

THE STATE OF SOUTH CAROLINA
In the Supreme Court

RECEIVED

Apr 16 2026

S.C. SUPREME COURT

APPEAL FROM DILLON COUNTY
Court of General Sessions

Paul M. Burch, Circuit Court Judge

Appellate Case No. 2022-000324

The State,

Respondent,

Marc Yasin Mckeiver,

Petitioner.

APPENDIX

Dayne C. Phillips, Esq.

SC Bar No. 77712
Price Benowitz LLP
1614 Taylor Street, Suite D
Columbia, SC 29201
(803) 807-0234

ATTORNEY FOR PETITIONER

Alan Wilson

Attorney General

Mark R. Farthing

Assistant Deputy Attorney General

PO Box 11549
Columbia, SC 29211
(803) 734-3727

William B. Rogers, Jr.

Solicitor, Fourth Judicial Circuit
PO Box 616
Bennettsville, SC 29512
(843) 479-6516

ATTORNEYS FOR RESPONDENT

INDEX

INDEX i

RECORD ON APPEAL1
FILED JUNE 21, 2023

FINAL BRIEF OF APPELLANT436
FILED JUNE 21, 2023

FINAL BRIEF OF RESPONDENT465
FILED JUNE 21, 2023

MOTION TO HOLD APPEAL IN ABEYANCE AND TO REMAND FOR A HEARING ON A
MOTION FOR A NEW TRIAL BASED ON AFTER-DISCOVERED EVIDENCE.....517
FILED JUNE 6, 2025

RETURN IN OPPOSITION TO MOTION TO HOLD APPEAL IN ABEYANCE AND TO
REMAND FOR A HEARING ON A MOTION FOR A NEW TRIAL BASED ON AFTER-
DISCOVERED EVIDENCE535
FILED JUNE 16, 2025

APPELLANT’S AFFIDAVIT545
FILED JULY 7, 2025

ORDER DENYING MOTION TO HOLD APPEAL IN ABEYANCE AND TO REMAND FOR
A HEARING ON A MOTION FOR A NEW TRIAL BASED ON AFTER-DISCOVERED
EVIDENCE.....548
FILED JULY 23, 2025

PETITION FOR REHEARING.....550
FILED AUGUST 4, 2025

NO ACTION ON PETITION FOR REHEARING LETTER554
FILED AUGUST 8, 2025

OPINION NO. 2026-UP-018.....555
FILED FEBRUARY 11, 2026

PETITION FOR REHEARING.....561
FILED FEBRUARY 26, 2026

ORDER DENYING PETITION FOR REHEARING565
FILED MARCH 17, 2026

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM DILLON COUNTY
Court of General Sessions

Paul M. Burch, Circuit Court Judge

Appellate Case No. 2022-000324

Trial Court Case No. 2019-GS-16-0996

The State of South Carolina,

Respondent,

v.

Marc Yasin Mckeiver,

Appellant.

RECORD ON APPEAL

Dayne C. Phillips, Esq.

SC Bar No. 77712
Price Benowitz LLP
1614 Taylor Street, Suite D
Columbia, SC 29201
(803) 807-0234

ATTORNEY FOR APPELLANT

Alan Wilson

Attorney General

Mark R. Farthing

Assistant Deputy Attorney General

PO Box 11549
Columbia, SC 29211
(803) 734-3727

William B. Rogers, Jr.

