23

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CERTIFICATE OF TRANSCRIBER

I, JACKSON ALEXANDER, a court-approved transcriber, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings had, and evidence introduced in the trial of the captioned case, relative to appeal, in the South Carolina Circuit Court 1 of Edgefield County, South Carolina, on April 3, 2023.

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

November 5, 2025.



JACKSON ALEXANDER
Transcriber

EDGEFIELD COUNTY
CLERK OF COURT
CHARLES L. REEL

Thuss Law Office LLC

2013 APR 12 AM 10:06

Robert Rutland Thuss, Esq.
7001 St. Andrews Rd. #193
Columbia, SC 29212
(803) 640-1000
Rob@ThussLawOffice.com

February 25, 2016

**WAIVER OF CONFLICT OF INTEREST
AND FEE AGREEMENT**

Dear Mr. Wheeler and Ms. Hall,

It is my understanding that you wish for me to represent both of you in this general sessions matter, where you each have identical or nearly identical trafficking and possession of unlawful drugs charges, several receipt of stolen goods charges, and unlawful possession of weapons charges.

At your request, I agreed to represent you both for the purpose of obtaining an immediate circuit court bond review, which did occur. At the bond review, you indicated to the presiding judge that you each waived conflict of interest. Now, I am pursuing discovery at your request, and first and second appearances are scheduled in early April, and the court considers me the attorney of record. I am not advising you or recommending you enter into joint representation.

My retainer and fixed fee for this matter is \$15,000, which is nonrefundable and earned when this agreement is made. South Carolina Rules of Professional Conduct for lawyers require me to obtain your informed consent to retain me to represent both of you and to confirm that consent in writing. In deciding whether you wish to consent to my representation of you, please consider the following:

1. Because I will be representing both of you, my ethical obligation is to treat you equally, not favoring one of you over the other. I will raise for mutual discussion any issue that I think is material to either of you. I have an obligation to provide each of you with complete information relating to my representation. You must understand that any information you share with me is not confidential as to the other party, and I will disclose all material information I receive from either of you to the other.

2. If a dispute develops between the two of you, I must withdraw from representation of one or both of you. Additionally, although neither of you have expressed anything to me that would lead me to believe you have an existing conflict of interest, a conflict of interest could arise in the future as the case progresses. For example, at some point in the future, the solicitor could offer a plea to one or both of you that would create a conflict. The solicitor could offer such a plea on the condition that one of you incriminate or give a statement or testimony harmful to the other. It could be an offer where one of you accepts a lesser sentence



than the other.

In criminal defense, an actual conflict of interest occurs when a defense attorney places himself in a situation inherently conducive to divided loyalties. If a defense attorney owes duties to a party whose interests are adverse to those of the defendant, then an actual conflict exists. The interests of the other client and the defendant are sufficiently adverse if it is shown that the attorney owes a duty to the defendant to take some action that could be detrimental to his other client. So, it is understood that I will not pursue efforts where one of you would incriminate the other. I will not take any action to compare the involvement of one of you to the involvement of the other to gain leniency for one at the expense of the other.

Also, if a dispute between you arises, any communications among us will probably be admissible in evidence and not subject to a claim of attorney-client privilege.

Once it becomes clear an actual conflict has arisen, then, you agree and consent for me to continue to represent Mr. Wheeler, and that I shall withdraw from representation of Ms. Hall. At that point, Ms. Hall may apply for a public defender. The public defender is representing Mr. Coon, and to avoid a conflict, a private attorney will be appointed. Or, Ms. Hall may retain a private attorney herself. Or, in the alternative, you both may execute a new waiver covering the specific conflict that has arisen, and based on a new waiver, I may be able to continue the representation, although some conflicts are not waivable.

3. If you do not encounter serious disagreements, multiple representation can minimize legal fees and expenses, and in this case, permit you both to have private counsel at a cost considerably less than customary fees. However, if a conflict develops, and I am required to withdraw, one or both of you will be forced to retain separate counsel unfamiliar with the matter. As a result your legal fees may well increase if you elect to retain paid private counsel.

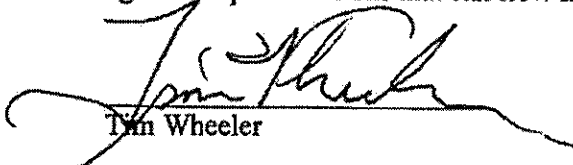
4. If you wish me to represent you despite the risks that I have outlined, I am willing to do so. I will inform you if I believe that a conflict of interest has developed. If you understand the risks involved and consent to my representation, please sign this letter, and keep a copy. Your consent will also be inferred if by your conduct you indicate that you are authorizing me to proceed with representation.

Sincerely,

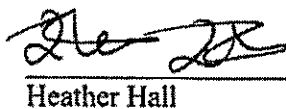


Thuss Law Office LLC by RR Thuss

We have been advised of your right to separate counsel and of the risks of multiple representation. We hereby consent to Thuss Law Office LLC representing both of us with full knowledge of the possible risks that can flow from such representation.



Tim Wheeler



Heather Hall

McMAHAN LAW, LLC

March 22, 2023

Charles L. Reel
Edgefield County Clerk of Court
PO Box 34
Edgefield, SC 29824

EDGEFIELD COUNTY
CLERK OF COURT
CHARLES L. REEL
2023 MAR 28 AM 10:17

Re: Timothy Wayne Wheeler, #371128 v. State of South Carolina
2020-CP-19-086

Dear Mr. Reel:

Please find enclosed an Amended PCR Application for the above-referenced matter along with one copy. Kindly clock in this order and forward a clocked copy to me in the enclosed envelope.

Should you have any questions I can be reached at the number listed below or at

[REDACTED]

Best regards,



ASHLEY A. McMAHAN
ATTORNEY AT LAW

AAM

cc: Timothy Wayne Wheeler, #371128
AAG Taylor Z. Smith (by email)

STATE OF SOUTH CAROLINA)
)
 COUNTY OF EDGEFIELD)
)
 Timothy Wayne Wheeler, #371128)
)
 Applicant,)
)
 v.)
)
 State of South Carolina.)
 _____)

COURT OF COMMON PLEAS
 FOR THE 11TH JUDICIAL CIRCUIT
 Case No.: 2020-CP-19-086

EDGEFIELD COUNTY
 CLERK OF COURT
 CHARLES L. REEL
 2023 MAR 28 AM 10:17

**AMENDED POST-CONVICTION
 RELIEF APPLICATION**

The Applicant, by and through his undersigned attorney, hereby amends his PCR application filed on March 23, 2020 to add the following:

1. Ineffective Assistance of Counsel
 - a. Failure to adequately cross examine investigator about items seized from the home, especially regarding testimony about a brown jar that was actually a green vase. See Tr. p. 153, lines 20-25.

Furthermore, Applicant requests that he be permitted to amend his PCR application to conform to the evidence presented at the PCR hearing should any new or unaddressed issues arise during the course of the hearing that have not been specifically addressed in the Application. See Simpson v. Moore, 367 S.C. 587, 627 S.E.2d 701 (2006); see also Love v. State of South Carolina, 428 S.C. 231, 834 S.E.2d 196 (2019); SCRPC Rule 15(b).

Respectfully submitted,



ASHLEY A. MCMAHAN, ESQUIRE

MCMAHAN LAW, LLC

PO Box 50536
 Columbia, SC 29250
 803-219-1110

SC Bar No. 71676
 ATTORNEY FOR APPLICANT

March 22, 2023

CERTIFICATE OF SERVICE

I certify that I have served this document via email to:

Taylor Z. Smith
Assistant Attorney General

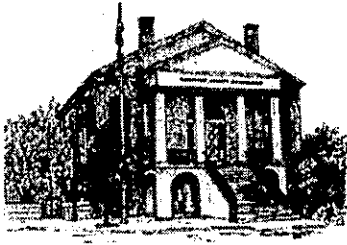


This 22nd Day of March, 2023.

EDGEFIELD COUNTY
CLERK OF COURT
CHARLES L. REEL
2023 MAR 28 AM 10:17

A handwritten signature in black ink, appearing to read "Ashley A. McMahon".

ASHLEY A. MCMAHAN
Attorney for Applicant



Charles L. Reel
EDGEFIELD COUNTY
CLERK OF COURT
& REGISTER OF DEEDS
P. O. BOX 34
EDGEFIELD, SC 29824
PHONE: (803) 637-4080
FAX: (803) 637-4117

Re: Timothy Wheeler -vs- State of SC 2020CP1900086

A clocked copy of the Order for Continuance for the above referenced civil action was mailed to Atty Ashley McMahan and Lillian Meadows of the attorney general's office on October 20, 2022. Also, a hard copy was mailed on October 20, 2022 to each attorney.

EDGEFIELD COUNTY
CLERK OF COURT
CHARLES L. REEL
2022 OCT 20 PM 3: 17

STATE OF SOUTH CAROLINA)
 COUNTY OF EDGEFIELD)
 Timothy Wayne Wheeler, #371128,)
 Applicant,)
 v.)
 State of South Carolina,)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 FOR THE ELEVENTH JUDICIAL CIRCUIT

Case No.: 2020-CP-19-086

ORDER OF CONTINUANCE

EDGEFIELD COUNTY
 CLERK OF COURT
 CHARLES L. REEL
 2022 OCT 20 PM 1:56

This matter comes before the Court by way of a pro se application for post-conviction relief filed by Timothy Wayne Wheeler (“Applicant”) on March 23, 2020. Ashley A. McMahan represents Applicant in this matter and Taylor Z. Smith represents the State (“Respondent”). An evidentiary hearing on the application was scheduled to take place before this Court on October 13, 2022, at the Lexington County Courthouse.

On the day of the hearing, due to unforeseen delays in the resolution of hearings appearing on the docket ahead of the hearing in this matter, the parties agreed that it was unlikely that all matters on the docket for that day would be able to be heard before the end of the day. This Court shared the parties’ concern, which was reasonable. In light of the apparent lack of sufficient time remaining, the parties jointly moved for a continuance in this matter because they agreed that a hearing on an application for post-conviction relief filed before Applicant’s should be take

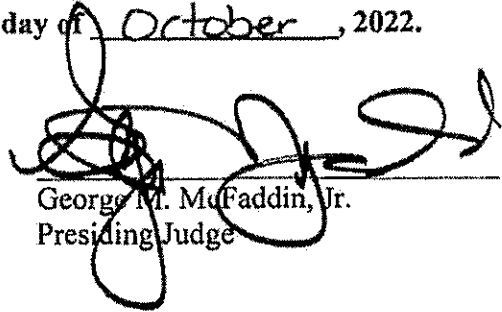


scheduling priority on October 13. This Court finds that the parties have shown good cause for the continuance.

IT IS THEREFORE ORDERED:

1. That this post-conviction relief matter shall be continued until the next appropriate term of post-conviction relief hearings in the Eleventh Judicial Circuit.

AND IT IS SO ORDERED this 18th day of October, 2022.



George M. McFaddin, Jr.
Presiding Judge

Sumter, South Carolina

McFaddin, George M. Secretary (Andrea Morris)

To: McFaddin, George M. Law Clerk (Madison Killen)
Subject: RE: Proposed order in Timothy Wheeler's PCR.

From: Taylor Smith [REDACTED]
Date: October 17, 2022 at 12:05:59 PM EDT
To: "McFaddin, George M. Law Clerk (Madison Killen)" [REDACTED]
Cc: Ashley McMahan [REDACTED] Ashley McMahan [REDACTED]
Subject: Proposed order in Timothy Wheeler's PCR.

*** **EXTERNAL EMAIL:** This email originated from outside the organization. Please exercise caution before clicking any links or opening attachments. ***

Madison,

I was scheduled to represent the State before Judge McFaddin on October 13 in the post-conviction relief case of *Wheeler v. State*, 2020-CP-19-086. Ashley McMahan, who represents Mr. Wheeler in this case, and I sent Mr. Wheeler back to SCDC before his case was called because we were running out of court time that day and there was an older case that we felt should be heard first, in light of the time constraints. Judge McFaddin said that that decision was fine with him.

Attached to this email is a proposed order of continuance for Judge McFaddin's consideration. If he finds it acceptable, please have him sign it and then forward it to the Edgefield County Clerk of Court for filing and service on the parties. Alternatively, I would be happy to submit a hard copy upon request.

Ashley reviewed the order and has no objections. Please let me know if I can provide any other information.

Thank you,
Taylor

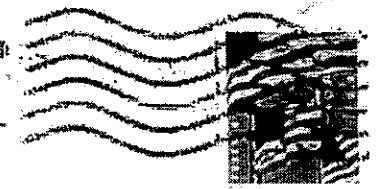
TAYLOR SMITH, Assistant Attorney General
South Carolina Attorney General's Office
Criminal Division | Office 803-734-0904
P.O. Box 11549 | Columbia, SC 29211
scag.gov

This email, along with any attachments, is considered confidential and may be legally privileged. If you have received it in error please notify the sender immediately by reply email and then delete this message from your system. Please do not copy it or use it for any purposes, or disclose its contents to any other person. This email, and attachments, are subject to FOIA requests. Thank you for your cooperation.

GEORGE M. MCFADDIN, JR., JUDGE
Circuit Court Judge, At-Large, Seat 1
215 NORTH HARVIN STREET
SUMTER, SOUTH CAROLINA 29150

COLUMBIA SC 290

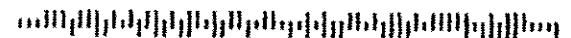
EDGEFIELD COUNTY 19 OCT 2022 PM 3 L
CLERK OF COURT
CHARLES L. REEL



2022 OCT 20 PM 2:05

The Honorable Charles L. Reel
PO Box 34
Edgefield, SC 29824

29824-003434



**10/7/2022 Mailed a clocked copy of Amended Post-Conviction Relief
Application and Certificate of Service to Office of Attorney General Attn: Taylor
Z. Smith and to Ashley A. McMahan.**

EDGEFIELD COUNTY
CLERK OF COURT
CHARLES L. REEL
2022 OCT -7 AM 10:37

McMAHAN LAW, LLC

June 29, 2020

Charles L. Reel
Edgefield County Clerk of Court
PO Box 34
Edgefield, SC 29824

2022 OCT -7 AM 9:20
EDGEFIELD COUNTY
CLERK OF COURT
CHARLES L. REEL

Re: Timothy Wayne Wheeler, #371128 v. State of South Carolina
2020-CP-19-00086

Dear Mr. Reel:

Please find enclosed an amended PCR application for the above-referenced matter. Kindly clock in this order and forward a clocked copy to me in the enclosed envelope.

Should you have any questions I can be reached at the number listed below or at



Best regards,

ASHLEY A. MCMAHAN
ATTORNEY AT LAW

AAM

cc: AAG Taylor Z. Smith
Timothy Wayne Wheeler, #371128

EDGEFIELD COUNTY
CLERK OF COURT
CHARLES L. REEL

STATE OF SOUTH CAROLINA)
2022 OCT -7 AM 9: 20)
COUNTY OF EDGEFIELD)

COURT OF COMMON PLEAS
FOR THE 11TH JUDICIAL CIRCUIT
Case No.: 2020-CP-19-086

Timothy Wayne Wheeler, #371128)
)
Applicant,)
)
v.)
)
State of South Carolina.)
_____)

**AMENDED POST-CONVICTION
RELIEF APPLICATION**

The Applicant, by and through his undersigned attorney, hereby amends his PCR application filed on March 23, 2020 to add the following:

1. Ineffective Assistance of Counsel of Robert R. Thus.
 - a. Failure to object to Solicitor's closing statement to the jury on page 269, lines 17-25
 - b. Failed to adequately discuss the conflict issue between representing Mr. Wheeler and his co-defendant.
 - c. Failure to fully explain constructive possession/conspiracy/hand of one is the hand of all.

Furthermore, Applicant requests that he be permitted to amend his PCR application to conform to the evidence presented at the PCR hearing should any new or unaddressed issues arise during the course of the hearing that have not been specifically addressed in the Application. See Simpson v. Moore, 367 S.C. 587, 627 S.E.2d 701 (2006); see also Love v. State of South Carolina, 428 S.C. 231, 834 S.E.2d 196 (2019); SCRPC Rule 15(b).

Respectfully submitted,



ASHLEY A. MCMAHAN, ESQUIRE

MCMAHAN LAW, LLC

PO Box 50536
Columbia, SC 29250
803-219-1110

SC Bar No. 71676
ATTORNEY FOR APPLICANT

October 4, 2022

EDGEFIELD COUNTY
CLERK OF COURT
CHARLES L. REEL

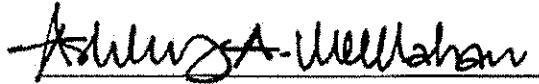
2022 OCT -7 AM 9:20

CERTIFICATE OF SERVICE

I certify that I have served this document via email to:

Taylor Z. Smith
Assistant Attorney General
[REDACTED]

This 4th Day of October, 2022.


ASHLEY A. MCMAHAN
Attorney for Applicant

EDGEFIELD COUNTY
CLERK OF COURT

STATE OF SOUTH CAROLINA
COUNTY OF EDGEFIELD

CHARLES L. REEL
2022 JUL -1 AM 11:52

IN THE COURT OF COMMON PLEAS
FOR THE 11th JUDICIAL CIRCUIT
Case No.: 2020-CP-19-00086

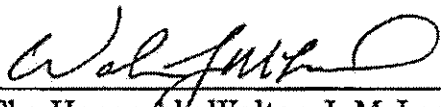
Timothy Wayne Wheeler, #371128,)
)
vs.)
)
State of South Carolina,)
)
Respondent.)
_____)

**ORDER GRANTING PAYMENT
OF FUNDS AND AUTHORIZATION
OF SERVICES**

This matter is before the Court by way of this order, requesting funding for investigative services. Applicant is represented by appointed counsel, Ashley A. McMahan. Ms. McMahan represents to the Court that she is in need of these funds in order to effectively represent the Applicant in his post-conviction relief case. The Court finds Ms. McMahan's request to be reasonable and necessary for the adequate and effective representation of the Applicant. This Order is made pursuant to SC Appellate Court Rule 602; Bailey v. State, 424 S.E.2d 503 (S.C. 1992); McMehan v. York County Council, 281 S.C. 249, 315 S.E.2d 127 (S.C. App. 1984).

THEREFORE This Court authorizes the Commission on Indigent Defense to pay Kristie Lumley or Lumley Investigations up to \$1500.00 for investigative services in this matter.

IT IS SO ORDERED!



The Honorable Walton J. McLeod, IV
Chief Administrative Judge
11th Circuit - CP

_____, South Carolina
6/24, 2022

M^CMAHAN LAW, LLC

EDGEFIELD COUNTY
CLERK OF COURT
CHARLES L. REEL
2022 JUL -1 PM12:08

June 27, 2022

Charles L. Reel
Edgefield County Clerk of Court
ATTN: PCRs
PO Box 34
Edgefield, SC 29824

Re: Maurice Anthony Odom, #199677 vs. State of South Carolina
2020-CP-19-00071
Timothy Wayne Wheeler, #371128 vs. State of South Carolina
2020-CP-19-00086

Dear Mr. Reel:

Please find enclosed two orders for funding along with copies. Kindly clock in these documents and return to me in the enclosed envelope. **Please note: as this is a PCR matter, it cannot be filed online.**

Should you have any questions I can be reached at the address listed below.

Best regards,



Danielle Miller
Law clerk for
ASHLEY A. MCMAHAN
ATTORNEY AT LAW

AAM/dsm

STATE OF SOUTH CAROLINA)
 COUNTY OF EDGEFIELD)
)
 Timothy Wayne Wheeler, SCDC #371128,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 FOR THE ELEVENTH JUDICIAL CIRCUIT

Case No. 2020-CP-19-0086

ORDER OF DISMISSAL

EDGEFIELD COUNTY GS\CP COURT
 CLERK OF COURT CHARLES REEL
 2025 SEP 29 AM08:45

This matter comes before this Court by an application for post-conviction relief commenced by Timothy Wayne Wheeler (Applicant) on March 23, 2020. The Respondent State of South Carolina made a Return and Motion for a More Definite Statement on November 12, 2020. On April 20, 2020, Ashley A. McMahan was appointed to represent the Applicant. On March 22, 2023, Counsel filed an amended application for post-conviction relief.