Solicitor, Fourth Judicial Circuit

PO Box 616
Bennettsville, SC 29512
(843) 479-6516

ATTORNEYS FOR RESPONDENT

INDEX

INDEX i

TRIAL TRANSCRIPT1
DATED JANUARY 10-12, 2022

JURY VOIR DIRE6

JURY SELECTION.....15

PRE-TRIAL MOTIONS.....28

NEIL v. BIGGERS HEARING

 ALEX BLAKE

 Direct Examination by Mr. Daniel.....95

 Cross Examination by Mr. Brooker99

 Redirect Examination by Mr. Daniel104

 Recross Examination by Mr. Brooker106

 JAMES MARTIN

 Direct Examination by Mr. Daniel.....107

 Cross Examination by Mr. Brooker110

 Redirect Examination by Mr. Daniel113

 Recross Examination by Mr. Brooker114

 Redirect Examination by Mr. Daniel115

 Recross Examination by Mr. Brooker116

OPENING STATEMENT BY MR. DANIEL.....134

OPENING STATEMENT BY MR. BROOKER136

TESTIMONY

 JAMES MARTIN

 Direct Examination by Mr. Daniel.....141

 Cross Examination by Mr. Brooker165

 Redirect Examination by Mr. Daniel185

 Recross Examination by Mr. Brooker197

 Redirect Examination by Mr. Daniel202

 ALEX BLAKE

 Direct Examination by Mr. Daniel.....205

 Cross Examination by Mr. Brooker216

MARIBETH MCCORMACK	
Direct Examination by Mr. Daniel.....	232
Cross Examination by Mr. Brooker	244
Redirect Examination by Mr. Daniel	255
Recross Examination by Mr. Brooker	256
DIRECTED VERDICT MOTION	261
DEFENDANT’S RIGHTS.....	272
TESTIMONY	
ASIA PAGE	
Direct Examination by Mr. Brooker	275
Cross Examination by Mr. Daniel	279
Redirect Examination by Mr. Brooker.....	282
Recross Examination by Mr. Daniel.....	284
CLOSING ARGUMENT BY MR. DANIEL.....	289
CLOSING ARGUMENT BY MR. BROOKER.....	291
CLOSING ARGUMENT BY MR. DANIEL.....	316
JURY INSTRUCTIONS.....	329
VERDICT	352
SENTENCING	358
STATE’S EXHIBIT NO. 9 (SLED REPORT BY MS. MCCORMACK).....	372
STATE’S EXHIBIT NO. 10 (SNAPCHAT AUTHENTICATION).....	376
DEFENDANT’S EXHIBIT NO. 1 (SEARCH WARRANT).....	377
NOTICE AND MOTION FOR NEW TRIAL WITH ATTACHMENTS	384
FILED JANUARY 20, 2022	
MOTION HEARING TRANSCRIPT	397
DATED MARCH 10, 2022	
ARREST WARRANT	426
INDICTMENT AND SENTENCING SHEET	427

CERTIFICATE OF COUNSEL431

THE FOLLOWING EXHIBITS ARE ON FILE WITH THE DILLON COUNTY CLERK OF COURT'S OFFICE: STATE'S EXHIBIT #1 (FLASH DRIVE); STATE'S EXHIBIT #2-8, 11, 13-19 (PHOTOGRAPHS).

STATE OF SOUTH CAROLINA)
)
COUNTY OF DILLON) In Circuit Court of the
) Fourth Judicial Circuit
) 2019-GS-16-0996

THE STATE,)
)
) Plaintiff,)
)
) vs.) Portion of
) Transcript of Record
)
MARC YASIN McKEIVER,)
)
) Defendant.)
)
)
)
)
)

Dillon, South Carolina
January 10-12, 2022

B E F O R E:

The Honorable Paul M. Burch

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

Mr. Shipp Daniel, Esquire
Attorney for Plaintiff

Mr. Thurmond Brooker, Esquire
Attorney for Defendant

Lisa Carter
Court Reporter

I N D E X

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

<u>WITNESSES</u>	<u>PAGE</u>
<u>Monday, January 10, 2022</u>	
Voir Dire.....	6
Jury Selection.....	15
Motion.....	28
<u>Tuesday, January 11, 2022</u>	
Motion.....	80
Neil vs. Biggers Hearing.....	94
Alex Blake:	
Direct Examination by Mr. Daniel.....	95
Cross-Examination by Mr. Brooker.....	99
Redirect Examination by Mr. Daniel.....	104
Re-cross Examination by Mr. Brooker.....	106
James Martin:	
Direct Examination by Mr. Daniel.....	107
Cross-Examination by Mr. Brooker.....	110
Redirect Examination by Mr. Daniel.....	113
Re-cross Examination by Mr. Brooker.....	114
Redirect Examination by Mr. Daniel.....	115
Re-cross Examination by Mr. Brooker.....	116
Judge’s Instructions.....	130
Opening Statements- Mr. Daniel.....	134
Closing Statements- Mr. Brooker.....	136

1	James Martin:	
2	Direct Examination by Mr. Daniel.....	141
3	Cross-Examination by Mr. Brooker.....	165
4	Redirect Examination by Mr. Daniel.....	185
5	Re-cross Examination by Mr. Brooker.....	197
6	Redirect Examination by Mr. Daniel.....	202
7	Alex Blake:	
8	Direct Examination by Mr. Daniel.....	205
9	Cross-Examination by Mr. Brooker.....	216
10	Maribeth McCormack:	
11	Direct Examination by Mr. Daniel.....	232
12	Cross-Examination by Mr. Brooker.....	244
13	Redirect Examination by Mr. Daniel.....	255
14	Re-cross Examination by Mr. Brooker.....	256
15	<u>Wednesday, January 12, 2022</u>	
16	Motion.....	261
17	Defendant's Rights.....	272
18	Asia Page:	
19	Direct Examination by Mr. Brooker.....	275
20	Cross-Examination by Mr. Daniel.....	279
21	Redirect Examination by Mr. Brooker.....	282
22	Re-cross Examination by Mr. Daniel.....	284
23	Closing Arguments- Mr. Daniel.....	289
24	Closing Arguments- Mr. Brooker.....	291
25	Closing Arguments- Mr. Daniel.....	316

1	Judge's Charge.....	329
2	Allen Charge.....	346
3	Verdict.....	352
4	Sentencing.....	358
5		
6		
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

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

<u>NO.</u>	<u>DESCRIPTION</u>	<u>EV.</u>
S-1	Flash Drive	155
S-2	PHOTO	157
S-3	PHOTO	157
S-4	PHOTO	163
S-5	PHOTO	163
S-6	PHOTO OF DRUGS	203
S-7	PHOTO	203
S-8	PHOTO	203
S-9	SLED REPORT BY MS. McCORMACK	238
S-10	SNAPCHAT AUTHENTICATION	180
S-11	PHOTO	194
S-12	DRUGS (BAG)	204
S-13	PHOTO	194
S-14	PHOTO	194
S-15	PHOTO	194
S-16	PHOTO	194
S-17	PHOTO	194
S-18	PHOTO	195
S-19	PHOTO	195
D-1	SEARCH WARRANT 11-19-2019	82

1 **Monday, January 10, 2022**

2 (WHEREAS, this matter was scheduled for a trial, the
3 defendant appeared along with his attorney of record. The
4 proceedings began at 9:30 a.m.)

5 **Voir Dire:**

6 THE COURT: The court is calling for trial the case
7 entitled the State vs. Marc Yasin, if I mispronounce
8 anything, counsel, y'all let me know, Marc Yasin McKeiver.
9 Some areas that might be pronounced McKeiver, but it's M-c-
10 K-e-i-v-e-r, charged in the bill of indictment by the grand
11 jury of Dillon County with the offense of trafficking
12 methamphetamine. To this indictment the defendant has
13 entered a plea of not guilty and we're gonna seat a jury at
14 this time for the trial of the case. So I have some
15 additional questions to pose to you.

16 Is anybody on the panel related by blood or by
17 marriage or have any business, social, religious, or
18 fraternal relationship with Marc McKeiver? And with that
19 said, I'm gonna ask Mr. McKeiver, if he would, to stand and
20 let the jury take a look and make sure you, we covered the
21 question about relationship.

22 (Whereupon, the defendant stands for the jury panel)

23 THE COURT: Thank you, sir. You may be, you may,
24 may be seated. I'll repeat the question. Anybody on the
25 panel related by blood or by marriage with Mr. McKeiver or

1 have any business, social, religious, or fraternal
2 relationship with him, if so, we need you to raise your
3 right hand at this time.

4 (Whereupon, some jurors raise their hand)

5 THE COURT: All right, if you'll come up please.

6 (Whereupon, the juror comes forward)

7 THE COURT: And then we'll hear from the next
8 potential jury as soon as we conclude this.

9 COURT REPORTER: What's your number, again?

10 POTENTIAL JUROR #37: Thirty-seven.

11 COURT REPORTER: Thirty-seven.

12 (Whereupon, the juror spoke to the judge at the bench)

13 THE COURT: You told me earlier that you know him?

14 POTENTIAL JUROR #37: Mmm, hmm.

15 THE COURT: How do you know him?

16 POTENTIAL JUROR #37: We grew up together.

17 THE COURT: You grew up together?

18 POTENTIAL JUROR #37: (Shaking of head yes)

19 THE COURT: Are you related?

20 POTENTIAL JUROR #37: No.

21 THE COURT: If you were to be seated on this jury
22 could you both be fair and impartial to the State as well
23 as the defendant?