On April 3, 2023, the matter was convened in Lexington County for an evidentiary hearing. The Applicant was present and represented by appointed Counsel McMahan. The Respondent was represented by Assistant Attorney General Taylor Smith. Testimony was received from the Applicant and his trial Counsel Robert Thuss.

This Court has reviewed the records and transcripts of the trial, the PCR hearing transcript, and the appellate court records. In light of its review, this Court concludes the application must be denied and dismissed in its entirety.

I. FACTS & PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Edgefield County Clerk of Court. During its April 2016 term,

the Edgefield County Grand Jury indicted Applicant for three counts of possession of an unlawful firearm (2016-GS-19-0245, -246, -247); one count of possession with intent to distribute (PWID) a schedule IV controlled substance (2016-GS-19-02444); one count of trafficking methamphetamine (2016-GS-19-0251); one count of PWID marijuana (2016-GS-19-0250); three counts of receiving stolen goods (RSG) (2016-GS-19-0255, -0256, -0258). Applicant was subsequently indicted for two additional counts of RSG (2017-GS-19-0074, -0075) during the Edgefield County Grand Jury's January 2017 term.

On January 17, 2018, Applicant proceeded to a jury trial before the Honorable Eugene C. Griffith, Jr. Robert R. Thuss, Esquire (Counsel) represented Applicant. Assistant Solicitors Ervin J. Maye and Douglas W. Fender, II, prosecuted the case.

A. Pre-Trial

Prior to trial, Counsel moved for a continuance and to be relieved as Counsel due to a potential conflict with representing both Applicant and his co-defendant, Heather Hall (Hall). (ROA 301-08). During a pre-trial chambers discussion about the motion, the circuit court inquired about any pending plea offers, and the solicitor indicated the State had offered Applicant a negotiated sentence of twenty-two years, and Hall a negotiated sentence of five years. Counsel informed the court Hall wanted to take the plea offer, but she was "tied" to Applicant, who did not want to accept the plea offer. The solicitor then indicated a stand-alone plea deal with Hall would be contingent on her testifying against Applicant at trial.

The solicitor informed the court the State was ready to proceed with Applicant's case alone if the court determined there was a dual representation conflict, and Hall's testimony was not required for the trial to go forward. The court then asked Counsel if he was ready to proceed on Applicant's case, and give Hall an opportunity to obtain independent Counsel. Counsel stated

he had discussed the situation with Applicant, but had been unable to communicate with Hall. He also stated he was not previously aware about the contingency with Hall's plea offer, and he was concerned about Hall for several reasons, including her relationship with Applicant, and he did not know "how well she can exercise judgment at her age." (ROA 8-13).

Based on the discussion, the court ultimately relieved Counsel as Counsel for Hall, and stated Hall could either get a private attorney or a new attorney would be appointed for her. The court also gave Counsel an opportunity to talk to Applicant about whether he wanted to proceed with the trial. When court reconvened, Counsel did not indicate Applicant had any concerns about proceeding with the trial, and stated they were prepared to proceed. After jury selection, the court informed Hall, who was seated at the defense table with Applicant and Counsel, that Counsel had been relieved as her Counsel, and she would have the opportunity to obtain another retained Counsel, or the court would appoint one for her. (ROA 12-17, 42-43).

B. Summary of Evidence Adduced at Trial

During his opening statement, Counsel stated Applicant did not live at the residence where the contraband (drugs and illegal weapons) was found, but he was present when law enforcement executed a search warrant and seized the contraband. He also stated Applicant was in a relationship with Hall, who lived at the residence with her step-father (David Coon), and Applicant was at the residence just to help Hall care for Coon, who had serious health issues.¹ (ROA 65-68).

Brian Wade ("Wade") testified he stole vehicles and traded them for drugs at the residence where Applicant, Hall and Hall's step-father lived. He also testified he entered into an

¹Coon pled guilty to trafficking methamphetamine and various other charges the week before Applicant's case was called for trial, and was sentenced to twenty-five years incarceration.

agreement with Applicant and Coon in December 2015 for them to front him methamphetamine, which he would sell and return the profit to them in exchange for increasing amounts of methamphetamine, and Applicant was the one who gave Coon the methamphetamine who then gave it Wade. (ROA 80). He also saw multiple firearms at the residence, a surveillance system, and was told explosives were planted around the perimeter of the property in case anything happened. (ROA 69–80, 85–90). Counsel vigorously cross-examined Wade about the details of his testimony, as well as his own criminal conduct and his dealings with law enforcement in connection with the case. (ROA 90–107).

Jennifer DeWitt (“DeWitt”) testified she stayed at the residence with Applicant, Hall and Coon off and on over a period of months prior to December 2015, and was present when law enforcement executed the search warrant at the residence. During the time she stayed at the residence, she personally observed Applicant meeting with people who came to purchase drugs, and heard Applicant and Coon discussing the price of a kilo of drugs, as well as some bad drugs they had purchased. (ROA 189–98). Counsel then vigorously cross-examined her about prior inconsistent statements she gave to law enforcement, her own criminal activities and her reasons for cooperating with law enforcement. (ROA 199–203).

At the close of the State’s case, Counsel moved for a directed verdict on all charges, arguing the State failed to prove Applicant ever had dominion and control over the firearms, drugs and stolen property found at the residence. The court denied the motion, finding there was sufficient evidence to submit the case to the jury. (ROA 204–210).

Coon testified as a defense witness that he was responsible for everything found in the residence, and Applicant and Hall had nothing to do with it. He admitted on cross-examination that he originally told law enforcement he had never seen the seized contraband or stolen

property found at the residence, but if anyone was going to take the fall for it, he would because he had cancer and did not care. (ROA 212–13).

D. Verdict & Subsequent Proceedings

On July 18, 2017, the jury convicted Applicant as indicted. Judge Griffith sentenced Applicant to concurrent terms of twenty-five years' imprisonment for trafficking meth, three years for each RSG charge, three years for PWID marijuana, five years for each weapons charge, and five years for PWID a schedule IV controlled substance.

Applicant filed a timely notice of appeal. Appellate Defender Taylor Gilliam perfected Applicant's appeal by filing a brief with the Court of Appeals on the following issues:

- I. Whether the trial court reversibly erred by failing to hold an on-the-record colloquy with Applicant to determine whether Applicant knowing, intelligently, and freely waived his right to conflict free representation where Applicant and his co-defendant were represented by the same retained attorney.

Following briefing, the Court of Appeals affirmed Applicant's convictions and sentences. *State v. Wheeler*, 2019-UP-307 (S.C. Ct. App. filed August 28, 2019). In its unpublished order, the Court of Appeals stated the following:

Affirmed pursuant to Rule 220(b), SCACR, and the following authorities: *State v. Justus*, 392 S.C. 416, 418, 709 S.E.2d 668, 670 (2011) (stating a defendant has the Sixth Amendment right to the assistance of Counsel); *Thomas v. State*, 346 S.C. 140, 143, 551 S.E.2d 254, 256 (2001) ("To establish a violation of the Sixth Amendment right to effective Counsel due to a conflict of interest arising from multiple representation, a defendant who did not object at trial must show an actual conflict of interest adversely affected his attorney's performance."); *State v. Gregory*, 364 S.C. 150, 152, 612 S.E.2d 449, 450 (2005) ("An actual conflict of interest occurs where an attorney owes a duty to a party whose interests are adverse to the defendants."); *Id.* at 152-53, 612 S.E.2d at 450 ("The mere possibility defense Counsel may have a conflict of interest is insufficient to impugn a criminal conviction."); *Fuller v. State*, 347 S.C. 630, 634, 557 S.E.2d 664, 666 (2001) (finding no conflict in trial Counsel's prior representation of one of the co-defendants); *Langford v. State*, 310 S.C. 357, 359-60, 426 S.E.2d 793, 795 (1993) (concluding Counsel did not actively represent competing interests because there was no evidence Counsel "advised either co-

defendant to plead guilty in order to obtain more favorable consideration for the other” and “[t]he mere fact that [the co-defendant] would be available to testify against [the defendant did] not establish an actual conflict of interest”).

State v. Wheeler, No. 2017-000152, 2019 WL 4052476, at *1 (S.C. Ct. App. Aug. 28, 2019).

The case was remitted back to the circuit court on September 13, 2019. Applicant commenced this PCR action on March 23, 2020.

II. ALLEGATIONS

In his initial *pro se* application, the Applicant did not include any allegations. Instead, he stated “unable to properly answer without legal assistance.” Applicant requested relief as follows:

“Unsure legally what I can and cannot do. Also there has been significant changes/modifications to drug trafficking sentences as of July 19, 2019 by Atty Gen Office.”

In the first amended application dated October 4, 2022, the Applicant alleged:

- I. Ineffective Assistance of Counsel:
 - a. Failure to object to the Solicitor’s closing statement to the jury on page 269, lines 17-25.
 - b. Failed to adequately discuss the conflict issue between representing Mr. Wheeler and his codefendant.
 - c. Failure to fully explain constructive possession /conspiracy/hand of one is the hand of all.

In the second Amended application by appointed Counsel dated March 22, 2023, the Applicant alleged the following:

- I. Ineffective Assistance of Counsel:
 - a. Failure to adequately cross-examine investigator about items seized from the home, especially regarding testimony about a brown jar that actually was a green vase. See Tr.p. 153, lines 20-25.

In Fishburne v. State, 427 S.C. 505, 512, 832 S.E.2d 584, 587 (2019), the Supreme Court in ruling on a PCR application, “[t]he [PCR] court shall make specific findings of fact, and state expressly its conclusions of law, *relating to each issue presented.*” (emphasis added) S.C. Code Ann. § 17-27-80 (2014). The South Carolina Rules of Civil Procedure apply to PCR matters. See Id.; Rule 71.1(a), SCRPC. Rule 52(a) provides in pertinent part, “In all actions tried upon the facts without a jury ..., the court shall find the facts specially and state separately its conclusions of law thereon.” Rule 52(a), SCRPC. “The PCR court’s general denial of all claims not specifically addressed in the PCR court’s order ‘does not constitute a sufficient ruling on any issues since it does not set forth specific findings of fact and conclusions of law.’” Simmons v. State, 416 S.C. 584, 592, 788 S.E.2d 220, 225 (2016) (quoting Marlar v. State, 375 S.C. 407, 409, 653 S.E.2d 266, 266 (2007)).

In the amended application, PCR Counsel indicated that it would seek to amend the application to conform the evidence presented at the PCR hearing to any new or unaddressed issues during the course of the hearing that had not been addressed in the written application. See October 4, 2022 amended application.

During the PCR hearing, PCR Counsel raised through the PCR testimony the following claims and additional allegations of ineffective assistance of Counsel:

- Counsel failed to object to the Solicitor’s closing reply statement at ROA 269, 17-25 related to explosives and “huge bags of drugs.”
- Counsel failed to adequately discuss the conflict of interest issue involving the joint representation of Wecler and his girlfriend Heather Hall.
- Counsel failed to adequately explain the concepts of constructive possession, mere presence, conspiracy and accomplice liability of hand of one, hand of all.
- Failure to adequately cross-examine investigator about items seized from the home, especially regarding testimony about a brown jar that actually was a green vase. See ROA 153, lines 20-25.
- Counsel failed to adequately review the plea offers with the Applicant.
- Counsel failed to adequately review discovery with the Applicant.
- Counsel failed to adequately meet with the Applicant to prepare for trial and make

- a strategy for the trial.
- Counsel failed to adequately cross-examine Jennifer DeWitt about her inconsistent statements and change in testimony.
 - Counsel failed to adequately cross-examine Brian Wade about his testimony and impeach him related to the testimony that Wheeler gave a bag of drugs to Coon and that Wade and Applicant and Coon shot weapons together.
 - Counsel failed to adequately cross-examine Investigator Roosevelt Young about the amount of money seized at the residence its location and the amount seized from the Applicant's wallet. Counsel failed to point out that there was no photograph showing \$7337.
 - Counsel failed to object to the Solicitor's opening statement related to explosives and drugs at ROA 60, 62.
 - Counsel failed to object to Counsel's initial closing statement at Tr.p. 245 and 247 related to "heavy narcotics, methamphetamine, crack, heroin, hard narcotics," "a bag of human misery" and explosive and narcotics and stolen motorcycles.
 - Counsel failed to bring up that his fingerprints were not found on the ammo box that included the methamphetamine.
 - Counsel failed to locate and present that the Applicant's cellphone and his mother's last will and testament were missing and not in the chain of custody.
 - Counsel failed to adequately show that the house was not his residence by failing to point out that he did not receive mail at that address.
 - Counsel failed to challenge evidence that the green flower vase that some money was in was not a jar or a brown jar, See ROA 153-154.
 - Counsel failed to adequately impeach DeWitt or Wade based upon their prior criminal records.
 - Counsel only briefly interviewed David Coon before putting him on the witness stand.
 - Counsel never investigated mitigating evidence.

DOCUMENTS BEFORE THE COURT

This Court has before it the Edgefield County Clerk of Court records regarding the subject convictions; Applicant's records from the South Carolina Department of Corrections; a full and complete record of Applicant's direct appeal, including the trial transcript; the Final Brief of Appellant, the Final Brief of Respondent and Opinion by the Court of Appeals and the records of the current PCR action, including the transcript of the PCR hearing of April 3, 2023.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

STANDARD OF REVIEW

The Uniform Post-Conviction Procedure Act² (the Act) provides that any person who has been convicted of a crime may seek post-conviction relief based upon the following types of allegations:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. That his sentence has expired, his probation, parole or conditional release unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy[.]

S.C. Code Ann. § 17-27-20(A).

The Sixth and Fourteenth Amendments to the United States Constitution guarantee Applicant, like all other defendants, the right to effective assistance of Counsel. Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052 (1984); Taylor v. State, 404 S.C. 350, 359, 745 S.E.2d 97, 101 (2013). Ordinarily, PCR allegations are centered upon an allegation that the Applicant did not receive *effective* assistance of Counsel guaranteed by the Sixth Amendment. The allegation of denial of such representation sets forth a *prima facie* violation of this constitutional right and raises a question of fact that can only be determined by an evidentiary hearing. Rogers v. State, 261 S.C. 288, 291, 199 S.E.2d 761, 762 (1973).

In a post-conviction relief action, the Applicant bears the burden of proving the allegations by a preponderance of the evidence—a mere allegation of ineffective assistance is not sufficient to warrant granting relief. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). The reviewing court applies the two-part test outlined in Strickland

² S.C. Code Ann. §§ 17-27-10 to -160.

v. Washington to determine whether Counsel's conduct "was so [ineffective] as to require reversal" of the Applicant's conviction. 466 U.S. 668, 687 (1984). To obtain relief, a PCR Applicant must prove (1) Counsel's performance fell below an objective standard of reasonableness, and (2) the Applicant sustained prejudice as a result of Counsel's deficient performance. Id. at 687–88; accord. Cherry v. State, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim. Strickland, 466 U.S. at 700; see also Bell v. Cone, 535 U.S. 685, 695 (2002) (explaining that "[w]ithout proof of both deficient performance and prejudice to the defense, . . . it could not be said that the sentence or conviction resulted from a breakdown in the adversary process that rendered the result of the proceeding unreliable." (citation and internal quotation marks omitted)).

Regarding the deficiency prong of the Strickland analysis, the proper measure of performance is whether Counsel provided representation within the reasonable range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. When analyzing Counsel's performance, the reviewing court will strongly presume Counsel provided adequate assistance, and the Applicant is responsible for rebutting that presumption "by proving that his attorney's representation was unreasonable under prevailing professional norms and that the challenged action was not sound strategy." Kimmelman v. Morrison, 477 U.S. 365, 384 (1986); cf. Cullen v. Pinholster, 563 U.S. 170, 189 (2011) (explaining a defendant must show defense Counsel failed to act reasonably considering all the circumstances in order to overcome the presumption of adequate representation).

Furthermore, the reviewing court will scrutinize Counsel's performance in a highly deferential manner, make every effort "to eliminate the distorting effects of hindsight," and

"evaluate the conduct from Counsel's perspective at the time" in light of then-existing circumstances. Strickland, 466 U.S. at 689. In order to establish Counsel's performance was deficient, the Applicant must demonstrate "Counsel made errors so serious that Counsel was not functioning as the 'Counsel' guaranteed the defendant by the Sixth Amendment." Id. at 687. Accordingly, Counsel's performance will be considered deficient only when it was objectively incompetent under prevailing professional norms and *not* when it simply "deviated from best practices or most common custom." Harrington v. Richter, 562 U.S. 86, 105 (2011).

Beyond satisfying the burden required by the deficiency prong, an Applicant also bears the burden of establishing prejudice in order to be entitled to relief as "[a]n error by Counsel, even if professionally unreasonable, does not warrant setting aside the judgment of a criminal proceeding if the error had no effect on the judgment." Strickland, 466 U.S. at 691. To meet this burden, Counsel's deficient performance must have prejudiced the Applicant to such an extent, there is a reasonable probability the result of the proceeding would have been different but for Counsel's unprofessional errors. Cherry, 300 S.C. at 117–18, 386 S.E.2d at 625; see Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) ("To establish a claim of ineffective assistance of Trial Counsel, a PCR Applicant has the burden of proving Counsel's representation fell below an objective standard of reasonableness and, but for Counsel's errors, there is a reasonable probability the result at trial would have been different."). Importantly, "[t]he likelihood of a different result must be *substantial*, not just conceivable." Richter, 562 U.S. at 112.

Finally, the Strickland standard must be applied with scrupulous care, lest "intrusive post-trial inquiry" threaten the integrity of the very adversary process the right to Counsel is meant to serve. 466 U.S. at 689–90. Courts must be wary of second-guessing Counsel's trial tactics, and

where Counsel articulates a valid reason for employing such strategy, such conduct is not ineffective assistance of Counsel. Whitehead v. State, 308 S.C. 119, 417 S.E.2d 529 (1992). The Applicant's burden of proving both Strickland components is heavy in light of the strong presumption that Counsel's conduct fell within the range of reasonable professional legal assistance. 466 U.S. at 690. Representation is constitutionally ineffective only if Counsel's conduct "so undermined the proper functioning of the adversarial process" that the defendant was denied a fair proceeding. Id. at 686; see Nix v. Whiteside, 475 U.S. 157, 175 (1986) (noting that under Strickland, the "benchmark" of the right to Counsel is the "fairness of the adversary proceeding"); cf. United States v. Morrow, 977 F.2d 222, 229 (6th Cir. 1992) ("[T]he threshold issue is not whether [the Applicant's] attorney was inadequate; rather, it is whether he was so *manifestly* ineffective that defeat was snatched from the hands of probable victory.").

SPECIFIC FINDINGS

Applicant has alleged and elected to pursue various claims of ineffective assistance of Counsel through the post-conviction relief action presently before this Court. In analyzing these claims, this Court has considered the legal arguments by Counsel and thoroughly reviewed the record in its entirety, including the transcript of the PCR hearing. This Court additionally heard the testimony presented at the evidentiary hearing and was able to observe the witnesses, which allowed the Court to evaluate and scrutinize their credibility. See, e.g., State v. Mercer, 381 S.C. 149, 166, 672 S.E.2d 556, 565 (2009) ("In this post-trial setting, our jurisprudence recognizes the gatekeeping role of the trial court in making a credibility assessment."); Clemons v. Mississippi, 494 U.S. 738, 766 (1990) (Blackmun, J., concurring in part and dissenting in part) ("The trial judge who hears the witnesses live, observes their demeanor and in general smells the smoke of the battle is by his very position far better equipped to make findings of fact which will have the

reliability that we need and desire.").

Upon conducting and completing its analysis, this Court finds that Applicant has failed to establish any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. See Rule 71.1(c), SCRPC (stating that in a post-conviction relief action, "[t]he Applicant has the burden of establishing his entitlement to relief by a preponderance of the evidence."); Luccero v. State, 414 S.C. 238, 244, 777 S.E.2d 409, 412 (Cl. App. 2015) ("In a PCR proceeding, the Applicant bears the burden of establishing that he or she is entitled to relief."); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) ("The burden of proof is on the Applicant in post-conviction proceedings to prove the allegations in his application.").