24 POTENTIAL JUROR #37: I don't want do any -- have
25 any ---

1 THE COURT: You don't want anything to do with it?

2 POTENTIAL JUROR #37: Uh-Uh.

3 THE COURT: Okay. We may need you on the next
4 trial but if you'll just stay with us. Don't leave yet,
5 okay?

6 POTENTIAL JUROR #37: Okay.

7 THE COURT: And don't discuss this with anyone.

8 POTENTIAL JUROR #37: Okay.

9 THE COURT: Thank you.

10 POTENTIAL JUROR #37: You're welcome.

11 THE COURT: What was that number?

12 COURT REPORTER: Thirty-seven.

13 MR. BROOKER: Thirty-seven.

14 COURT REPORTER: What's your number, ma'am?

15 POTENTIAL JUROR #90: Ninety.

16 COURT REPORTER: Ninety?

17 POTENTIAL JUROR #90: Yes, ma'am.

18 COURT REPORTER: Thank you.

19 THE COURT: Good afternoon.

20 POTENTIAL JUROR #90: Good afternoon. How are you?

21 THE COURT: How does that question apply?

22 POTENTIAL JUROR #90: He use to work for me. I was
23 a shipping clerk some years ago, he worked at Purdue.

24 THE COURT: Where was that?

25 POTENTIAL JUROR #90: Sir?

1 THE COURT: Where was that?

2 POTENTIAL JUROR #90: Where was that -- at Purdue
3 Farms in Dillon.

4 THE COURT: Purdue?

5 POTENTIAL JUROR #90: Mmm, hmm.

6 THE COURT: If you were to be seated on this jury,
7 could you be both fair and impartial to the State as well
8 as the defendant?

9 POTENTIAL JUROR #90: Yes, sir. Do I have to be on
10 this jury?

11 THE COURT: If you tell me you can be fair and
12 impartial.

13 POTENTIAL JUROR #90: I can be fair.

14 THE COURT: Okay. You're fine. Anyone else?
15 (Whereupon, no one is coming forward)

16 THE COURT: All right. I've got some potential
17 witnesses and I'll, y'all have to update me, counsel, if I
18 haven't gotten everybody here. Potential witnesses: James
19 Martin, with State Law Enforcement Division; as well as,
20 Alex Blake, who formerly was with Sled now currently with
21 the FBI; Maribeth McCormack from over at Sled, the State
22 Law Enforcement Division. Any additional witnesses,
23 solicitor?

24 MR. DANIEL: None from the State, judge.

25 THE COURT: Mr. Brooker?

1 MR. BROOKER: Your Honor, potential witnesses would
2 be Asia Page.

3 THE COURT: All right.

4 MR. BROOKER: And Winter Bennett.

5 THE COURT: Winter Bennett. Anybody on the panel
6 connected by blood or by marriage or have any business,
7 social, religious or fraternal relationship with any of
8 these potential witnesses? If so, we need you to raise your
9 right hand.

10 (Whereupon, no one raises their hand)

11 THE COURT: Anybody on the panel have any personal
12 knowledge or have developed an opinion about this case, if
13 so, we need you to raise your right hand but don't make any
14 comment?

15 (Whereupon, no one raises their hand)

16 THE COURT: Does anybody on the panel have any
17 opinion, any biasness, or any prejudice toward either the
18 State or the defendant whereby you cannot be a fair and
19 impartial juror? We need you to raise your right hand but
20 don't say anything.

21 (Whereupon, no one raises their hand)

22 THE COURT: Does anybody on the panel know of any
23 reason why you should not serve as a juror on this
24 particular case, please raise your right hand?

25 (Whereupon, no one raises their hand)

1 THE COURT: Anybody on the jury panel or anyone in
2 your immediate family currently or in the past been
3 prosecuted by the Fourth Circuit Solicitor's Office, if so
4 we need you to raise your right hand?