Accordingly, set forth below are the relevant findings of facts and conclusions of law as required by § 17-27-80 of the South Carolina Code:

SUMMARY OF PCR TESTIMONY

TIMOTHY WHEELER

The Applicant, Timothy Wheeler testified that he was arrested on December 22, 2015 and tried in January 2017. He stated that he was denied bond four (4) times. (PCR 6-7).

Wheeler testified that he retained Robert Thuss a couple of months after his arrest. He met him at the detention center each time because he was never bonded out. In that initial meeting, he recalled that they spoke about the charges a little bit, but more in later meetings. He said that neither he nor Counsel knew what sentence he was facing.

Wheeler stated that there was a later back and forth with the Solicitor who had spoken with Thuss about potential sentencing. Counsel stated to him the solicitor stated initially it was 5 years for Heather Hall (his co-defendant), 10 years for him, and 17 years for David Coon.

Applicant stated that later it was 22 or 25 years. (PCR 8-9).

When asked about discovery, the Applicant claimed that he did not see it all. He said Counsel brought to him the parts he thought were pertinent. These included pictures of the drugs and the drug box. He stated that he did not recall all the guns, but that he owned a couple of guns legally. (PCR 9). Wheeler confirmed that this was a home where drugs were being sold. (PCR 9, l. 17-19).

Applicant testified that he was dating David Coon's daughter, Heather Hall. He also claimed that he did not live at that home. (PCR 9). He claimed that he was living in Aiken, while Coon and Heather lived in Edgefield. (PCR 10).

The Applicant claimed the plea offers of 10 for him, 5 for Heather, and 17 for Coon were not set in stone. He thought this offer was what the Solicitor had told Counsel Thuss and was in passing. (PCR 10). He declared that he really did not talk about it with Counsel. He stated a second offer was made about ten (10) minutes before the trial began for about 22 or 25 years. (PCR 11). Applicant stated that Counsel agreed with him to not take the plea offer. (PCR 11).

Applicant testified that co-defendant Coon was tried in January 2017 the week before Applicant's trial. (PCR 11). He felt like he did not have much notice. (PCR 11-12).

Applicant testified that he met with Thuss four or five times prior to the trial. Since he was also representing Heather, some of the meetings occurred with Heather and some with him only. (PCR 12). Heather was out on bond, while Applicant remained in custody, so she was able to meet with Counsel when Applicant could not. In the meetings, they spoke about what they faced. (PCR 12).

Concerning conflict of interest, the Applicant stated that he did not understand it when it was brought up before the trial. (PCR 13). He stated that Counsel was unsure about it and the

court ruled to have someone appointed for Heather and her trial to be separate. (PCR 13).

Applicant stated that he was not really familiar with a “conflict of interest.” He stated that Thuss had earlier presented a document explaining to him about a conflict that he signed willingly. (PCR 14); (see ROA 42-43, 301-308).

Concerning Counsel’s closing reply argument, the Applicant was pointed to ROA pages 269, L.17-25. The Applicant claimed that the solicitor made reference to huge bags of drugs, buried explosives and C-4. (PCR 14). Applicant complained that no one testified about any explosives being buried on the property. (PCR 15). He did acknowledge that witness Brian Wade testified he had seen explosives and C-4. The Applicant complained that Maye interviewed Wade for the warrant, but there were no explosives found on the property. (PCR 15).

Related to “constructive possession”, “hand of one” and his involvement with Heather, the Applicant testified that he had discussions with Counsel, but not big discussions. (PCR 16). He understood “hand of one” meant to him “because he was there he was guilty” and claimed that was how Counsel explained constructive possession to him. (PCR 16).

He testified that he never met with Wade. He just learned about Wade’s statement when it was provided discovery.

Concerning Jennifer DeWitt, another co-defendant in the case, Applicant complained that Counsel did not adequately cross-examine her. (PCR 18). Applicant stated that he knew DeWitt for a few months and that they did not have a close relationship. (PCR 19). Applicant argued that DeWitt was not truthful in her testimony. Applicant argued her testimony stating she watched vehicles come down the driveway on a TV monitor was an impossibility because there were no security cameras covering that area. He claimed there was only one over the front door that you could see a little off the steps. (PCR 18). He only complained that he was not at the

house all the time except frequently during the holidays.

The Applicant testified that he told Counsel he did not know Wade. He said that most of their discussion was about Coon. (PCR 19). He stated Wade brought him up at one point that Applicant handed a bag to Coon when he was in the house that week. Wheeler also stated that Wade lied when he said that they fired weapons together. (PCR 19, l. 12-17).

Applicant argued trial Counsel failed to address most of Investigator Roosevelt Young's inconsistent testimony regarding where money was found. (PCR 20). Investigator claimed he found money in a locked brown box and found around \$300 in Heather's green vase in room number 2, which was her bedroom. Applicant complained that he did not know anything about a sealed brown box. He further stated that Counsel failed to address Heather's green flower vase which may have been referred to as a round bottle or jar that had money in it. (PCR 20).

Applicant testified that his prints were not found on the green box or the drug box. He was told that another set of prints was found, but Counsel did not present that in court during cross-examination. (PCR 21).

Applicant complained that Maye's opening statement, referenced massive explosives, crack, and heroin, but the State found none of these items nor was he charged with possession of any of them. He complained the State continually brought it and it seemed highly prejudicial. (PCR 21). He asserted trial Counsel failed to object. (PCR 22).

Concerning inconsistency in the money, he testified that the state asserted over \$7,200 was found in the wallet. Wheeler questioned how that amount of money could fit in a wallet and that it was illogical. He also stated that investigator Roosevelt Young's testimony was also incorrect about the amount. (PCR 22-23). (See ROA Tr. 153-155). According to Applicant he never saw a picture showing \$7,200 dollars. He only saw a picture in discovery showing his

wallet containing a couple twenty-dollar bills, ten-dollar bills, and others. (PCR 31).³

As to Applicant's complaint about chain of custody, he complained that he was missing his phone and his mother's last will and testament. (PCR 23). He claimed that he had those items with him at the house because he had recently received them. (PCR 23).

Concerning his presence in the house, Applicant asserted that Counsel did not argue he did not receive mail at the house. Instead, Counsel only relied on "mere presence." (PCR 24).

[Counsel's closing pointed out no mail showed that was his residence. ROA 263, 21-23]

Applicant argued Counsel failed to object to Maye's statement about guns throughout the house and the house being a mess. (PCR 25); (See ROA 250); (But see ROA 223 (Coon), 130-131 (Morris), ROA 82 (Wade); Exhibit State 4 (multiples of weapons in home that day); State Exhibit 5, 7 (shotgun); State Exhibit 8 (photos of drugs brought out by Applicant that day); ROA 105, 300 (testimony related to guns laying around house to defend); ROA 105-106 (pistols in every room he went into); ROA 107 (Thuss question Wade whether he ever saw Applicant shooting the other weapons that were laying throughout the house); ROA 124 (Morris testified they seized all the weapons laying the scene as shown State Exhibit 4); ROA 78 (Wade) (fired saved-off shotgun).

Applicant also complained about not objecting to statements about the money found in jar or green flower vase and not a sealed jar in Heather's bedroom. (PCR 26).

Applicant asserted that Counsel should have emphasized Heather's meth convictions and Wade's felony convictions. (PCR 26). But See; ROA 42 (Wade admits using meth and marijuana); ROA 73 (state vehicles to pay to get drugs); ROA 74 (arrested for possession of

³ But see, ROA 250, 255 (reference to bill fold and \$7300); ROA 130 (billfold); ROA 152-153 (\$7337 found in billfold in room 21, ROA 155 (Thuss cross of Roosevelt Young explaining stack of bills); ROA 267 (defense closing re: wallet and money).

stolen vehicle, grand larceny, receiving stolen goods, escape); ROA 84 (Wade went to prison); ROA 88 (convicted of giving false information to law enforcement) ROA 91 (Thuss brings out false information conviction, receiving stolen goods, possession of stolen vehicle, financial transactions theft, and criminal domestic violence).

Appellant argued Counsel failed to object to the state referencing him stealing motorcycles. Applicant explained that he was not aware that the motorcycle he placed his license on while his motorcycle was being prepared was a stolen motorcycle. (PCR 27).

He complained that Counsel had no legitimate trial strategy to pursue the inconsistencies of the state witnesses. He complained that Counsel only interviewed David Coon briefly for 10 minutes or less before he put him on the witness stand. (PCR 28); (ROA 212-237). He complained that while Counsel brought up "mere presence" in his closing, it was not effectively argued. (PCR 28); (But see, ROA 264, l. 1-9) (Applicant only a guest there); ROA 266 (drugs not in room where the Applicant stayed); ROA 267 (owner of property did not know who Wheeler was); ROA 267 (none of documents Wheeler's have the address to that residence).

Applicant also contended that Counsel failed to investigate mitigation evidence. He only thought he spoke with Edgefield County. (PCR 28).

On cross-examination, Applicant confirmed that he did not want to take the plea offers. (PCR 29-30). As in direct, he noted the offers were made in passing and did not consider them. He felt he was innocent. (PCR 30).

COUNSEL ROBERT THUSS

Counsel Thuss testified he was referred to Applicant's case. (PCR 31-32). He stated that the Applicant and Heather Hall both wanted him to represent them. He met with Applicant at the detention center about seeking to review his bond.

Counsel stated that Applicant had been arrested in December 2015 when the police raided David Coon's house. During the raid, Coon's daughter, Heather Hall, and Ms. DeWitt were present. Coon was at a hotel in Aiken at the time, but they had a warrant for his arrest. Drugs and weapons were found on Coon at his Aiken arrest. They found around 730 grams of Methamphetamine at the house, as well as a number of weapons. (PCR 33).

Concerning a potential conflict in representing both Wheeler and Heather, Counsel investigated whether he could ethically represent both and reviewed current caselaw and determined that there had to be a written document waiving a conflict and explaining it. (PCR 34). He stated he drafted a conflict waiver document anticipating the issues after reviewing the case. (PCR 34).

In that document, he set out the provisions having to treat both equally, disclose what one said to the other and if a dispute arose between the two, Thuss would have to resign. After reviewing and reading the document, Applicant and Hall agreed to the plan and signed the document in his presence. (PCR 35-37). Counsel opined that they understood. (PCR 36).

Trial Counsel testified that he met with them both individually and together. He stated he shared information with both when he met outside their presence. (PCR 36).

Trial Counsel testified he met with Applicant twice the amount of 4 or 5 times he. He took Applicant to her bond at least three times because, in the first few months, it was indicated that the case may be tried in federal court. (PCR 38). Subsequently, they learned that ATF and the Feds decided it would not be a federal case. (PCR 38).

Counsel stated they received information about the confidential informant in mid-December and matters heated up. He stated he worked on a motion to be relieved once Applicant saw and asked for a continuance. He asserted that he met with them at least eight times. (PCR

39).

Counsel stated he went over discovery with Applicant and explained the significance. He stated there were around 300 photographs turned over. (PCR 39). He received these before Ms. Hall was released on bond and went over them on his computer at the detention center. (PCR 39).

Counsel stated he also discussed mere presence, constructive possession, and defenses. (PCR 40). He stated that there was an issue related to suppression due to staleness of the warrant that they discussed throughout. Counsel thought they discussed the fact about money being removed from his wallet.

As to the mere presence, Counsel advised Applicant that it was a "constructive possession" case because it was not his residence. He was involved with Coon's daughter and was staying there as a guest. It was their defense that he was not involved in the offense. It was mere presence to the constructive possession. (PCR 40-41).

Counsel stated he discussed accomplice liability and conspiracy may have come up generally in those discussions. (PCR 41).

Concerning the solicitor's closing argument referencing heavy narcotics, methamphetamine, and heroin, Counsel confirmed that he did not object. He believed it was not objectionable. He found the comment to be a general statement about Edgefield County. (PCR 41-42).

Counsel could not recall whether there was evidence about explosives. After referring to ROA p. 269, he recalled that there were allegations that the place was boobytrapped based upon an informant's claims related to the warrants, but he did not recall it as an issue during the trial.

In reference to the comment by Solicitor Maye in the reply closing regarding whether

Applicant would have been able to dispose of the evidence before the officers entered the home, Counsel thought some of it was objectionable. He recalled the comment Maye made that Counsel did not object to related to a question whether there was time for someone to dispose of the drugs by flushing them in the house when they knew the police were outside. (PCR 43). Counsel stated that they had already established DeWitt testified that the police came and knocked on the door and that she went and got Wheeler and Hall up, they took their time to get dressed and then answered the door. (PCR 43); (ROA 201) (DeWitt testified she noticed the police outside, woke up Tim and Heather, they got on their clothes, waited a while, and she did not observe them take any action to dispose or flush the drugs). Counsel stated that he argued to the jury why someone in that position would have flushed the drugs if they had time to do so. PCR 43-44. (See ROA 262, i. 10-20).

In hindsight, he thought it was something he should have objected to but did not. PCR 44. When asked what the objection would have been, Counsel testified that he thought it had already been established that there were several minutes between when the police knocked on the door before they entered the house and that Maye's comment was basically saying something to the jury on whether they would believe SWAT would have waited that long before they entered. PCR 44.

Respondent's Counsel referred Trial Counsel to ROA 201 concerning DeWitt's testimony related to the actions while the police were waiting. PCR 44-45. He stated that he had a conversation with Applicant about the strategy in the matter. Counsel stated that he sat through Coon's earlier trial the week before and had been preparing a suppression motion. The public defender who represented Coon made a similar motion and Counsel heard the State's response to the similar argument that he was going to make. Counsel stated that he did not make that

argument because it was lost the week before in the Coon trial.

Counsel stated that it was going to be a constructive possession and mere presence case. It was their strategy to establish that he was not a resident there and that the drugs were found in a different room than where he spent his time. The further strategy was to cross-examine and impeach DeWitt and Wade, and to call Coon, who they believed would testify that all the drugs were his which he did. PCR 45. See ROA 213-214 (Coon accepts full responsibility for all the drugs , the guns and stolen vehicles).

Counsel stated he does not recall if he discussed this with Coon before he testified.⁴ (PCR 45). However, Counsel stated that they knew Coon was going to do this for several months.

As to any issue on whether the cash was found in a jar or vase, Counsel stated that he did not feel that this was a substantial issue. (PCR 46).

As to the fingerprints, Counsel stated that they had been waiting to see what sort of results came back. Counsel stated that they considered putting in that evidence. However, after the State rested its case, he talked with Applicant about taking the stand, but he was not comfortable in doing it, so he did not testify. (PCR 47);⁵ See ROA 47. 234-235. Counsel stated that they did not find the Applicant's fingerprints . PCR 47, 1. Counsel did not recall cross-examining any fingerprint expert at trial.⁶

Counsel testified that the Applicant never indicated that he wanted to plead guilty. PCR 47. In the fall, Counsel received information that the State was going forward after the federal government was deciding what they would do. He stated that there were not any plea offers from

⁴ During the trial, Counsel indicated that he spoke with Coon prior to his testimony and told him that he was going to ask Coon about his plea and the statement that he gave. (ROA 210, I. 15-21.

⁵ During the same time, Counsel initially indicated that the Applicant would testify. ROA 210, I. 15-16.

⁶ The record shows that no expert was presented by the state on fingerprint analysis.

Solicitor Maye. He later learned after the fact that Coon was offered a 15 or 17 year sentence, but Coon never accepted it. He stated that Solicitor Maye offered Applicant a 17 year sentence after that. Counsel stated initially Solicitor Maye thought that Coon was the principal with the drugs, but stated that later he came to believe that Wheeler was more involved. In thinking the State was going to offer Applicant that and when Counsel mentioned it to him, Applicant rejected it. Counsel stated that maybe we could start with that and work it down to a 10 year sentence. However, Applicant felt that Coon was going to take full responsibility for the charges and provide him relief. Applicant never indicated that he wanted to take the offer. (PCR 48-49). Then while Coon was being tried, Counsel inquired of Maye about it and he offered 22 years and Wheeler did not accept it. (PCR 49).

On cross-examination, Counsel testified that from the beginning our defense was constructive possession, mere presence and that Coon was going to take responsibility on the charges. He also felt that Ms. DeWitt was going to be a favorable witness. He stated that he did not know that she had changed her testimony before trial. (PCR 50). Counsel also stated that they did not know about Wade's potential testimony until a couple of weeks before the trial. (PCR 50). Counsel stated that he believed that Wade and DeWitt testified in Coon's trial. (PCR 50).

Counsel stated that he called Coon as a witness in their defense. He acknowledged that this did not preserve his right to last argument. (PCR 50). Counsel agreed that he did not bring up that Wheeler's fingerprints were not on the box that had the drugs and did not call anyone to testify about what was found on the green ammo box where most of the drugs were found. Counsel confirmed that there were not huge bags of drugs laying around the house and that the methamphetamine was found in the green ammo box. (PCR 52). Counsel confirmed he did not object to the comment about the huge bags of drugs and bags of human misery. (PCR 52).

As to the motion to suppress the drugs, Counsel acknowledged that there was a different judge than the judge in Coon's trial, but rejected the assertion that it was likely that Judge Griffith would have made a different ruling if it was presented to him. (PCR 52). He stated based upon what the public defender argued and the State's response to the argument in Coon he felt the motion related to the delay in the search warrant would not have been successful. (PCR 52-53).

As to the comments about explosives, Counsel stated that he did not recall any testimony about explosive being buried or boobytrapped around the yard. Counsel stated that he did not know whether he should have objected to the reference. (PCR 53).⁷

Counsel stated the significant issues or part of the discovery, Counsel stated that when the case began there were issues as to whether the state could prove that those were Applicant's drugs and whether he had been trafficking. Counsel stated that they knew drugs were found in

⁷ Brian Wade testified that he was told there were multiple firearms including rifles, assault rifles, handguns, sawed off shotguns and pistols. (ROA 77, l. 11-12). He also testified that he learned about measures they had in place including surveillance, booby traps which he related to Investigator Jimmy Smith of Edgefield County. (ROA 77, l. 13-16). He specifically related that since there was C-4 planted around the perimeter of the property, if something happened, they needed to get away. *Id.*

The property owner, Chris Harmon, was asked whether he knew that his residence was full of guns, explosives and drugs, which he denied. (ROA 113-114). Investigator Jimmy Smith of Edgefield County testified that he spoke with Wade and told he had seen large quantities of guns, methamphetamines, heroin, and C-4 explosives all located in the residence of David Coon, Heather Hall and a male called Biker Tim. (ROA 116, l. 8-14).

Officer Curtis Morris worked on the crime scene pursuant to the search warrant, along with ATF, SLED, SWAT, and the Edgefield Sheriff's Department. Officer Morris testified that he found weapons throughout the residence and located an explosive blasting cap in the common area of the residence. (ROA 124). ATF Agent Ricardo Prince testified he was on the scene with the bomb squad, cleared the house, and saw the blasting cap located therein and noted it was a form of an explosive. (ROA 177, l. 4-13).

the house, they knew who was in the house, and knew where things were. Counsel was aware of the physical layout, including where Tim and Heather were staying, Coon's room and what was in his room, and the DeWitt's statement. Counsel stated that they went over the statements and found that DeWitt's first statements were favorable to Applicant. (PCR 54). This changed when she changed her story in December and was also charged with trafficking for the first time. (PCR 54). Counsel stated that he questioned her about a deal. (PCR 55).⁸ Counsel stated that he later learned that she was sentenced. He stated he did not make a specific motion to reveal the deal prior to her testimony. (PCR 55).

When questioned again about the plea offers, Counsel stated Maye's view about the case changed over time. When asked if Applicant was approached by Maye about testifying against Coon or anyone else, Counsel appeared to speculate whether Maye would have asked Wheeler to testify against Coon. However, he noted that Ms. Hall did not testify against Wheeler (after Counsel was removed from the case) at trial, and he thought she ended up taking plea but did not recall the specific sentence. (PCR 56).