5 (Whereupon, no one raises their hand)

6 THE COURT: Have you or any member of your family
7 or friend been prosecuted in any jurisdiction for drug
8 possession, drug distribution or drug trafficking, if so,
9 please raise your right hand?

10 (Whereupon, no one raises their hand)

11 THE COURT: Are any of you or immediate family
12 member ever been investigated by the State Law enforcement
13 Division which is commonly known as Sled? The DEA, that's
14 Drug Enforcement Agency of the Federal Government? Or any
15 Dillon County Law Enforcement Agency for any reason, if so,
16 please raise your right hand?

17 (Whereupon, no one raises their hand)

18 THE COURT: Anybody on the panel presently
19 represented or represented in the past by Attorney Thurmond
20 Brooker, if so, we need you to raise your right hand?

21 (Whereupon, no one raises their hand)

22 THE COURT: All right. Any further voir dire,
23 gentlemen?

24 MR. BROOKER: If we can approach, Your Honor?

25 THE COURT: Yes, sir.

1 (Whereupon, a bench conference was held off the record)

2 THE COURT: All right. Have any of you or a family
3 member or a close friend ever suffered from drug addiction
4 or you have a family member or friend who's ever suffered a
5 drug overdose, if so, we need you to raise your right hand
6 but don't say anything until we recognize you?

7 (Whereupon, several jurors raise their hands)

8 THE COURT: All right. If y'all come forward,
9 please. I see two hands.

10 COURT REPORTER: What's your number?

11 POTENTIAL JUROR #56: Fifty-six?

12 COURT REPORTER: I'm sorry?

13 POTENTIAL JUROR #56: Fifty-six.

14 COURT REPORTER: Fifty-six. Thank you.

15 POTENTIAL JUROR #56: I am - brother, a long-term
16 drug addict. Been clean for about seven years now.

17 THE COURT: Okay. Thank you for coming forward.

18 POTENTIAL JUROR #56: Thank you.

19 COURT REPORTER: What's your number, sir?

20 POTENTIAL JUROR #55: Fifty-five.

21 COURT REPORTER: Fifty-five.

22 THE COURT: Good afternoon.

23 POTENTIAL JUROR #55: Good afternoon.

24 THE COURT: How does that question apply?

25 POTENTIAL JUROR #55: My father and a best friend

1 of mine. My best friend died.

2 POTENTIAL JUROR #55: Thank you, sir.

3 THE COURT: To the two jurors, potential jurors
4 that step forward, in your response to me I need to ask you
5 this, considering your response to the court, if you were
6 to be seated on this jury could you be both fair and
7 impartial to the State as well as the defendant?

8 (Whereupon, the potential jurors comes forward)

9 THE COURT: Come forward please. We'll take you one
10 at the time. Just keep your distance. We don't want anybody
11 getting the Covid. How does it -- tell us about it?

12 POTENTIAL JUROR #55: What do you need to know
13 about it?

14 THE COURT: My question was could you be fair and
15 impartial towards the State and the defendant and I thought
16 you said ---

17 POTENTIAL JUROR #55: No, sir. I'm not -- my --
18 the situation is kind of sensitive for me.

19 THE COURT: Okay. Which side could you not be fair
20 to?

21 POTENTIAL JUROR #55: The drug-related side.

22 THE COURT: Thank you.

23 POTENTIAL JUROR #55: Yes, sir.

24 (Whereupon, potential juror #56 comes forward)

25 POTENTIAL JUROR #56: Yes, Your Honor. I think I

1 could be fair and impartial to both sides.

2 THE COURT: Okay. Thank you. All right. Any
3 further inquiry? One last question, all right, I mentioned
4 Mr. Brooker, Mr. Shipp Daniel is the assistant solicitor.
5 He will be representing the State in this. I'll ask you
6 now, does anybody have any business, social relationship or
7 fraternal or are you related to either of these gentlemen,
8 we need to know that?