Concerning the waiver of a conflict document, Counsel testified he went over each paragraph of the Agreement with Applicant but did not recall when. (PCR 56-57). Counsel testified he discussed the dual representation issues with Applicant prior to him signing the waiver. (PCR 57). (ROA p. 301-308); (Court Exhibit 1).⁹ Counsel stated that he did not learn

⁸ The record reveals that the State questioned DeWitt about whether she had been made any direct promise as to what was going to happen with her charges and she responded no. (ROA 197). It was also pointed out that she was in a jumpsuit because she had been arrested the week before because there was a bench warrant for her arrest. (ROA 197-198). Counsel Thus did cross-examine DeWitt about her inconsistent statements, the new trafficking charge prior to this trial, and that she was fearful of losing her children from a probation violation. (ROA 202-203).

⁹ In the Motion, Counsel noted that Deputy Solicitor Maye made a plea offer which favored one client over another. (ROA 303 ¶ 9).

any information from Heather that would have been detrimental to Applicant. Counsel stated that if there had been a possibility that she would have been a witness at Wheeler's trial they would have discussed it. Counsel stated that Wheeler and Heather had the same defenses of constructive possession, and mere presence. They both alleged the drugs were not theirs. Counsel stated that Brian Wade ended up being the confidential informant in the case. (PCR 57). Counsel stated that he knew early on that it was someone in Aiken County Detention Center who gave law enforcement a tip. Counsel stated that he discussed the possibilities with Applicant and Heather. (PCR 58).

On re-direct, Counsel stated that he withdrew the suppression motion because he heard the argument the week before. (PCR 60-61). He felt if he had the chance to make the argument without the state knowing it was coming it may have been different. But Counsel was able to hear how the affiant who gave the affidavit with the oral testimony testified, it would not be a winner. (PCR 61).

FINDINGS AND CONCLUSIONS RELATED TO THE SPECIFIC ALLEGATIONS

REPLY CLOSING ARGUMENT ISSUE.

In the Applicant's first amended allegation, he contends that Counsel was deficient in failing to object to the following portion of the State's reply closing argument, particularly ROA 269, l. 17-25:

In this case, this box over here in the corner of the house, they said oh, he wasn't doing anything wrong in this case, you ought to find him not guilty because he didn't know anything about this, he would have gotten up out of the bed there with all those officers around and he would have just gotten rid of all this stuff. All these *big old huge bags of drugs*, they've got *drugs and stolen goods* and items, how big of a toilet would it take to flush away all that evidence that was throughout that house and scattered right and left and up and down? Drugs everywhere in the house. All this here, but scattered.

Look at the photographs of the underside of the bed up there where he

was; drug paraphernalia, sawed-off shotgun, explosives, weapons. How's he gonna get rid of any of that? He wouldn't have had time to turn around backwards in this case. And, ladies and gentlemen, it's quite a stretch to think that the SLED SWAT team and ATF and the sheriff's department would have let them get rid of a thing in this case or do one thing where they could pick up a weapon or hurt somebody in this case.

(ROA 269, l. 11-25) (emphasis added); (See also ROA 268, l. 17-24) (reference that "they were going out there to serve a search warrant on people with explosives, booby traps and sawed off shotguns). No objection was raised concerning these matters at trial.

In this allegation, Applicant contends that Trial Counsel should have objected to references in the State's reply argument to huge bags of drugs, weapons, and explosives because he claims that there was no evidence to support those assertions. This Court is constrained to find that Applicant failed in his burden of proof to show either deficient performance or prejudice under Strickland.

In order to prove Counsel was ineffective, the Applicant must show Counsel's performance was deficient and the deficient performance prejudiced the defense. Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); Thrift v. State, 302 S.C. 535, 397 S.E.2d 523 (1990). Prejudice under the Sixth Amendment test is whether there is a reasonable probability that absent Counsel's deficient performance that result of the proceeding would have been different.

A solicitor's closing argument must not appeal to the personal biases of the jurors nor be calculated to arouse the jurors' passions or prejudices, and its content should stay within the record and reasonable inferences to it. State v. Cooper, 334 S.C. 540, 514 S.E.2d 584 (1999). A solicitor has a right to state his version of the testimony and to comment on the weight to be given to such testimony. Id. Improper comments do not automatically require reversal if they are not prejudicial to the defendant, and the Applicant has the burden of proving he did not receive a

fair trial because of the alleged improper argument. Simmons v. State, 331 S.C. 333, 503 S.E.2d 164 (1998). The relevant question is whether the solicitor's comments infected the trial with unfairness as to make the resulting conviction a denial of due process. Id. (citations omitted); Humphries v. State, 351 S.C. 362, 373, 570 S.E.2d 160, 166 (2002).¹⁰

A review of the trial record reveals the following testimony related to these issues. Brian Wade testified that he was told by David Coon there were multiple firearms including rifles, assault rifles, handguns, sawed off shotguns and pistols. (ROA 77, l. 11-12). He also testified that he learned about measures they had in place including surveillance and booby traps which he relayed to Investigator Jimmy Smith of Edgefield County. (ROA 77, l. 13-16). He specifically told Investigator Smith that since there was C-4 planted around the perimeter of the property, if something happened, they needed to get away.

The property owner, Chris Harmon, denied knowledge of guns, explosives and drugs in his home. (ROA 113-114). Investigator Jimmy Smith testified that Wade told him that he had seen large quantities of guns, methamphetamines, heroin, C-4 explosives located in David Coon, Heather Hall, and Biker Tim's residence. (ROA 116, l. 8-14).

Officer Curtis Morris worked on the crime scene along with ATF, SLED, SWAT, and the Edgefield Sheriff's Department. He testified that he found weapons throughout the residence. (ROA 124). Officer Morris also located an explosive blasting cap in the common area of the residence. ATF Agent Ricardo Prince testified that he cleared the house and saw the blasting cap located therein and noted it is a form of an explosive. (ROA 177, l. 4-13).

This Court is cognizant that this complaint addressed the State's reply argument to the defense's closing statement. Trial Counsel Thuss opened his closing argument with the following

¹⁰ Darden v. Wainwright, 477 U.S. 168 (1986).

comment:

You've heard — well, let me go back. There was a search warrant executed on December 22nd and Mr. Wheeler was present along with two other people. Why didn't he flush the meth -- if he knew that police were outside, as Ms. DeWitt testified she told him, and he woke up and he had time to put on his clothes and wait before the police to come in, if he knew these drugs were there in Bedroom Number 3, why didn't he dispose of them? Wouldn't anybody in that position have tried to dispose of that? It's a crystal substance they can flush right down the toilet. It wouldn't take quite a minute.

(ROA 263, l. 5-16); (See also ROA 201 (Thuss cross of DeWitt about not observing Applicant attempt to dispose, flush, or destroy any evidence after she woke Applicant up when the police arrived)).

Related this issue, Trial Counsel's testimony was inconsistent. Trial Counsel testified that he thought some of it was objectionable. He recalled Maye's comment that Counsel did not object to a question whether there was time for someone to dispose of the drugs by flushing them in the house when they knew the police were outside. (PCR 43). Trial Counsel stated that they already established DeWitt testified that the police knocked on the door and that she got Wheeler and Hall up, took their time to get dressed, and then answered the door. (PCR 43). (ROA Tr.p. 201). Counsel stated that he argued to the jury why someone in that position would have flushed the drugs if they had time to do so. (PCR 43-44); (See ROA 262, l. 10-20).

In hindsight, Trial Counsel thought it was something he should have objected to but did not. (PCR 44). When asked what the objection would have been, Counsel testified that he thought it had been established that there were several minutes between when the police knocked on the door before they entered the house and that Maye's comment was basically saying something to the jury on whether they would believe SWAT would have waited that long before they entered. (PCR 44); (See also PCR 52- 53).

This Court must find that Counsel's hindsight concession that he should have objected is not binding to this Court on either deficient performance or prejudice under Strickland. "Admissions of inadequate performance by trial lawyers are not decisive in ineffective assistance claims. Ineffectiveness is a question for the courts, not Counsel, to decide." Walls v. Bowersox, 151 F.3d 827, 836 (8th Cir. 1998) (internal citation omitted); see also Robertson v. Pichon, 849 F.3d 1173, 1188 (9th Cir. 2017) ("Trial Counsel's post-hoc explanation that his decision was based on a legal error is not dispositive, because Strickland 'calls for an inquiry into the objective reasonableness of Counsel's performance, not Counsel's subjective state of mind.'") (quoting Harrington v. Richter, 562 U.S. at 110). Cf. Chandler v. United States, 218 F.3d 1305, 1315 n.16 (11th Cir. 2000) (because the ineffective assistance inquiry is objective, Counsel's admission of deficient performance "matters little"). Such self-proclaimed admissions have been regarded with skepticism. Reviewing an attorney's performance under Strickland involves an objective analysis. The Supreme Court has stated that:

Although courts may not indulge "post hoc rationalization" for Counsel's decision making that contradicts the available evidence of Counsel's actions, neither may they insist Counsel confirm every aspect of the strategic basis for his or her actions. There is a "strong presumption" that Counsel's attention to certain issues to the exclusion of others reflects trial tactics rather than "sheer neglect." After an adverse verdict at trial even the most experienced Counsel may find it difficult to resist asking whether a different strategy might have been better, and, in the course of that reflection, to magnify their own responsibility for an unfavorable outcome. Strickland, however, calls for an inquiry into the objective reasonableness of Counsel's performance, not Counsel's subjective state of mind.

Richter, 562 U.S. 86, 109-10 (internal citations omitted).

This Court finds that Counsel was not deficient in failing to object to this identified portion of the reply argument. The State's reply was responsive to defense's closing argument which suggested that Wheeler's failure to dispose of evidence in the period between having knowledge of law enforcement's presence suggested his innocence because he did not dispose

of the evidence in his room and the house before the police entered. Further the prosecutor asked the jurors to review the photographs presented in evidence. Although huge bags of drugs may be viewed as a rhetorical flourish, the photographs showed of the extent of drugs and weapons located at the scene and located within Applicant's control. Applicant further failed to show what appropriate objection reasonable Counsel would have made to the responsive argument. This Court must find that Counsel's failure to object was not deficient.

This Court must also find that Strickland prejudice was not proven by Trial Counsel's failure to object. In light of the evidence and testimony before the jury, this Court must find that the Applicant failed to show "that a prosecutor's improper comments amount to a constitutional violation if they 'so infected the trial with unfairness as to make the resulting conviction a denial of due process.'" Darden, 477 U.S. at 193. These challenged comments, if objectionable, did not undermine confidence in the verdict. Prejudice requires that the Applicant prove that had Counsel objected, there is a reasonable probability that the result of the proceeding would have been different. Applicant failed to meet that burden where the prosecution directed the jury to consider the evidence and photographs before the Court. In light of the evidence, the jury was free to make its own assessment of whether the bags of drugs were "huge" or not. Similarly, the blasting cap, an explosive was presented in evidence. (ROA 117, 124); State Exhibit 13, 14. This ground must be dismissed.

STATE'S CLOSING ARGUMENT ISSUE

Applicant, also asserted an ineffective assistance of Counsel issue during the State's initial closing argument which concerned "heavy narcotics, methamphetamine, crack, heroin," "a bag of human misery," explosives and stolen motorcycles. (ROA 245-247). A review of the record supports that relief is not required because Applicant did not prove deficient performance

or prejudice under Strickland.

In the State's closing argument, Deputy Solicitor Maye described the development of the Edgefield Courthouse:

... Edgefield has got history of where people would get into disputes with one another and they'd take up pistols and duel and shoot each other dead. It hasn't been long ago that men stood on battlefields and hacked each other to death with swords, eyeball to eyeball, so I doubt we're any meaner than we once were, but back then a sheriff and a chief deputy and that was it for everybody that lived here.

You know what's the difference? It's not more people and I doubt people are ever even meaner than they once were. *Heavy narcotics; methamphetamines, crack, heroin, hard narcotics. Right there, a bag of human misery.* The kind of substance that will have people go out and scour the countryside. Y'all saw here folks coming up here and testifying. Where were they all from? In case you can't recall, some of them came from Aiken, some came from houses in Columbia. These are people throughout this whole area who were hardworking people, who one guy came here and wanted to move to South Carolina to get away from crime so he could restore a house. A mechanic who thought that his son was teasing him when he said your camper's gone. These are hardworking folks that lost are so addicted to what's in that *bag of human misery* that they forgo everything that they have, they lose everything they have and they would roam the countryside cutting locks, breaking in buildings, going up under people's sheds and taking their camper, stealing their truck, **stealing motorcycles from their friends.** Anything they could get their hands on to steal and what were they doing with it?

Well, there's one thing for sure. On December the 22nd of 2015 all of those stolen goods had accumulated out there at the residence of Mr. Coon, Mr. Wheeler and Ms. Hall, and I guess on a sometimes basis Ms. DeWitt, who was a hanger-on there. All because somebody or several somebodies were so selfish and so mean and had **such black hearts that they would dispense this human misery at the expense of other people,** and that's what this case is all about. Because seated over there at the defense table in this case, Mr. Wheeler, who was happy and healthy over there, **is a person who would dispense human misery that cost so many people so much. They had all these stolen goods there that day.** And we're not saying who stole anything because who knows, but we know all of those stolen goods ended up here in Edgefield County out at that residence and we know from Brian Wade how they got there because we know what was going on. It wasn't a secret. Everybody knew; Ms. DeWitt, Mr. Wade. . . .

(ROA p. 244-24). (emphasis added).

Applicant complained that Counsel should have objected because of similar reasons as to

the State's reply argument. This Court recognizes its role in viewing these arguments both from the prosecutor's perspective and defense Counsel's perspective in making this assessment. As stated by the Supreme Court:

The 'consistent and repeated misrepresentation' of a dramatic exhibit in evidence may profoundly impress a jury and may have a significant impact on the jury's deliberations. Isolated passages of a prosecutor's argument, billed in advance to the jury as a matter of opinion not of evidence, do not reach the same proportions. Such arguments, like all closing arguments of Counsel, are seldom carefully constructed in toto before the event; improvisation frequently results in syntax left imperfect and meaning less than crystal clear. *While these general observations in no way justify prosecutorial misconduct, they do suggest that a court should not lightly infer that a prosecutor intends an ambiguous remark to have its most damaging meaning or that a jury, sitting through lengthy exhortation, will draw that meaning from the plethora of less damaging interpretations.*

Donnelly v. DeChristoforo, 416 U.S. 637, 646-47 (1974) (emphasis added).

Applicant challenges the failure to object to the highlighted statements because he disagrees with them. Counsel Thuss testified he did not find Solicitor Maye's comments objectionable. (PCR 41-42). This Court agrees that he was referring to the impact of drugs generally and that Edgefield County had been affected by it. This rhetorical device was not suggesting that Applicant was the root of all drug misery in the County.

Courts have held similar and more pointed rhetoric to not be error. Three primary arguments for permitting prosecutorial use of drug-related rhetoric hinge on the prosecutor's need to urge the jury to perform its duty. First, some courts have permitted such rhetoric because the rhetoric appropriately reminds the jury to serve as the conscience of the community. In United States v Magee, 821 (F.2d) 234 (5th Cir. 1987),¹¹ for example, the Fifth Circuit found the

¹¹ The prosecutor argued that "it's common knowledge that we got a drug problem in this United States. ... [W]hen are they going to do something about this drug smuggling? ... [H]ave your foreman sign a guilty verdict. That's the way to do something about drugs." Id at 242.

drug-related rhetoric of the prosecutor proper, holding that the comments were simply a “suggestion by the prosecutor that the jury fulfill its role as the conscience of the community.”

Id. At 242

A second justification for the use of drug-related rhetoric is that the rhetoric emphasizes the gravity of the defendant's alleged narcotics crime. This rationale underlies the Seventh Circuit's decision in United States v Ferguson, 935 F.2d 1518 (7th Cir. 1991). In Ferguson, the prosecutor argued:

[N]obody has to tell you about the scourge of drugs in our society today and the effect it is having on the social fabric today. ... You may hear that people, individual people, don't have a chance to make a difference in the fight against drugs. ... Detective Boyle, a fine law enforcement officer, stopped it. Here is your chance to do something.

The Seventh Circuit held this comment was proper, describing the rhetoric as a mere comment to the jury on the “gravity of this country's drug problem.” Third, some courts have permitted the drug-related rhetoric as a plea to the jury to enforce the law. For example, in Martinez v State, 826 S.W.2d 807 (Tex. App. 1992), the prosecutor stated about the police: “They're fighting the war on drugs and they're working hard. ... They're our first line of defense in this war on drugs.” Id. At 808. The Texas court found no error because the prosecutor was “making a plea for law enforcement,” and it held that such a plea can permissibly describe the “respective parts played in that drug war by the police, prosecutors, court and jury.” Id. Several other state courts have also relied on this rationale. See, State v Crenshaw, 852 S.W.2d 181, 187 (Mo. Ct. App. 1993) (stating that “the Prosecutor alluded to the ‘drug war’ in the United States, [and] the efforts of police to catch the culprits ‘on the battlefields of our streets[.]’”); People v. Peterson, 618 N.E.2d 388, 395 (Ill. App. 1993) (stating that “[t]he prosecutor's remarks relating to the war on drugs was permissive comment on the evils of crime and fearless administration of

justice and, therefore, did not constitute prosecutorial misconduct”); People v. Loferski, 601 N.E.2d 1135, 1145 (Ill. App. 1992); State v Plummer, 860 S.W.2d 340, 351 (Mo. Ct. App. 1993); State v Hatcher, 835 S.W.2d 340, 344-45 (Mo. Ct. App. 1992).

A fourth justification for allowing some prosecutorial comments about drugs is that these comments are permissible as a rebuttal to certain defense Counsel arguments. For example, in United States v Bascaro, 742 F.2d 1335 (11th Cir. 1984), the prosecutor asked the jury: “Isn't this case really one about a war? Haven't they invaded our shores?” Id. at 1353. The Eleventh Circuit ruled these comments permissible in light of the defense Counsel's accusation that the government had no legitimate reason to prosecute the defendant.

The South Carolina Supreme Court has addressed the general parameters of permissible closing argument in State v. Durden, 264 S.C. 86, 212 S.E.2d 587 (1975):

This Court, on numerous occasions, has held that the duty of a solicitor is not to convict a defendant, but to see that justice is done. At the same time, the solicitor should prosecute vigorously. State v. Davis, 239 S.C. 280, 122 S.E.2d 633 (1961). Closing arguments have been held improper when they have appealed to personal bias, or when they have aroused passion and prejudice. State v. White, *supra*.

In 23A C.J.S. Criminal Law s 1107, closing arguments, similar to that of the solicitor in this case, are discussed as follows:

‘So long as he stays within the record and its reasonable inferences, the prosecuting attorney may legitimately appeal to the jury to do their full duty in enforcing the law, or to return the verdict, which he conceives it to be their duty to return under the evidence, and may employ any legitimate means of impressing on them their true responsibility in this respect, as by stating that a failure to enforce the law begets lawlessness. Thus, he may in effect tell them that the people look to them for protection against crime, and may illustrate the effect of their verdict on the community or society generally with respect to obedience to, and enforcement of, the law; he has the right to dwell on the evil results of crime and to urge a fearless administration of the criminal law; and he may ask for a conviction, or assert the jury's duty to convict. He may argue with reference to any matter which the jurors may properly consider in arriving at their verdict, and may point out as well the matters which they should not consider.’

The test of granting a new trial for alleged improper closing argument of

Counsel is whether the defendant was prejudiced to the extent that he was denied a fair trial.

Id. at 92-93, 212 S.E.2d at 590-91 (emphasis added)

The solicitor also tied his comments to witnesses' drug use. Brian Wade acknowledged his use of drugs as a teenager and after his return from the military and admitted to stealing vehicles. (ROA p. 72-73). In fact, he testified that drugs made his criminality worse. (ROA 94). Jennifer DeWitt admitted to being a meth addict. (ROA p. 192-193, 198).

This Court must find that Counsel was not deficient in failing to object to the solicitor's comment about "[H]eavy narcotics; methamphetamines, crack, heroin, hard narcotics. Right there, a bag of human misery" consistent with Durden. These comments were not inconsistent with the fact that there were evils in drug use and it had an impact upon the community. This Court finds that Counsel acted reasonably under the mandates of criminal law in not objecting. Further, this Court must find that these comments did not undermine confidence in the verdict under *Strickland* as Applicant failed to prove deficient performance and prejudice.

Applicant argued that Counsel failed to object to the State referencing stolen motorcycles. He argued that he did not steal a friend's motorcycle but merely used it with his license tag while his was being repaired. (PCR 23-24). However, Applicant did not testify at trial that he only borrowed rather than stole the motorcycle. The State's theory, however, was that the motorcycle was stolen based upon the evidence presented, including Applicant's license tag was on the stolen motorcycle. (ROA 239-241). While the defense may have had a factual argument on whether the State proved the motorcycle was stolen, there was not a valid objection to be made during the State's closing argument. Counsel was not deficient in failing to object. A solicitor has the right to state his version of the testimony, its reasonable inferences and to comment on the weight to be given such testimony. State v. Caldwell, 300 S.C. 494, 504, 388

S.E.2d 816, 822 (1990). Since these comments arose from the record, Counsel was not deficient in failing to object and further prejudice has not been shown.

Further, Applicant argued Counsel failed to object these comments:

...and had **such black hearts** that they would dispense **this human misery** at the expense of other people, and that's what this case is all about. Because seated over there at the defense table in this case, Mr. Wheeler, who was happy and healthy over there, is a person who would **dispense human misery** that cost so many people so much. **They had all these stolen goods there that day.**

(ROA 246-247). The reference to "black heart" is rhetoric related to wickedness. In dispensing "human misery" was clearly a reference to selling the drugs which had an effect on the individual they sold it to. As noted above, there was evidence in the record about the assertion that "they" sold drugs. Further, there was evidence in the record that there were many stolen items in the home when it was searched. (ROA 79-80, 96) (Wade described receiving the meth from Wheeler); (ROA 122-133) (evidence of matters seized during search later identified as stolen); (ROA 140-141, 144-146, 183-185) (stolen motorcycles identified); (ROA 187-188) (stolen weapon identified). Further, Coon testified that all the guns found were stolen. (ROA 226).

Counsel was not deficient in failing to object because this comment was supported by evidence in the record and its reasonable inferences. Further, Sixth Amendment prejudice has not been shown. Applicant's allegations related to Trial Counsel's failure to object to the State's closing argument must be denied.

THE STATE'S OPENING STATEMENT ISSUE

Applicant contends Counsel was deficient in failing to object to the State's opening statement related to explosives and surveillance. In particular, he argued Trial Counsel failed to object to this statement:

Now you're gonna hear that Brian Wade laid out for them you ought to be careful when you go over there because **they've got surveillance, they've got cameras on the driveway** so that when somebody comes down the driveway they know somebody's coming. **They've got explosives.** They've got all sorts of things as countermeasures for somebody coming in trying to, A, rip them off and steal their dope or law enforcement coming in.

(ROA 60). (emphasis added).

In addition, Appellant argued Counsel failed to object to this statement: Now they got SLED and they got ATF, they got everybody under the sun to go down there and help them because **they were worried about explosives, they were worried about booby traps, they were worried about surveillance,** so they went down there ready to deal with the situation.

(ROA 62).

He claimed that explosives were not, he was not charged with anything related to explosive possession and suggested that this was highly prejudicial. As noted previously in this order, Counsel Thuss recalled that the warrant stated that the home was booby trapped, but he did not recall it being an issue at the trial. Counsel stated that he did not know whether he should have objected to the references. (PCR Tr. 53).

Regarding surveillance, Applicant complained that Jennifer DeWitt was not being truthful claiming that it was impossible for her to have a view of the driveway because there was no security camera showing a view of the driveway. (PCR 18).

"The opening statement serves to inform the jury of the general nature of the action and the issues involved so they can better understand the evidence presented." State v. Kornahrens, 290 S.C. 281, 284, 350 S.E.2d 180, 183 (1986). "The solicitor is permitted in opening statement to outline the facts the [S]tate intends to prove." Id. "As long as the State introduces evidence to reasonably support the stated facts, there is no error." Id. "Improper comments do not automatically require reversal if they are not prejudicial to the defendant, and the appellant has the burden of proving he did not receive a fair trial because of the alleged improper argument."

Brown v. State, 383 S.C. 506, 516, 680 S.E.2d 909, 915 (2009) (quoting Humphries v. State, 351 S.C. 362, 373, 570 S.E.2d 160, 166 (2002)). “The relevant question is whether the solicitor’s comments so infected the trial with unfairness as to make the resulting conviction a denial of due process.” Id. (quoting Humphries, 351 S.C. at 373, 570 S.E.2d at 166).

In Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018), the Supreme Court found Counsel was not deficient for failing to challenge solicitor’s comment in opening statement that police saw the defendant charged with robbery at the scene of the crime. The assessment is analogous to the instant situation. The Court found trial Counsel was not deficient for failing to challenge solicitor’s comment in opening statement that police saw the defendant at the scene of the crime. The Court, reviewing the later trial record found that the crime scene investigator testified that he was directed by officers who reported that they were chasing a suspect and observed him throw or dispose of a plastic bag which was later found to hold money from the robbery, and the robbery’s victim testified he told the police they could intercept the robber at the same location where officers saw him try to dispose of the plastic bag.

The Supreme Court stated, referring to the Court of Appeals finding that trial Counsel could have addressed the comments either by objecting or by pointing out in the defense closing statement that the State had failed to prove the assertion made in the opening statement, stated:

We certainly agree with the court of appeals that these are two of the options Counsel has to deal with a misstatement by the State in opening. *However, the simple fact trial Counsel does not respond to an incorrect statement made during opening does not render trial Counsel’s performance deficient.* Under certain circumstances, it may be reasonable for trial Counsel to simply ignore the misstatement. Such a decision could be based on Counsel’s assessment the point is minor and inconsequential; perhaps it is debatable whether there is evidence to support the statement; or perhaps the circumstances of the trial—as perceived by trial Counsel—unfold in such a way that pointing out the misstatement would no longer be beneficial.

Smalls, 422 S.C. at 186–87, 810 S.E.2d at 842.

The trial evidence supports a finding that explosives were on the property. Further, although no officers found evidence that the home was boobytrapped, officers did find C-4 explosive within the house. (ROA 101, 104, 113-116, 124, 176-177). As with the closing argument issue concerning similar comments, this Court must find that Counsel was not deficient in failing to object to those portions of the opening statement related to explosives and surveillance.

Similarly, there was evidence about the surveillance at the property. Brian Wade testified about the live camera feed and indicated it to Investigator Smith. (ROA 77). Jennifer DeWitt described her role in monitoring the house cameras to see who was pulling up. (ROA 191-192).

In addition, Applicant failed to prove prejudice and deficient performance by Trial Counsel's failure to object. As with Smalls, and Kornahrens, there was evidence and reasonable inferences from the evidence at trial. This Court finds that if an objection been made to the opening statement and more clarity consistent with the actual evidence been presented, the Court finds that there is a not a reasonable probability that the result of the proceeding would have been different. This case was about drug possession. His claim about the opening statement and Counsel's failure to object must be denied.

CONFLICT OF INTEREST DISCUSSION ISSUE

In his amended application, Applicant contends that Counsel failed to adequately discuss the conflict issue between representing Applicant and his co-defendant. This Court finds that reviewing the record and testimony Applicant failed to prove deficient performance and prejudice. Counsel's discussion was within the standards of competence demanded of lawyers practicing criminal law.

Prior to the beginning of the trial, Trial Counsel represented Applicant and his girlfriend, Heather Hall. The Court removed Trial Counsel from representing Hall when the State offered her a plea offer contingent upon her testifying against Applicant. Applicant claimed that issues related to a possible conflict of interest in the dual representation were not adequately discussed with him and he claimed Counsel was deficient, since prior to Trial Counsel was relieved from representing Hall. This Court finds that the Applicant has failed to prove deficient performance or prejudice.

In the direct appeal of his conviction, the following issue was raised in appeal as the Applicant's Statement of Issue on Appeal:

I. Whether the trial court reversibly erred by failing to hold an on-the-record colloquy with Applicant to determine whether Applicant knowing, intelligently, and freely waived his right to conflict free representation where Applicant and his co-defendant were represented by the same retained attorney.

In its Final Brief of Respondent, the State restated the issue as follows:

The circuit court's pre-trial removal of Appellant's Counsel as Counsel for a co-defendant removed any actual or potential conflict of interest by dual representation, and nothing in the record indicates Counsel's representation of Appellant at trial was in any way impacted by his prior representation of the co-defendant.

Following briefing, the Court of Appeals affirmed Applicant's convictions and sentences. State v. Wheeler, 2019-UP-307 (S.C. Ct. App. filed August 28, 2019). In its unpublished order, the Court of Appeals stated the following:

Affirmed pursuant to Rule 220(b), SCACR, and the following authorities: State v. Justus, 392 S.C. 416, 418, 709 S.E.2d 668, 670 (2011) (stating a defendant has the Sixth Amendment right to the assistance of Counsel); Thomas v. State, 346 S.C. 140, 143, 551 S.E.2d 254, 256 (2001) ("To establish a violation of the Sixth Amendment right to effective Counsel due to a conflict of interest arising from multiple representation, a defendant who did not object at trial must show an actual conflict of interest adversely affected his attorney's performance."); State v. Gregory, 364 S.C. 150, 152, 612 S.E.2d 449, 450 (2005)

“An actual conflict of interest occurs where an attorney owes a duty to a party whose interests are adverse to the defendants.”); *Id.* at 152-53, 612 S.E.2d at 450 (“The mere possibility defense Counsel may have a conflict of interest is insufficient to impugn a criminal conviction.”); *Fuller v. State*, 347 S.C. 630, 634, 557 S.E.2d 664, 666 (2001) (finding no conflict in trial Counsel's prior representation of one of the co-defendants); *Langford v. State*, 310 S.C. 357, 359-60, 426 S.E.2d 793, 795 (1993) (concluding Counsel did not actively represent competing interests because there was no evidence Counsel “advised either co-defendant to plead guilty in order to obtain more favorable consideration for the other” and “[t]he mere fact that [the co-defendant] would be available to testify against [the defendant did] not establish an actual conflict of interest”).

State v. Wheeler, No. 2017-000152, 2019 WL 4052476, at *1 (S.C. Ct. App. Aug. 28, 2019).

Prior to trial, Trial Counsel moved to be relieved as Counsel for Hall due to a potential conflict with representing both Applicant and Hall and requested continuance. (Court's Exhibit 1 (Memorandum in Support of Motion to be Relieved as Counsel and for a Continuance); (ROA 301-308). During a pre-trial chambers discussion about the motion, the solicitor indicated the State offered Applicant a twenty-two year negotiated sentence, and Hall a five year negotiated sentence. Trial Counsel advised the court Applicant did not want to accept the offer, but Hall did, and stated “but they're tied.” He also advised the court he discussed the issue with Applicant, but had not been able to discuss it with Hall, and he was not aware Hall's offer was contingent on her testimony against Applicant until the solicitor said it in chambers. He expressed concern over Hall's state of mind, and her ability to exercise her judgment under the circumstances. (ROA 10-13).

The solicitor then indicated Hall's plea deal would be contingent on her testifying against Applicant. (ROA l. 7-11).

The solicitor informed the court the State was ready to proceed with Applicant's case if the court determined there was a dual representation conflict, and Hall's testimony was not required for the trial to go forward. The court then asked Trial Counsel if he was ready to

proceed on Applicant's case, and give Hall an opportunity to obtain independent Counsel. Trial Counsel stated he had discussed the situation with Applicant, but had been unable to communicate with Hall.

Based on the discussion, the court ultimately relieved Trial Counsel from representing Hall, and stated Hall could either get a private attorney or a new attorney would be appointed for her. The court also gave Trial Counsel an opportunity to talk to Applicant about whether he wanted to proceed with the trial. When court reconvened, Trial Counsel did not indicate Applicant had any concerns about proceeding with the trial, and stated they were prepared to proceed.

After jury selection, the court informed Hall, who was seated at the defense table, that Trial Counsel had been relieved as her Counsel, and she would have the opportunity to obtain other Counsel. (ROA. 12-17, 42-43).

During the PCR proceeding, Counsel Trial Counsel testified that he met with Applicant and Heather Hall and discussed the possible conflict with them at the beginning of his representation. He testified that he reviewed the current caselaw to determine whether he could ethically represent both clients. He prepared a written waiver of a conflict of interest document relying upon the supreme court's decision in anticipation potential issues. The document, State Exhibit 1, was provided to and reviewed with both Wheeler and Hall. (PCR 34-35). The Waiver of Conflict of Interest and Fee Agreement (State Exhibit 1) dated February 25, 2016, read as follows:

Dear Mr. Wheeler and Ms. Hall,

It is my understanding that you wish for me to represent both of you in this general sessions matter, where you each have identical or nearly identical trafficking and possession of unlawful drugs charges, several receipt of stolen goods charges, and unlawful possession of weapons charges.

At your request, I agreed to represent you both for the purpose of obtaining an immediate circuit court bond review, which did occur. At the bond review, you indicated to the presiding judge that you each waived conflict of interest. Now, I am pursuing discovery at your request, and first and second appearances are scheduled in early April, and the court considers me the attorney of record. I am not advising you or recommending you enter into joint representation.

My retainer and fixed fee for this matter is ~~\$15,000~~, \$12,000 which is nonrefundable and earned when this agreement is made. South Carolina Rules of Professional Conduct for lawyers require me to obtain your informed consent to retain me to represent both of you and to confirm that consent in writing. In deciding whether you wish to consent to my representation of you, please consider the following:

1. Because I will be representing both of you, my ethical obligation is to treat you equally, not favoring one of you over the other. I will raise for mutual discussion any issue that I think is material to either of you. I have an obligation to provide each of you with complete information relating to my representation. You must understand that any information you share with me is not confidential as to the other party, and I will disclose all material information I receive from either of you to the other.

2. If a dispute develops between the two of you, I must withdraw from representation of one or both of you. Additionally, although neither of you have expressed anything to me that would lead me to believe you have an existing conflict of interest, a conflict of interest could arise in the future as the case progresses. For example, at some point in the future, the solicitor could offer a plea to one or both of you that would create a conflict period the solicitor could offer such a plea on the condition that one of you incriminate or give a statement or testimony harmful to the other period there could be an offer where one of you accepts A lesser sentence and the other.

In criminal defense, an actual conflict of interest occurs when a defense attorney places himself in a situation inherently conducive to divided loyalties. If a defense attorney owes duties to a party whose interests are adverse to those of the defendant, then an actual conflict exists. The interests of the other client and the defendant are sufficiently adverse if it is shown that the attorney owes a duty to the defendant to take some action that could be detrimental to his other client. So, it is understood that I will not pursue efforts where one of you would incriminate the other. I will not take any action to compare the involvement of one of you to the involvement of the other to gain leniency for one at the expense of the other.

Also, if a dispute between you arises, any communications among us will probably be admissible in evidence and not subject to a claim of attorney-client

privilege.

Once it becomes clear an actual conflict has arisen, then, you agree and consent for me to continue to represent Mr. Wheeler, and that I shall withdraw from representation of Ms. Hall. At that point, Ms. Hall may apply for a public defender. The public defender is representing Mr. Coon, and to avoid a conflict, a private attorney will be appointed. Or, Ms. Hall may retain a private attorney herself. Or, in the alternative, you both may execute a new waiver covering the specific conflict that has arisen, and based on a new waiver, I may be able to continue the representation, although some conflicts are not waivable.

3. If you do not encounter serious disagreements, multiple representation can minimize legal fees and expenses, and in this case, permit you both to have private Counsel at a cost considerably less than customary fees. However, if a conflict develops, and I am required to withdraw, one or both of you will be forced to retain separate Counsel unfamiliar with the matter. As a result your legal fees may well increase if you elect to retain paid private Counsel.

4. If you wish me to represent you despite the risks that I have outlined, I am willing to do so. I will inform you if I believe that a conflict of interest has developed. If you understand the risks involved and consent to my representation, please sign this letter, and keep a copy. Your consent will also be inferred if by your conduct you indicate that you are authorizing me to proceed with representation.

Sincerely,

Written signature

Thuss Law Office LLC by RR Thuss

We have been advised of your right to separate Counsel and of the risks of multiple representation. We hereby consent to Thuss Law Office LLC representing both of us with full knowledge of the possible risks that can flow from such representation.

Tim Wheeler (signed)

Heather Hall (Signed)

PCR Respondent Exhibit 1.

At the PCR hearing, Trial Counsel confirmed that he went over each provision with them, including that he would tell anything that one client told the other and if a dispute arose that he would withdraw from representation. He stated that after the discussion they decided to move forward with Trial Counsel's representation. He felt that Applicant and Hall understood the

provisions before Applicant signed the document. (PCR 36).¹² He clarified that the dual representation issue was discussed with each of them before the day the document was signed. (PCR 58-59). Counsel also testified that he did not learn any information from Hall that was detrimental to Wheeler's defense. He stated that he went over a number of scenarios with them. He stated that both had the same defense as it related to mere presence, constructive possession and that the drugs were not theirs. (PCR 59).

Counsel confirmed that he met with Hall or Wheeler outside of the other's presence, but also with both of them together. (PCR 36). He stated when the other was not present, Counsel would share the information with the other person.

This Court finds that Applicant failed to prove deficient performance related to the conflict that evolved. This Court finds that Trial Counsel was credible about his conflict of interest discussions with his client. There has been no showing that Hall or Applicant had conflicting defenses. The issue of a conflict arose when the State offered Hall a plea deal contingent on her testifying against Applicant immediately prior to the trial. This was consistent with the information Applicant received at the time he and Hall agreed to the dual representation as something that could terminate the joint representation. See Exhibit 1, p. 1 §2. At that point, Trial Counsel was faced with the conflict due to the inability to advise Hall on whether to accept the deal and testify against Applicant. See Hoffman v. Lecke, 903 F.2d 280, 289 (4th Cir.1990);

¹² *Matter of Anonymous Member of S.C. Bar*, 315 S.C. 141, 142-43, 432 S.E.2d 467, 468 (1993) ("a lawyer shall not represent a client if the representation of that client will be directly adverse to another client, unless the lawyer reasonably believes the representation will not adversely affect the relationship with the other client and each client consents after consultation. Rule 407, SCACR, Rule 1.7. Once the conflict is determined to be subject to client consent, the lawyer must obtain consent only after consultation. Rule 1.7. Written consent, although not required by the rules, is preferable.").

Thomas v. State, 346 S.C. 140, 144, 551 S.E.2d 254, 256 (2001) (“Although petitioner initially waived a conflict of interest, once it became clear an actual conflict existed due to the plea bargain, Counsel should have either withdrawn from representing one or both of them or acquired another waiver covering this specific conflict”).

This Court finds that, Applicant failed to show 6th Amendment prejudice. Heather Hall did not testify at the trial for either the state or the defense. Counsel’s discussions and advice concerning the potential risks were correct.

PLEA OFFER DISCUSSION ISSUE

Applicant contended Trial Counsel was ineffective in failing to advise him why he should not take a plea offer prior to the trial, he learned from Counsel that his initial offer from the Solicitor was ten years for him, five years for Heather, and seventeen years for Coon, but the offers were not set in stone and were stated in passing. (PCR 10). He stated that the State offered twenty-two or twenty-five years just before the trial started. (PCR 11). Applicant stated that him and Trial Counsel did not have much conversation about the offer but they agreed not to take it. (PCR 12). However, he claimed Trial Counsel did not tell him why not to take it. (PCR 11). During cross-examination, Applicant confirmed that he did not want to take the plea offer because he felt that he was innocent. (PCR 30).

Trial Counsel testified that the Applicant did not indicate any desire to plead guilty. (PCR 47). Counsel indicated that initially Deputy Solicitor Maye did not make Applicant any plea offers, but later learned that the State offered Coon fifteen or seventeen years. After Coon’s offer, the State initially offered Applicant seventeen years. Trial Counsel indicated that that Applicant rejected that offer and Trial Counsel suggested he’d try to work toward a ten year offer. However, Applicant felt that Coon was going to take full responsibility for the drugs and

did not want to take the offer. (PCR 48-49). While Coon was being tried, Maye indicated that he offered twenty-two years, but Applicant did not accept it. (PCR 49). Counsel stated that Deputy Solicitor Maye's view about the Applicant file changed over time. (PCR 56).

At the outset of the trial, the trial judge inquired if there were any plea negotiations. (ROA 10). Deputy Solicitor Maye indicated that he offered Applicant twenty-two years and offered Hall five years. (ROA 10-11). Trial Counsel indicated that Applicant did not want the offer, but that Hall did. However, as noted previously, the solicitor then indicated that her offer was contingent on testifying against him. (ROA 11).

This Court finds that the Applicant failed to show deficient performance on the part of Counsel related to the plea offers.

The United States Supreme Court has held that "defense Counsel has the duty to communicate formal offers from the prosecution to accept a plea on terms and conditions that may be favorable to the accused." Missouri v. Frye, 566 U.S. 134, 145 (2012); Collins v. State, 422 S.C. 250, 261, 810 S.E.2d 871, 876 (2018).

"Claims of ineffective assistance of Counsel in the plea bargain context are governed by the two-part test set forth in Strickland." Frye, 566 U.S. at 140. To establish ineffective assistance of Counsel, a petitioner must prove: (1) his Counsel was deficient in his representation; and (2) he was prejudiced as a result. Strickland, 466 U.S. at 687. For the first factor, the petitioner must show that "Counsel's representation fell below an objective standard of reasonableness." Id. at 688, 104 S.Ct. 2052. To show prejudice in this context, petitioners must demonstrate a reasonable probability that (1) "they would have accepted the earlier plea offer had they been afforded effective assistance of Counsel," and (2) "the plea would have been entered without the prosecution canceling it or the trial court refusing to accept it, if they had the

authority to exercise that discretion under state law.” Frye, 566 U.S. at 147; See Walters v. Martin, 18 F.4th 434, 442 (4th Cir. 2021).

Based on the record and Counsel’s credible testimony, this Court finds that Counsel was not deficient related to the plea offers. Applicant may be suggesting Counsel was deficient for failing to convince Applicant to take the offers, but this Court does not find Counsel deficient. This Court finds that Counsel properly communicated each plea offer to Applicant. This Court further finds that Applicant knowingly chose to reject each offer based upon his belief that Coon would take responsibility for the drugs if he went to trial to support his defense. Applicant failed to show that Counsel’s communication related to the offers was lacking in any respect. This ground raised at the hearing must be denied.

CONSTRUCTIVE POSSESSION AND HAND OF ONE HAND OF ALL AND MERE PRESENCE DISCUSSIONS

Applicant contended that Counsel failed to fully explain constructive possession, conspiracy and “hand of one hand of all” during their discussions. At the PCR proceeding, Applicant testified that he had discussions with Counsel about these concepts, but not “big discussions.” (PCR 16). Applicant indicated they discussed hand of one hand of all , but at this time he did not remember what it meant other than the fact that he was there made him guilty. (PCR 16). Trial Counsel testified that they discussed mere presence, constructive possession, and other defenses. (PCR 40). Counsel stated that it was a constructive possession case and the defense was that it was not his residence and he was only there as a guest of Hall. Counsel stated it was their defense that he was not involved in the offense and was merely present. (PCR 40-41). Counsel also stated that he may have had discussions with Applicant about accomplice liability (“hand of one hand of all”) and conspiracy generally in the discussions. (PCR 41). Counsel stated that it was their strategy to establish that he was not a resident and that the drugs

were found in a different room than where he spent his time with Hall, in addition to calling Coon as a witness to confirm that the drugs were his and not Applicant's. (PCR Tr. 45).

Applicant failed to show how these discussions with Counsel were deficient, as related to the case. Mere presence is insufficient to prove constructive possession. State v. Tabory, 260 S.C. 355, 364, 196 S.E.2d 111, 113 (1973). In order to prove constructive possession, the "State must show a defendant had dominion and control, *or the right to exercise dominion and control over the [illegal substance].*" State v. Halvard, 274 S.C. 397, 400, 264 S.E.2d 841, 842 (1980) (emphasis added). Further, the State may establish constructive possession by either circumstantial or direct evidence. Id. The defendant's knowledge and possession may be inferred if the substance was found on premises under his control. State v. Adams, 291 S.C. 132, 135, 352 S.E.2d 483, 486 (1987); State v. Heath, 370 S.C. 326, 329–30, 635 S.E.2d 18, 19 (2006) ("The State failed to present evidence that Appellant could exercise dominion and control over the area where the crack was found. Appellant lived in the home where the crack was found. However, the home is owned by Appellant's mother. As a result, it is arguable that Appellant merely had a right to access the area where the crack was found, not actual dominion and control of the property."). Applicant's strategy was to urge that Applicant did not have dominion or control over the area where the drugs were found. Although evidence presented by the State challenged the defense's theory, it cannot be stated that Counsel was deficient.

Further, this Court does not find that Sixth Amendment prejudice was shown. The allegation must be dismissed.

**INADEQUATE CROSS-EXAMINATION OF INVESTIGATOR ROOSEVELT YOUNG
ABOUT ITEMS SEIZED**

In the March 22, 2023 amendment, Applicant asserted that Counsel failed to adequately cross-examine the investigator about items seized from the home, especially regarding

testimony about a brown jar that was actually a green vase. This Court finds that Applicant failed to prove deficient performance or prejudice on this ground.

During the trial, Investigator Roosevelt Taylor testified about search warrant results. In its pertinent part related to this claim, he testified on cross-examination about \$7,373 being recovered in the search as listed on the return. (ROA 153, 11. 9-13). The following then occurred:

Q. And on the return this is the search warrant return after everything was inventoried. There is something about some money in a jar.

A. Yes, sir.

Q. Do you know how much money was in that jar?

A. It's a brown colored antique jar, glass jar. No, sir, because you would have to break it to actually get into it to count the denominations of money and coins and we haven't done that yet.

Q. Okay. Oh, so it was a sealed

A. Yes, sir.

Q. --- a sealed jar?

A. Yes, sir. Yes sir it was.

(ROA 153, 1. 15-154)

In the PCR hearing, Applicant contend that Counsel should have addressed more of the inconsistencies in Investigator Young's testimony, particularly related to where the money was found. (PCR 20). Applicant testified that there was evidence that money was claimed to be found in a locked brown box and that it was Heather's green vase that had around \$300 located in their room. (PCR 20). Applicant claimed that there was inconsistency between whether it was a jar or a green flower vase. Applicant claimed he did not know anything about a sealed brown box. Id. He contended that the money was in a green flower vase in Heather Hall's room which

should have been brought out because she was convicted on meth charges. (PCR 25-26).

Applicant asserted that Trial Counsel could have further addressed the inconsistency with the money. Applicant claimed that Counsel did not bring up that the State claimed that over \$7,300 was found in his wallet. (PCR 22). Applicant claimed that it was impossible for that amount to be in his wallet, and further stated that Investigator Young admitted to being human and making mistakes. (PCR 22). Applicant only saw a picture of the wallet in discovery with a few bills, and he never saw a picture that showed \$7,300. (PCR 31).

At trial during cross-examination, the following occurred related to the money and the wallet based upon Investigator Young review of the return to the search warrant after acknowledging that he did not fill out the return:

Q. Right. And I did have a -- a photograph showing the stack of bills a stack of bills here.

A. Yes, sir. You can see a couple hundreds right there. It should be the 358.

Q. Okay. But from this picture you can't tell, can you?

A. No, sir. No, sir.

Q. So based on the information in the return, there was money found in here with the ammo can?

A. Yes, sir.

Q. And then there was certain amount of money in the wallet?

A. Yes, sir.

Q. But do you know with a degree of certainty that this is all correct or could there have been some mistake in how much money was where?

A. No, sir.

Q. Can you explain then?

A. \$7,337 was in the wallet unless he just forgot to put it on there. We had so many people and so much stuff going on, but I'm pretty sure he's got it on there somewhere.

Q. So so somebody could have made a mistake then?

A. I mean, it's possible, we are human, but it's in the pictures and everything.

MR. THUSS: Thank you. No further questions.

(ROA 155); (See also ROA 250, 255) (reference to the billfold and \$7,300, ROA 130 (billfold); (ROA 152-153) (\$7,337 found in billfold in Room 2)).

In the defense closing, Trial Counsel addressed the money found at the scene in the following manner:

And you heard- you heard the testimony, you heard it, Mr. Wheeler had money in his wallet, but I questioned Investigator Young because I've got money laying - of money that was found in this box, an indeterminant amount of money, showing hundred dollar bills on top and then there's money laying around on the floor and then there's an amount of money in Mr. Wheeler's wallet, and it looks like it's a thick wad of money, but because the money I have questions about the- how the total amount of money that they're trying to attribute to Mr. Wheeler was come up with because it's clear that there it appears that they're saying that all the money was Mr. Wheeler's, but it's clear that there were sums of money that were found with these drugs.

Mr. Wheeler . . . it's admitted into evidence, Mr. Wheeler's documents, none of them that none of them that have addresses here, but there's one in particular, a green receipt, that showed that Mr. Wheeler was making child support payments. Well, if Mr. Wheeler couldn't keep large sums of money in the bank because he was afraid it was gonna . . . But there are other reasons why a person could have large sums of money . . . on their person.

(ROA 267-68) (emphasis added).

During the trial, evidence was presented about the cash and money in addition to the material above. State Exhibit 16 shows money, among pills and scales. A photograph of the wallet of the Applicant was shown containing cash that was in bedroom 2. (ROA 125-26). In State Exhibit 32, a close up of the wallet was shown with the visible money. State Exhibit 18 was

described as a photograph under the bed showing more cash money among other items. State Exhibit 63 was another photograph of the Applicant's license found with the wallet in Bedroom 2. (ROA 126), State 62 and 68 showed the wallet containing money with the Applicant's license found in Room 2. (ROA 152).

At the PCR hearing, Trial Counsel indicated that his recollection was that whether cash was found in a jar or vase was not a big issue at trial. (PCR 46).

Counsel's decisions about "whether to engage in cross-examination, and if so to what extent and in what manner, are ... strategic in nature." United States v. Nersesian, 824 F.2d 1294, 321 (2d. Cir. 1987), cert. denied, 484 U.S. 958 (1987). "[T]he conduct of examination and cross-examination is entrusted to the judgment of the lawyer, and an appellate court on a cold record should not second-guess such decisions unless there is no strategic or tactical justification for the course taken." United States v. Luciano, 158 F.3d 655, 660 (2d Cir. 1998). Here, it is apparent that Petitioner was defended very ably and effectively by trial Counsel and there is no basis for a conclusion that Counsel's performance was objectively unreasonable. See United States v. Eisen, 974 F.2d 246, 265 (2nd Cir.1992) (finding no ineffective assistance despite defendant's claim that lawyer had failed to thoroughly impeach prosecution witnesses because decisions as to nature and extent of cross-examination are strategic); Matthews v. Workman, 571 F.3d 1065, 1081 (10th Cir. 2009) (finding cross-examination properly limited to avoid opening up unfavorable evidence); Phoenix v. Matsanz, 233 F.3d 77, 83 (1st Cir. 2000) (finding choice of emphasis in cross-examination is prototypical example of strategy); Henderson v. Norris, 118 F.3d 1283 (8th Cir. 1997) (a delicate task entrusted to the professional discretion of Counsel).

"[D]eciding what questions to ask a prosecution witness on cross-examination is a matter of strategy." United States v. Jackson, 546 F.3d 801, 814 (7th Cir. 2008). To show that Counsel's

cross-examination was deficient under the first prong of the Strickland test, a defendant must overcome the “strong presumption that Counsel’s conduct falls within the wide range of reasonable professional assistance.” United States v. Rodriguez, 53 F.3d 1439, 1448 (7th Cir. 1995) (quotation marks omitted). And to show prejudice, the defendant must “explain[] ... what [the witness’s] responses to further cross-examination might have revealed” and “how those responses might have affected the result.” Id. at 1449; see Rodriguez, 53 F.3d at 1448 (“Based on his trial Counsel’s cross-examination of [the witness, in which he attempted to challenge her recollection, motivation for testifying, and her ability to recognize the defendant], we refuse to conclude that the defendant’s attorney’s performance fell below par.”).

Applicant failed to overcome the strong presumption from Strickland that Trial Counsel conduct was reasonable. Applicant’s suggestions that further questions should have been asked of Investigator Young were not constitutionally required and the relevant points of Investigator Young was presented. On direct-examination, Investigator Young, the supervisor of narcotics, described the purpose of the December 22, 2015 search was to collect suspected narcotics at the scene. (ROA 147). His direct examination focused on the location of drugs seized, including the ammo box (State Exhibit 23); (ROA 150). He was shown on direct State Exhibit 62 and 63 which were described as photographs of the wallet revealing the Applicant’s drivers license and asserted that \$7,337 was recovered from the billfold which was located in Bedroom 2 and an additional \$358 from the ammo can (from Bedroom 3) for a total of \$7,731. (ROA 152). In cross-examination, Trial Counsel immediately asked Investigator Young about the money and the existence of the unaccounted for money in the sealed jar, which Investigator Young described as brown. (ROA 153). The challenge made on cross-examination was whether the jar identified in the return to the warrant had money in it that was accounted for in the amount of

\$7,337 which Young indicated it did not because the jar remained sealed. There is no other reference at trial about the jar other than what Counsel presented on cross-examination.

Applicant suggests that the item was misidentified as brown and he claims that Counsel should have challenged it because he claims it was actually a green vase. Applicant failed to show the significance as to whether it was a brown jar or a green vase. The item Investigator Young referred to was sealed and the money was not counted in his calculations. There was no assertion the jar or vase contained drugs. Trial Counsel credibly testified that whether it was a jar or vase was not a big deal. (PCR 46).

This Court finds Applicant failed to show Trial Counsel was deficient in challenging Investigator Young through cross-examination whether the sealed item was a brown jar or a green vase. Applicant failed to show the impact of the difference toward the charges since it did not involve the drugs. Applicant's claims that the green vase was Hall's property and unconnected to him would have only limited impact because it still was located in the room he shared with her. This Court finds that the record demonstrates that rather than focus on potential minute differences in testimony, Counsel on cross-examination was focused on amount of documented money might not be correct. This Court finds that Applicant failed to show that Counsel was deficient in questioning related to the jar.

Similarly, Applicant has failed to show Counsel was deficient in failing to show the amount of money attributed to his wallet as being \$7,337 was incorrect. As noted above, there was evidence of photographs of the wallet and money. In addition in defense Counsel's closing, he acknowledged that "there's an amount of money in Mr. Wheeler's wallet, and it looks like it's a thick wad of money" referencing the photograph and questioned the amount of money being attribute to the Applicant. (ROA 267). This Court finds that Counsel was not deficient in his

approach related to the money and the wallet.

The Court further finds that Sixth Amendment prejudice has not been shown. There is no reasonable probability the result of the proceeding would have been different if Counsel suggested that sealed item with money that had not been accounted for was a green flower vase as opposed to a brown colored antique jar. This was a purely collateral matter that could have had no effect on the actual matter that he was charged with. Similarly the Court finds that prejudice has not been shown because Counsel did not seek to impeach whether that amount of money attributed to the wallet could actually fit in the wallet. Applicant's Counsel in his closing argument implicitly made that suggestion. The jury had the photographs that Counsel was referring to as it related to the "thick wad of money." This case, however, was about dominion and control of the drugs. The jury had the ability to make the assessment based upon the inquiry made of Investigator Young by the defense, as well as the photographs presented to the jury as to whether the money could have been in the wallet or elsewhere at the scene and in Bedroom 2. This allegation must be dismissed

CROSS-EXAMINATION AND IMPEACHMENT OF BRIAN WADE

Applicant argued that Counsel failed to adequately cross-examine and impeach Brian Wade related to the fact that Applicant gave the bag of drugs to Coon and that Wade and Applicant had previously gone shooting together. He also contends that Counsel should have more effectively impeached him about his criminal record.

During his PCR testimony, Applicant initially contended that he never met with Brian Wade and first learned about him when the defense received his statement Wade gave the solicitor after being the disclosed confidential informant was disclosed. (PCR 16-17, 19). Applicant claimed that it was not true that he had fired weapons with Wade and Coon on some

occasion and further denied giving Coon a bag of drugs in Wade's presence. (PCR 19).

Trial Counsel testified that before the State disclosed that Brian Wade as a confidential informant, they were trying to figure out who gave the State the tip who had been known by either Applicant or Heather Hall.

The trial record reflects that Trial Counsel thoroughly sought to impeach Wade's testimony. (ROA 90-104, 107). Trial Counsel initially restated and developed Wade's criminal history including giving false information to police, receiving stolen goods, possession of stolen vehicles, criminal domestic violence, assault and battery, possession of meth, escape, grand larceny, and receiving stolen goods when he was arrested for the drug charge. (ROA 90-93). He developed that Wade admitted he had a drug problem and admitted having a lifestyle of drugs and crime since 2007. (ROA 94). Trial Counsel developed that Wade's relationship began with Coon two months prior to the incident. (ROA 85-96). Wade denied meeting with Applicant in Wade's earlier drug purchases because he stayed outside and his girlfriend went in for purchases. (ROA 96). Counsel also developed that DeWitt had done drugs before with him. (ROA 97). Counsel further developed that SLED Agent Daquan Smith had contacted the local investigators to meet with him at Wade's own request. (ROA 98).

On further cross-examination, Counsel developed that Wade was aware in going through the house about the firearms and testified that Applicant opened the door in that meeting with a firearm and asked Wade if he would like to shoot and "[he] did one with, him too." (ROA 98). However, Wade denied that it was shooting at the van at the time when it was just Wade and Coon shooting. (ROA 98). Wade initially claimed on inquiry that it was never mentioned who owned the guns, though a number of firearms were located in Coon's bedroom. (ROA 99). Wade clarified that Coon told him that he owned some of the firearms. (ROA 99). However when

Wade identified the gun as the one Coon got from his room and he shot, he stated that Coon had not identified who owned that weapon. (ROA 99-100). Upon examination, Wade admitted he was under the influence of drugs when he went to Wade's house and was a daily meth and marijuana user, but denied using pills or alcohol. (ROA 101). Wade denied that he gave the information to the police in the hopes of receiving favorable treatment, and claimed that he was not aware that his case could be reviewed. (ROA 101-102).¹³ Wade confirmed that he had already pled guilty to the escape, and drugs and that law enforcement had not given him the belief that he would receive favorable treatment in his cases. He stated that after the plea, the next meeting was a couple of weeks before this trial when he was asked if he would testify. At that time, he was made aware of the statute that could help him if he testified and that he could receive a lighter sentence. (ROA 103).

This Court finds that Counsel acted within the standards of competence in his cross-examination. Applicant has only made conclusory assertions. The record shows that Counsel sought to impeach Wade about the prior record and his hopes of having his sentence reviewed under the "substantial assistance" statute. See S.C. Code Ann. § 17-25-65 (2014). The Applicant failed to identify other matters of impeachment that Counsel failed to use.

Applicant further complains that Wade testified that he had met Applicant prior to the December 6 incident and that he had gone shooting with him.¹⁴ Trial Counsel's examination of

¹³ Wade testified on direct examination that he hoped when he gave the information initially that it would help him. ROA 87. The Solicitor then pointed out to Wade that there was now a method that if he testified that his sentence could be reviewed for assistance that he gave previously. ROA 87-88. However, he denied that any specific promises had been made to him. ROA 88. Wade confirmed that the source of the drugs that he received on December 6 were fronted by Wheeler and that he actually saw Wheeler hand the drugs to Coon and then they were provided to him. ROA 88-89.

¹⁴ In direct examination, Wade testified that he had gone shooting with Coon previously. He identified one incident when he and Coon shot sawed off shotguns at a broken down van in the

Wade, as noted above, touched upon those areas and subjected his credibility to the jury's consideration. There was no testimony in the State's direct examination that Applicant had shot guns with Wade, only that Coon had. However, Applicant has not indicated how this would have been otherwise addressed in the cross-examination when there was no other evidence to dispute it to use to support the Applicant position. In direct examination, Wade testified that he was aware of Applicant, known as "Biker Tim" lived there. (ROA 79). It is unclear when this was stated on cross-examination as a passing comment that reasonable defense Counsel could have done anything except emphasize it which would not necessarily be to his client's benefit. This Court must conclude that Counsel was not deficient.

Applicant also failed to show prejudice related to Wade's cross-examination. Although Applicant disagrees with Wade's testimony related to his knowledge of Applicant and whether they jointly fired weapons. There is no reasonable probability that the result of the proceeding would have been different if this Court could have found deficiency in that area. Applicant's strategy was to call David Coon who was going to admit the drugs were his own, but would also acknowledge that Applicant and his daughter were dating and she frequently was there and had a room to stay in. However, Coon claimed that they did not live there. (ROA 223). Coon admitted at one point he had stated Applicant was his brother but admitted that he was a friend of his and he had known him for around one year. (ROA 224, 228).

CROSS-EXAMINATION AND IMPEACHMENT OF JENNIFER DEWITT

Applicant argued that Trial Counsel should have more effectively addressed Jennifer DeWitt's testimony because he felt that she was lying. (PCR 18). Applicant acknowledged that

driveway. ROA 78. On cross-examination, Wade denied that Wheeler was involved in the particular shooting. ROA 98.

he knew DeWitt for a few months but questioned the accuracy of her testimony related to her ability to perform surveillance of the driveway on a TV monitor because he claimed that there were no security cameras covering that area. (PCR 18). He also complained that her testimony stating he was at the house all the time was inaccurate. (PCR 18-19). In addition, Applicant also argued that DeWitt's testimony was inconsistent, and Trial Counsel failed to adequately impeach her using her prior record.

During the PCR Hearing, Trial Counsel indicated that DeWitt's testimony that she was present when the police arrived and knocked on the door, she got Applicant up, dressed and that they took their time answering the door was not contested at the trial. (PCR 44). Counsel confirmed the strategy he discussed with Applicant was to impeach Wade and DeWitt, have Coon testify to admit the drugs were Coon's, and present that the drugs were found in different rooms. (PCR 45-46, 49-50). Trial Counsel recalled that Wade and DeWitt had testified at Coon's earlier trial. It was his earlier opinion that DeWitt was going to be a favorable witness for Applicant, but they learned that she had changed her testimony a couple of weeks before trial from her original statements. (PCR 50). DeWitt's statements changed in December when she was charged with trafficking in meth for the first time about a month before trial. (PCR 54). Trial Counsel stated that he inquired whether she was getting a deal to testify though the state denied there was one. (PCR 55).

During trial, DeWitt testified that she was at home the day of the search. (ROA 191). She stated that there were cameras in the house. She stated that her role was to watch the cameras to see who was pulling up, when they knocked on the door, she would determine whether they wanted to speak with Wheeler or Coon, then, she would take them to one of the bedrooms and bring them to the kitchen table to speak with them, and make the purchases. After that they

would frequently hang out. She admitted that she was a drug addict and sometimes got high with them from the drugs they purchased with people who had been there before. (ROA 192). She described that Applicant had a green box that he carried around with him when people came over. She stated that he sold methamphetamine in Ziploc bags. She stated that she and Heather Hall would go to the grocery and buy the Ziploc bags. (ROA 194). She described hearing Coon and Applicant discussing drug prices and the quality of the batches as well as paying \$16,000 per kilo. (ROA 195). She testified that she had been arrested and was initially charged with possession with intent to distribute. (ROA 197). She testified that it was upgraded to trafficking the same as the others and also charged with stolen guns and vehicles. (ROA 197). He denied anyone had made direct promises to her about what was going to happen with her charges. (ROA 197-98). She stated that she was in jail clothing that day as a result of a bench warrant for not showing up to court. (ROA 198). She also confirmed that in July 2015, she was convicted on possession of meth in Aiken County and was on probation. The direct examination closed with her confirming that she had been addicted to meth for a long time, which was why she was at the house. (ROA 198).

On cross-examination, Trial Counsel developed that she had been arrested on December 22, 2015, the day the warrant was served and spoke with ATF and Edgefield County Law Enforcement. She confirmed that she gave them an oral statement and claimed nothing had been done in front of her. (ROA 200). She stated in the statement that she had never bought meth from Applicant and that Applicant tried to help her get straightened out. (ROA 200). Importantly for the defense strategy, Counsel was able to get DeWitt to acknowledge that she was the first one who noticed law enforcement outside. She confirmed that she told them that she woke up Applicant and while they waited did not see Applicant take any action to dispose of any drugs.

(ROA 201). She stated that she had recently received the trafficking charge. (ROA 201-02). When she gave the initial oral statement to the police on December 22, 2015, she was charged with the same charge as the others, except for trafficking. (ROA 202). When asked if she was changing her "truthful" statement that she gave, the solicitor objected to the opinion about it being truthful. (ROA 202). The Court then acknowledged, after sustaining the objection that "she's given conflicting statements. The jury can hear the testimony." (ROA 202, l. 10-17).

The defense continued and then questioned her about her prior record for possession of meth, although she denied it was a felony. (ROA 202). She admitted that she was on possession. Finally, she admitted that she had stated in her December 22 statement that she was fearful of losing her children and of a probation violation. (ROA 203).

However, on re-direct she confirmed that she told officers who lived at the residence Applicant rode the black motorcycle and red truck, and that Applicant carried the green box. (ROA 204).

The Court finds that the Applicant failed to prove deficiency related to Counsel's examination of DeWitt. Trial Counsel was able to develop evidence in support of their theory that he did not seek to destroy any drugs when he was aware that law enforcement was at the home. Further, he impeached her with previous inconsistent statements. Applicant has not shown that Counsel omitted any specific statement during cross-examination that would have aided Applicant's defense. Although Counsel did not seek to contradict or challenge DeWitt's testimony about how often Applicant was there, she had claimed in direct that Applicant was Heather Hall's boyfriend, and she described the room Heather and Applicant stayed in. (ROA 193, l. 7-10). However, Applicant failed to show how the witness could have been further impeached related to how often Applicant stayed there. Similarly, as to the cameras used for

surveillance, Applicant failed to show Counsel was deficient related to this collateral issue.

Applicant failed to show Sixth Amendment prejudice under Strickland. There was evidence in the record for a jury to understand that DeWitt made inconsistent statements and a change occurred after she was charged with trafficking. Further, Trial Counsel presented her prior record during cross-examination. Other than Applicant's testimony, Applicant failed to show that there was only one camera at the house, and it was not showing the driveway. Nevertheless the number of cameras at the home was not a critical fact. It is undisputed that DeWitt was monitoring at least one camera and was aware that law enforcement arrived that morning. The Court finds that there is no reasonable probability that the result of the proceeding would have been different if Applicant successfully presented there was only one camera or more fully presented evidence from the inconsistent statements. It must be dismissed.

FAILURE TO ADEQUATELY MEET AND REVIEW DISCOVERY TO PREPARE FOR TRIAL

Federal case law holds that there is no constitutional minimum number of meetings between attorneys and their clients to satisfy competency. Campbell v. Polk, 447 F.3d 270, 279 fn.2 (4th Cir. 2006) United States v. Olson, 846 F.2d 1103, 1108 (7th Cir. 1988) (reciting that there is no constitutional minimum number of meetings between attorney and client and observing that an experienced attorney may get more out of a single meeting than a neophyte). "Brevity of time spent in consultation, without more, does not establish that Counsel was ineffective." Easter v. Estelle, 609 F.2d 756, 759 (5th Cir. 1980) (holding it is not enough to merely show that Counsel only met with his client twice before trial as long as Counsel devoted sufficient time to insure an adequate defense and to become thoroughly familiar with the facts of the case and the law applicable to the case, and holding the record revealed that Counsel was so prepared.).

South Carolina case law has established that even if Trial Counsel only met with his client very briefly, that alone does not establish that he was unprepared or ineffective at trial. See Harris v. State, 377 S.C. 66, 75, 659 S.E.2d 140, 145 (2008) ("First, there is no question that Counsel met with [Applicant] on several occasions prior to the first trial. Even if the meetings were brief, this fact alone is not indicative of inadequate trial preparation"). Mere speculation and conjecture is insufficient to substantiate allegations that Counsel's deficient performance was prejudicial. See Harris v. State, 377 S.C. 66, 659 S.E.2d 140 (2008), abrogated by Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018).

An Applicant who alleges his or her defense attorney was ineffective in failing to spend more time preparing or providing a copy of the discovery materials must demonstrate prejudice by showing what evidence could have been discovered or what other defenses could have been pursued. Harris v. State, 377 S.C. 66, 75-76, 659 S.E.2d 140, 145-46 (2008) (citing Jackson v. State, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998)), abrogated on other grounds by Smalls, 422 S.C. 174, 810 S.E.2d 836. An Applicant must also show how the new evidence or defenses would have resulted in a different outcome. Id. (citing David v. State, 326 S.C. 283, 288, 486 S.E.2d 747, 749 (1997); Skcen v. State, 325 S.C. 210, 214, 481 S.E.2d 129, 132 (1997)). Mere speculation as to how the alleged lack of preparation prejudiced an Applicant is not sufficient to support a grant of relief. Harris, 377 S.C. at 75, 659 S.E.2d at 145 (citing Glover v. State, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995)).

At the outset of the trial, the State indicated that Judge Hayes directed them to try Applicant's case during the January 17, 2015 term. The State indicated that they exchanged discovery with Applicant's Counsel on December 16 and contended that the only new material was Jennifer DeWitt's statement given prior to coming in and testifying in Coon's trial. Solicitor

Maye indicated Trial Counsel had a copy of the statement within an hour of it being made. He also indicated that Trial Counsel was present during Coon's trial. (ROA 10).

Applicant argued Trial Counsel failed to meet with him sufficient times or go over the discovery with him. He testified that in his initial meeting with Trial Counsel he spoke about the charges, and he later claimed that he did not see all the discovery. Applicant testified that he retained Trial Counsel a couple months after his arrest and that Counsel only provided him the parts of the discovery that he deemed pertinent. (PCR 7-9). He admitted that Counsel showed him the pictures of the drugs and the drug box. He had advised Counsel that he owned a couple of the guns but did not recall all of the guns. (PCR 8-9). He stated that they reviewed Coon's and the arresting officer's statements. (PCR 9). He claimed that he only met with Counsel four or five times and since Counsel was also representing Hall, some of the meetings were with both of them. (PCR 12).

Counsel testified that he initially met with Applicant in the detention center and believed that he met with Applicant at least eight times. (PCR 31-32, 38-39). Counsel noted he made a number of motions, including bond motions. He testified that they developed information about the confidential informant in mid-December, some of which was included in his motion to be relieved. (PCR 38).

Counsel and Applicant reviewed, and Counsel explained the significance of the discovery. (PCR 39). He recalled reviewing around 300 photographs and the electronically received file. (PCR 39). Some of the discovery he received was before co-defendant Hall was released on bond. He stated that he brought his computer to the detention center to review discovery with Applicant and Hall together. (PCR 39-40).

Counsel discussed constructive possession, mere presence and defenses, including a

staleness claim related to the search warrant. (PCR 40). They discussed that he was not a resident and was only in a relationship with Hall but was not involved in the offense. (PCR 40). Counsel indicated a significant issue in the discovery was whether the government could prove the discovered drugs were Applicant's and whether he had been drug trafficking. Counsel was aware of the drug's location and the house's layout, including where Applicant, Hall, and Coon stayed. Counsel also indicated that in the meeting they went over the statements from the discovery, particularly noting DeWitt's initial statements were favorable to Applicant. (PCR 54).

This Court finds that the Applicant failed in his burden of proof as it relates to the number of meetings or review of discovery. This Court finds Counsel's testimony credible as it relates to the amount of meetings and the fact that they reviewed all of the discovery. Applicant failed to identify an item or piece of evidence that he was not aware of which he believes should have been presented at trial or that Counsel failed to disclose to him. This Court finds that Counsel spent an adequate amount of time with Applicant prior to trial and that Counsel was not deficient.

In addition, Applicant failed to show prejudice because he has suggested no relevant evidence that Counsel failed to disclose to him from discovery or what other defenses Counsel could have pursued. An Applicant must show how the new evidence or defenses would have resulted in a different outcome to a reasonable probability. Applicant has not done so on this allegation. It must be dismissed.

**FAILURE TO PURSUE MOTION TO SUPPRESS EVIDENCE FROM THE SEARCH
WARRANT BASED UPON ALLEGED STALENESS**

Applicant argued that Counsel should have pursued his motion to strike the testimony related to the evidence received pursuant to a search warrant. The motion argued that the warrant

was stale and, therefore, the fruits of the search would have been inadmissible at trial. This Court finds that Counsel was not deficient, and Sixth Amendment prejudice was not proven. Applicant asserted that Counsel should have pursued the motion to suppress, even though the judge in Coon's trial denied the motion.

At the outset of the trial, the following occurred related to the search warrant:

MR. MAYE: And may it please the Court, Your Honor? I don't know if they're gonna move -- it may be strategy not to move to suppress the search warrant, so if they don't want to take that up pretrial, you know, I - - that's what we did last week. I'm not trying his case for him. If that's not part of their strategy, I'll stand aside, but we do have a search warrant.

THE COURT: All right.

MR. THUSS: Yes, Your Honor. I was here and I was able to hear the hear the argument in court. It was a search warrant that was supported by sworn oral testimony and within the four corners of the search warrant it looked like there could be issues and those issues were presented by Mr. Drylie, but then after hearing Investigator Smith's testimony concerning the oral testimony that he gave to the magistrate, I don't believe that there's - -that there's an issue here that I would want to present on the search warrant especially in light of what we're dealing with the constraints on time.

THE COURT: Okay.

MR. MAYE: No worries about that. I just wanted to make sure it was strategy and ... we do have a search warrant and I understand there'll be no contesting it. Thank you.

THE COURT: Mr. Thuss for the record, this case does, as I'm informed, involve the results of the search of a piece of property based on a search warrant and that issue was presented to Judge Hayes last week via the affidavit from the magistrate as well as sworn testimony from the investigator. Mr. Thuss was present during the entire trial and observed that he is making an informed decision that the search warrant appeared after considering everything to be sufficient and probable cause was found to have a search presented.

MR. THUSS: Yes, your honor. Because the real issue was reliability of the confidential informant and whether there was any corroboration investigation and the supplemental oral testimony addressed those.

(ROA 43, I. 12-44, I.24.).

Trial Counsel testified in the PCR hearing that he had been prepared to make a suppression argument. However, while he sat through Coon's trial, Coon's public defender made the same argument Trial Counsel intended to make and he was able to hear the State's response to the suppression motion. (PCR 52-53, 60-61). He stated he did not make the motion and argument in Applicant's case because it was not successful in Coon's case. (PCR 45). Counsel acknowledged that there was a different judge in Coon's trial than he had in his trial but rejected the assertion that it was likely that Judge Griffith would rule differently if it was presented to him, (PCR 52). He felt a motion to suppress based on the delay in the search warrant would not have been successful. After he heard the testimony of the officer who gave the affidavit, Counsel stated he knew it would not be a winner. (PCR 61).

This Court finds that Applicant failed to meet his burden of proof to show deficient performance. This Court finds Counsel decision not to pursue a suppression motion at trial was not the result of neglect or ignorance but an informed decision. Counsel prepared a motion which he represents was similar to the motion Counsel for Coon presented at the earlier trial. Counsel was present at the Coon trial when that similar motion was presented and learned that the Investigator Smith's testimony concerning was presented to the magistrate addressed the portion of the search warrant that Counsel was going to argue was defective. See State v. Weston, 329 S.C. 287, 290, 494 S.E.2d 801, 802 (1997) ("A search warrant that is insufficient in itself to establish probable cause may be supplemented by sworn oral testimony."). However, "sworn oral testimony, standing alone, does not satisfy the statute." State v. McKnight, 291 S.C. 110, 352 S.E.2d 471 (1987). This Court does not find Counsel was deficient in seeking to pursue a similar argument that was unsuccessful a week before.

This Court further finds that Applicant failed in his burden of proof under Strickland to show prejudice. Applicant failed to present any information or evidence to the Court that had Counsel made the motion that there is a reasonable probability that the evidence would have been suppressed and the result of the proceeding would have been different. As evident in the trial record, as well as Counsel's credible PCR testimony he would have made the same argument as was presented in Coon's trial. It is also undisputed that the earlier judge denied the motion to suppress. The Supreme Court has addressed in a similar setting why the Applicant here would fail in his presentation. The touchstone of an ineffective-assistance claim is the fairness of the adversary proceeding, and "in judging prejudice and the likelihood of a different outcome, '[a] defendant has no entitlement to the luck of a lawless decisionmaker.'" Nix, 375 U.S. at 175. (quoting Strickland, 466 U.S. at 695); (emphasis needed); Lockhart v. Fretwell, 506 U.S. 364, 370, 113 S. Ct. 838, 843, 122 L. Ed. 2d 180 (1993). Applicant made no showing or presentation that Judge Griffith would had ruled differently than Coon's Trial Judge. Strickland's burden is upon the Applicant not the State to show prejudice. Applicant failed in his burden of proof under Strickland.

COUNSEL'S STRATEGY WAS NOT INEFFECTIVE

Applicant generally argued that Counsel did not have a trial strategy. Trial Counsel credibly testified that the strategy was that they would present a defense that he was not a resident of the home where the drugs were seized, was merely present and did not have constructive possession of the drugs. Counsel argued that the drugs were found in a different room than the room where Applicant and Heather Hall shared. (PCR 45). Counsel planned to impeach Brian Wade and DeWitt based upon her changed statements and to call David Coon to indicate that all the drugs were his. (PCR 45). Counsel also indicated that when he made the

decision to call Coon, that he was aware that he was losing the right to last argument. (PCR 50). Counsel initially indicated that Applicant would testify; however, after the state rested, Counsel spoke with Applicant about taking the stand and decided not to testify. (ROA 47, l. 8-10).

DAVID COON ISSUE

At the outset of the trial, Counsel advised the court that he had subpoenaed David Coon but he had not been able to talk with him yet. He stated he had not made a decision to put him up because at the end of Coon's trial he gave a statement indicating all the charges were his and the other people were not culpable. (ROA 13-14). Solicitor Maye advised Counsel that Coon was available for Counsel to talk to him. Later in the trial, after the directed verdict was denied, Trial Counsel indicated he had spoken with Coon and that he was going to call him. (ROA 210). During Coon's testimony, Trial Counsel indicated he had spoken with Coon for five minutes that morning. (ROA 212). During his testimony, Coon indicated that he eventually pled guilty to all the charges, indicating the drugs, the stolen goods, camper, the Harley Davidson motorcycle, the Red Chevy pickup truck, the saw-off shotguns, and the Mossburg shotgun were all his. (ROA 213). Coon confirmed that he told the court that he accepted full responsibility for everything inside and outside his house. (ROA 214). He concluded his direct examination by indicating that the co-defendants "didn't have nothing to do with it, that everything there was mine." (ROA 214, l. 18-19).

Applicant argued Counsel was deficient because he only met with Coon for less than ten minutes. (PCR 28). This Court finds that Applicant failed to show Counsel was deficient in the strategy and his limited discussions with Coon. Since Coon did testify as expected, prejudice has not been proven.

Strickland itself refers to Counsel's strategic choice, 466 U.S. 668, 699, 104 S.Ct. 2052, 2070, and, in fact, also establishes a presumption that the challenged action of Counsel might be considered sound trial strategy. Id. at 689, 104 S.C. at 2065; see also Cullen v. Pinholster, 131 S.Ct. 1388, 1403, 179 L.Ed.2d 577 (2011) (the presumption was established to avoid the temptation to second-guess Counsel's performance).

APPLICANT'S MAIL ISSUE AND RESIDENCE ISSUE

This Court finds that Counsel was not deficient in his preparation, decisions, and strategy based upon his investigation and knowledge of the case. Applicant claimed that Counsel should have specifically pointed out that he did not receive mail at Coon's home address to support his assertion that it was not his residence. The State admitted evidence at trial that bills, Applicant's mail, and Applicant's clothing was located at Coon's residence to support the State's position that Applicant lived there. (ROA 63, 128-130); State Exhibits 64-69. This mail had various addresses for Applicant in Aiken, North Augusta, and Graniteville. (ROA 128-129). There were other private papers of Applicant's also found in the bedroom. Counsel's closing argument, stated, "there's no mail, there's nothing that showed that [Applicant]... was a resident." (ROA 263, l. 22-23). This Court must find that Counsel covered what he now claims to be a deficiency. Counsel adequately addressed the argument with the use of the evidence presented. The Court does not find Counsel deficient as it related to the mail issue.

Similarly, Counsel was not deficient in attempting to show that it was not his residence. Applicant claimed that he lived in Aiken, whereas Coon and Heather Hall lived in Edgefield. (PCR 10). In addition to pointing out the mail recovered at the scene was not addressed to Coon's home, Counsel attempted to show Applicant's residence was in Aiken. In his opening statement, Counsel stated that Applicant had been a resident of Aiken for several years. (ROA

67). Evidence was presented that Applicant is not on the lease and the owner of Coon's house was not familiar with him. (ROA 112-113). Evidence also indicated that law enforcement knew it was Coon's principal home. (ROA 120-121). In his direct examination of David Coon, Counsel claimed the co-defendants had nothing to do with the crime and all the evidence was his. Applicant has failed to present any credible evidence that Counsel should have presented that Applicant did stay or live with Coon. Absent this evidence, Applicant has not shown Counsel was deficient.

However, the issue was not whether this was his official residence, but whether he had sufficient access to Coon's residence to have either actual or constructive possession of the drugs. DeWitt claimed that Applicant was Heather Hall's boyfriend. (ROA 190). Hall claimed that she and Applicant stayed in one of the rooms in Coon's residence. (ROA 193). During Coon's cross-examination, he stated that Applicant lived in Aiken, but he was not aware of the Applicant's address. (ROA 227-228). In bedroom 2 where Applicant and Hall were purported to stay, officers found Applicant's wallet, insurance papers for a 2004 vehicle in the Applicant's name, and men's clothing. (ROA 131-132).

Since the Applicant has not presented credible evidence of what Counsel should have presented, the Court must find that Applicant failed to show Sixth Amendment prejudice. It must be dismissed.

FINGERPRINT ON AMMO BOX ISSUE

Applicant argued that Counsel erred in not presenting evidence that a fingerprint found on the green ammo box that had the drugs was not his fingerprint. (PCR 52).

Counsel testified that they had considered putting in the evidence about the fact that the fingerprint found on the ammo box was not Applicant's and that Counsel was aware the results

were that the fingerprint that officers found on the box did not belong to Applicant. Counsel testified he did not bring it up in the case in chief, did not bring it up when Mr. Coon testified, and that he did not call anyone as a witness who made the fingerprint determination. (PCR 51).

This Court finds that Counsel was not deficient in failing to show that the green box did not have Applicant's fingerprint at the time it was seized. The record of the trial shows that there was no testimony about the fingerprint during the trial by the state or defense witnesses. This Court finds that this was a strategic decision on Counsel's behalf and not the product of neglect or ignorance.

Even if this Court was to find deficient performance, this Court finds that there was no prejudice under Strickland for failing to present the fingerprint results. The record shows that the green ammo box was not located in the room Applicant stayed with Hall. (ROA 149-150). State Exhibit 23. Officers found \$358, marijuana, methamphetamine, and other pills in the box. (ROA 151-152, 154); State Exhibits 23. At trial, DeWitt claimed that she saw Applicant carrying around the green box before. (ROA 193-194, 204).

However, at trial, the green box was not the only item that connected Applicant to the crimes. Importantly, the green box was located in the room where the puppies were and all the occupants had access to the room, not just the Applicant, so the fact his print someone else's print was on the box did not preclude Applicant having prior possession when he still had constructive possession at the time of the search on December 22, 2025. As stated previously, Wade testified that he had been fronted meth by Applicant and Coon. (ROA 79). Wade testified that he was talking to Coon and Applicant went back to his room and brought back Ziploc bags with the drugs on December 6. (ROA 80, 84). Wade indicated that he was absolutely certain that the source of the drugs he was fronted that day was Applicant's. (ROA 88). However, Wade

never indicated that Applicant was holding the ammo box. He was not identified as carrying the green box with him at the time of the distribution to Coon who then gave it to Wade. (See ROA 265) (“I don’t believe that we heard any testimony that [DeWitt] or Mr. Wade saw him taking drugs out of this box and we don’t know what was in this toolbox when she saw him carrying it around because we didn’t have specific testimony about when she saw him carrying it around”).

Defense presented the testimony of Coon who claimed responsibility for all the crimes. The issue before the jury was whether Applicant had constructive possession of the drugs – not whether he touched the ammo box. In addition to the drug charges, Applicant was also charged with the possession of unlawful firearms and receiving stolen goods. These charges were unrelated to the green ammo box.

In addition, Coon indicated that he owned the green ammo box and that he sold drugs from it. (ROA 224-225, 230-231).

The State’s theory was that all the co-defendants were involved in the trafficking - not just Applicant. As to the weapons, Wade testified that Applicant showed off the weapons and claimed ownership. (ROA 98-100). Wade also claimed that weapons were all around the scene and Applicant was holding a weapon on that day when he was fronted the drugs. (ROA 104). He claimed everyone had access to the weapons. (ROA 106). Wade claimed that he shot a sawed off shotgun that day. (ROA 83-84). Wade further identified the camper and the red truck that were at the scene when he went there in December. (ROA 84-85). Wade identified State Exhibit 9 as the motorcycle that Coon rode. (ROA 84). Wade stated Applicant told him that some of the firearms in his room were his. A shotgun was seized during the search and guns were found throughout the house. (ROA 122-123, 131-132). Most of the weapons were located in Coon’s room. (ROA 136-137).

As to each of the items which resulted in the convictions it is overwhelming that the State had shown either actual or constructive possession. Even with the fingerprint evidence presented, the Applicant failed to show a reasonable probability that the result of the proceeding would have been different, including the drug charges. Confidence in the outcome has not been undermined by the lack of evidence that his fingerprint was not identified as the print on the ammo box. Despite the defense's evidence from Coon that he was responsible for all the crimes, there was enough evidence in the record for the jury to determine had constructive possession of the drugs and stolen items and an active participant in the criminal activity.

Further, this Court finds that Counsel's failure to point out that none of Applicant's mail included Coon's address was not adequate to satisfy Sixth Amendment prejudice under Strickland. There is no reasonable probability that the result of the proceeding would have been different under a review of the record.

SUFFICIENT NOTICE OF TRIAL

Applicant argues that he had insufficient notice of the trial. (PCR 11-12). On December 20, 2014, Applicant and Counsel received notice that Applicant's trial was added to the January term. (ROA 302, ¶7). During a previous term of court, Judge Hayes told the parties to try the case during the January term. Applicant continually moved for release on bond. Solicitor Maye noted that the U.S. Attorney's Office decided before the last term of court that they were not going to try Applicant in federal court, which left the state charges. (ROA 10). The record shows that Counsel moved for a continuance primarily based upon DeWitt's changed statement. (ROA 303-304).

This Court finds that Applicant failed to show deficient performance. The Court incorporated by reference the portion of this order above related to Counsel's alleged failure to

adequately meet and review discovery with Applicant. Counsel competently moved for a continuance to the next term of court. The record shows, that notice was given on December 20, 2016, and the trial began on January 17, 2017. This was nearly notice for one month. It appears that Counsel was diligent in his trial preparation, including sitting through the co-defendant's trial and learning the strength of the State's case as it related to Coon. This allegation must be denied.

COUNSEL FAILED TO INVESTIGATE MITIGATING EVIDENCE

Applicant argued that Counsel failed to investigate mitigating evidence. (PCR 28). He stated that Counsel only spoke with Edgefield County Law Enforcement. (PCR 28). Applicant failed to present any mitigating evidence that he claims Counsel should have pursued. Because of the failure of this, Applicant failed to prove deficient performance and prejudice. As stated previously, an Applicant must also show how the new evidence or defenses would have resulted in a different outcome. David v. State, 326 S.C. 283, 288, 486 S.E.2d 747, 749 (1997); Skeen v. State, 325 S.C. 210, 214, 481 S.E.2d 129, 132 (1997). Mere speculation as to how the alleged lack of preparation prejudiced an Applicant is not sufficient to support a grant of relief. Glover v. State, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995).

This Court would note that Counsel made a plea in mitigation of sentence. Due to the trafficking conviction, the potential sentence rested between 25 to 30 years. Counsel argued that his only record was a prior misdemeanor for unlawful possession. He stated Applicant was 54 years old at that time and was honorably discharged from the military in 1987. (ROA 295). Counsel advised the court that Applicant's mother had died a couple of years before and his father died while he was incarcerated. Although divorced, he had two working sons and had

remaining family in Pennsylvania. (ROA 296). Counsel indicated that he had no mental health background.

In response to the trial court's request for allocation, Applicant stated and claimed innocence of the charges:

THE COURT: Mr. Wheeler, how did you get involved with this stuff?

THE DEFENDANT: I was in the wrong place, sir. There's no question. A huge mistake. I've never trafficked or sold a drug in my life I did do recreational there for about a year, that was a mistake, but I've never trafficked a drug in my life. I **didn't know the drugs were present at that amount.** It doesn't matter now, but I don't know what else to say.

(ROA 296, l. 12-18. (emphasis added).

This Court further finds that Applicant failed to show prejudice under Strickland. This assertion does not support a claim for relief.

CHAIN OF CUSTODY AND MISSING PERSONAL PAPERS

Applicant argued that the chain of custody was incorrect. He claimed his cellphone and mother's last will and testament were present at the scene, and neither were listed on the return to the search warrant nor in any law enforcement paperwork. (PCR 23, 30). He asserted these items were beside the nightstand in the room. He stated he received the will not too long before his arrest. Applicant presented further information, but he claims he has never recovered either of these items.

This Court finds that Counsel is not deficient based upon this allegation. These matters were a two-edge sword if Counsel would have pursued it further. In particular the mother's last will and testament in his possession at the Coon home would further support the State's theory of his dominion and control of items at the home and support state theories of at least a part time residence.

Nevertheless, his complaint about the thoroughness of the State's records related to the do not establish Sixth Amendment prejudice. His allegation is dismissed.

CONCLUSION

Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. His claim of newly discovered evidence must fail because he failed to show a manifest injustice from his entry of a free and voluntary guilty plea and sentence within the negotiated range. Therefore, this application for post-conviction relief must be **DENIED and DISMISSED WITH PREJUDICE.**

This Court notifies Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by Counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), an Applicant has a right to an appellate Counsel's assistance in seeking a review of the denial of PCR. Rule 71.1(g), SCRPC, provides that PCR Counsel must serve and file a Notice of Appeal on the Applicant's behalf if the Applicant wishes to seek appellate review. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 9th day of September 2025.

Kristi Curtis

THE HONORABLE KRISTI F. CURTIS
Presiding Judge
Eleventh Judicial Circuit

Edgefield, South Carolina

WITNESSES

ECSD

YOUNG

DOCKET NO. 2016-GS-19- 244

The State of South Carolina

County of EDGEFIELD

COURT OF GENERAL SESSIONS

APRIL TERM 2016

THE STATE

VS.

TIMOTHY WAYNE WHEELER

ARREST WARRANT NUMBER

2015A1910100732

ACTION OF GRAND JURY

Shirley Campbell
Foreperson of Grand Jury

Date: 4/18/17

CDR#0189

VERDICT

State v. Burns

Guilty

4/18/17

Indictment for

POSSESSION WITH INTENT TO
DISTRIBUTE A SCHEDULE IV
CONTROLLED SUBSTANCE

Foreperson of Petit Jury

Date:

DONALD V. MYERS, SOLICITOR

STATE OF SOUTH CAROLINA)	INDICTMENT FOR
COUNTY OF EDGEFIELD)	POSSESSION WITH INTENT TO DISTRIBUTE A SCHEDULE IV CONTROLLED SUBSTANCE

At a Court of General Sessions, convened on March 30, 2016 the Grand Jurors of Edgefield County present upon their oath:

That TIMOTHY WAYNE WHEELER, did in Edgefield County on or about December 22, 2015, knowingly and intentionally possess with intent to distribute a quantity of Alprazolam (generic for Xanax), a controlled substance, in violation of §44-53-370(b)(2), South Carolina Code of Laws, 1976, as amended, such possession not having been authorized by law, with penalties provided for in §44-53-370(b)(3), South Carolina Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



 ASSISTANT SOLICITOR

DOCKET NO. 2016-GS-19- 246

The State of South Carolina

County of EDGEFIELD

COURT OF GENERAL SESSIONS

APRIL TERM 2016

THE STATE

vs.

TIMOTHY WAYNE WHEELER

CDR#0315

Indictment for

POSSESSION OF AN UNLAWFUL
FIREARM

DONALD V. MYERS, SOLICITOR

WITNESSES

ECSD

DORAN

ARREST WARRANT NUMBER

2015A1910100740

ACTION OF GRAND JURY

BILL

Sherrie Campbell
Foreperson of Grand Jury
Date: MAR 30 2016

VERDICT

Shirley S. Barnes

Gu. 1/4

4/18/17

Foreperson of Petit Jury
Date:

STATE OF SOUTH CAROLINA)	INDICTMENT FOR
COUNTY OF EDGEFIELD)	POSSESSION OF AN UNLAWFUL FIREARM

At a Court of General Sessions, convened on March 30, 2016 the Grand Jurors of Edgefield County present upon their oath:

That TIMOTHY WAYNE WHEELER, did in Edgefield County on or about December 22, 2015, unlawfully store, keep, possess, or permit another to store, keep, or possess a firearm, described as follows: a Harrington and Richardson, Inc. Topper Model M48, 12 gauge shotgun with serial # [REDACTED] the barrel of the shotgun was sawed off making the length of the shotgun less than 26 inches, in violation of §16-23-230 of the South Carolina Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



 ASSISTANT SOLICITOR

DOCKET NO. 2016-GS-19- 247

The State of South Carolina
County of EDGEFIELD
COURT OF GENERAL SESSIONS
APRIL TERM 2016

THE STATE
vs.

TIMOTHY WAYNE WHEELER

CDR#0315

Indictment for

**POSSESSION OF AN UNLAWFUL
FIREARM**

DONALD V. MYERS, SOLICITOR

WITNESSES

ECSD

DORAN

ARREST WARRANT NUMBER

2015A1910100742

ACTION OF GRAND JURY

BILL

Sherrice Campbell
Foreperson of Grand Jury
Date: MAR 30 2016

VERDICT

Stacy M. Barrow
Guilty
4/18/17

Foreperson of Petit Jury
Date:

WITNESSES
ECSD
YOUNG

ARREST WARRANT NUMBER
2015A1910100720

ACTION OF GRAND JURY
Sherrice Campbell
Foreperson of Grand Jury
Date: MAR 30 2016

VERDICT
Stacy A Bonds
Guilty
4/18/17

Foreperson of Petit Jury
Date:

DOCKET NO. 2016-GS-19- 250

The State of South Carolina
County of EDGEFIELD
COURT OF GENERAL SESSIONS
APRIL TERM 2016

THE STATE
vs.

TIMOTHY WAYNE WHEELER

CDR#0186

Indictment for
POSSESSION WITH INTENT TO
DISTRIBUTE MARIJUANA

DONALD V. MYERS, SOLICITOR

STATE OF SOUTH CAROLINA)
)
COUNTY OF EDGEFIELD)

INDICTMENT FOR
POSSESSION WITH INTENT TO DISTRIBUTE
MARIJUANA

At a Court of General Sessions, convened on March 30, 2016 the Grand Jurors of Edgefield County present upon their oath:

That TIMOTHY WAYNE WHEELER, did in Edgefield County on or about December 22, 2015, knowingly and intentionally possess with intent to distribute a quantity of Marijuana, a controlled substance, in violation of §44-53-370(b)(2), South Carolina Code of Laws, 1976, as amended, such possession not having been authorized by law, with penalties provided for in §44-53-370(b)(2), South Carolina Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



ASSISTANT SOLICITOR

WITNESSES

ECSD

YOUNG

ARREST WARRANT NUMBER

2015A1910100717

ACTION OF GRAND JURY

TRU

Sherrice Campbell

Foreperson of Grand Jury
Date: *Mar 8 2016*

VERDICT

Shirley A. Barnes

Guilty

4/18/17

Foreperson of Petit Jury
Date:

DOCKET NO. 2016-GS-19- 251

The State of South Carolina

County of EDGEFIELD

COURT OF GENERAL SESSIONS

APRIL TERM 2016

THE STATE

vs.

TIMOTHY WAYNE WHEELER

CDR#0370

Indictment for

TRAFFICKING METHAMPHETAMINE

DONALD V. MYERS, SOLICITOR

STATE OF SOUTH CAROLINA)
)
COUNTY OF EDGEFIELD)

INDICTMENT FOR
TRAFFICKING METHAMPHETAMINE

At a Court of General Sessions, convened on March 30, 2016 the Grand Jurors of Edgefield County present upon their oath:

That TIMOTHY WAYNE WHEELER, did in Edgefield County on or about December 22, 2015, knowingly, intentionally, willfully and unlawfully sell, manufacture, cultivate, deliver, purchase or bring into this state, or provide financial assistance or otherwise aid, abet, attempt or assist, conspire or participate with others to sell, manufacture, cultivate, deliver, purchase, or bring into this State, or was knowingly in actual or constructive possession of, and/or knowingly attempt to become in actual or constructive possession of more than four hundred (400) grams of Methamphetamine, a controlled substance, in violation of and with penalties provided for in §44-53-375(C)(1)(a), South Carolina Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



ASSISTANT SOLICITOR

DOCKET NO. 2016-GS-19- 255

The State of South Carolina

County of EDGEFIELD

COURT OF GENERAL SESSIONS

APRIL TERM 2016

THE STATE

vs.

TIMOTHY WAYNE WHEELER

ARREST WARRANT NUMBER

2015A1910100731

ACTION OF GRAND JURY

Sherrin Campbell
Foreperson of Grand Jury

Date:

CDR#3425

VERDICT

Indictment for

RECEIVING STOLEN GOODS

Stanley M. Barnes

Guilty

1/18/17

Foreperson of Petit Jury

Date:

DONALD V. MYERS, SOLICITOR

STATE OF SOUTH CAROLINA)
 COUNTY OF EDGEFIELD)

INDICTMENT FOR
 RECEIVING STOLEN GOODS

At a Court of General Sessions, convened on March 30, 2016 the Grand Jurors of Edgefield County present upon their oath:

That TIMOTHY WAYNE WHEELER, did in Edgefield County on or about December 22, 2015, buy or receive certain personal goods of James Thomas Miner, described as follows: a Mossberg 12 gauge shotgun Model 88 serial # [REDACTED] of the value of less than Two Thousand Dollars (\$2,000.00), such goods having been feloniously taken and carried away with intent to deprive the owner thereof permanently of such goods, and the said defendant knowing such goods to have been stolen, in violation of §16-13-0180 of the South Carolina Code of Laws, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


 ASSISTANT SOLICITOR

DOCKET NO. 2016-GS-19- 256

The State of South Carolina

County of EDGEFIELD

COURT OF GENERAL SESSIONS

APRIL TERM 2016

THE STATE

vs.

TIMOTHY WAYNE WHEELER

WITNESSES

ECSD

DORAN

ARREST WARRANT NUMBER

2015A1910100727

ACTION OF GRAND JURY

Sherrill Campbell

Foreperson of Grand Jury

Date: MAR 30 2016

VERDICT

Stacy M. Barnes

Guilty

4/18/17

Foreperson of Petit Jury

Date:

CDR#3740

Indictment for

RECEIVING STOLEN GOODS

DONALD V. MYERS, SOLICITOR

STATE OF SOUTH CAROLINA)
)
COUNTY OF EDGEFIELD)

INDICTMENT FOR
RECEIVING STOLEN GOODS

At a Court of General Sessions, convened on March 30, 2016 the Grand Jurors of Edgefield County present upon their oath:

That TIMOTHY WAYNE WHEELER, did in Edgefield County on or about December 22, 2015, buy or receive certain personal goods of William Cecil Allen described as follows: a 2007 Zeppelin Camper 30 foot VIN# [REDACTED] of the value of more than Two Thousand Dollars but less than Ten Thousand Dollars (\$10,000), such goods having been feloniously taken and carried away with intent to deprive the owner thereof permanently of such goods, and the said defendant knowing such goods to have been stolen, in violation of §16-13-0180 of the South Carolina Code of Laws, as amended, with punishment provided for in §16-13-0180(b) of the South Carolina Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



ASSISTANT SOLICITOR