9 (Whereupon, a potential juror raises their hand)

10 THE COURT: Yes, in the back come on up.

11 COURT REPORTER: What's your number, sir?

12 POTENTIAL JUROR #235: Two, thirty-five.

13 COURT REPORTER: Two, thirty-five? Thank you.

14 THE COURT: Yes, sir?

15 POTENTIAL JUROR #235: Mr. Daniel's family is a good
16 friend of mine, long-lasting friend.

17 THE COURT: All right. You know Mr. Daniel?

18 POTENTIAL JUROR #235: Yes.

19 THE COURT: All right. The fact that you know his
20 family and you know him, if you were to be seated on this
21 jury, can you be both fair and impartial towards the State
22 and the defense?

23 POTENTIAL JUROR #235: I don't think I'd want to get
24 put in that position. I really don't. I don't think I
25 would, but you don't know what happens in the middle of a

1 trial.

2 THE COURT: All right. I'll ask you again, think
3 about it a minute. If you were to be seated on the jury,
4 can you be both fair to the State and the defense?

5 POTENTIAL JUROR #235: I probably couldn't.

6 THE COURT: Okay. All right. Just to we used
7 capsules and you had physical little papers you'd put in
8 the capsule and we'd draw a jury. Now, in the computer
9 world we do it by random selection on the computer. As your
10 number is called, we need you to come around, get right
11 here in front of Mrs. Hyatt at the bar up here. That's
12 called a bar. This is called a bench. Come right in front
13 of the bar, turn and face that way toward the attorneys and
14 we will who's seated and who is not.

15 **Jury Selection:**

16 THE CLERK: Juror number 14, Michael B. Berry.

17 (Whereupon, a white male comes forward)

18 THE CLERK: What saith the State?

19 MR. DANIEL: Please present Mr. Berry.

20 THE CLERK: Defendant?

21 MR. BROOKER: Please seat the juror.

22 THE COURT: If you'll come over.

23 THE CLERK: Excuse me?

24 MR. BROOKER: I'm sorry ---

25 THE COURT: I'm sorry. He said seat. Yeah, we need

1 you around here.

2 THE CLERK: Tracy D. Moody, number 182.

3 (Whereupon, a white female comes forward)

4 THE CLERK: What saith the State?

5 MR. DANIEL: Please present Ms. Moody.

6 THE CLERK: Defendant?

7 MR. BROOKER: Please seat the juror.

8 THE CLERK: Have a seat in the jury box please.

9 Number 21, Shalanda Blakely.

10 (Whereupon, a black female comes forward)

11 THE CLERK: What saith the State?

12 MR. DANIEL: Please excuse Ms. Blakely for services
13 in this case.

14 THE CLERK: You're excused, ma'am. You can go have
15 a seat back out there. Number 90, Larita T. Harris.

16 (Whereupon, a black female comes forward)

17 THE CLERK: What saith the State?

18 MR. DANIEL: Please excuse Ms. Harris for services
19 in this case.

20 THE CLERK: You're excused, ma'am. Number 10,
21 Matthew P. Batten.

22 (Whereupon, a white male comes forward)

23 THE CLERK: What saith the State?

24 MR. DANIEL: Please present, Mr. Batten.

25 THE CLERK: Defendant?

1 MR. BROOKER: Please excuse this juror.

2 THE CLERK: You're excused, sir. Number 28, Candice
3 J. Bozeman.

4 (Whereupon, a white female comes forward)

5 THE CLERK: What saith the State?

6 MR. DANIEL: Please present Ms. Bozeman.

7 THE CLERK: Defendant?

8 MR. BROOKER: Please present the juror.

9 THE CLERK: Have a seat in the jury box please,
10 ma'am. Number 11, Tiffanie A. Beck.

11 (Whereupon, a white female comes forward)

12 THE CLERK: What saith the State?

13 MR. DANIEL: Please seat, Ms. Beck.

14 THE CLERK: Defendant?

15 MR. BROOKER: Please present the juror.

16 THE CLERK: Number 185, Hannah P. Mumford.

17 (Whereupon, a white female comes forward)

18 THE CLERK: What saith the State?

19 MR. DANIEL: Please present, Ms. Mumford.

20 THE CLERK: Defendant?

21 MR. BROOKER: Please excuse, Ms. Mumford.

22 THE CLERK: You're excused, ma'am. Number 53, David
23 Cooper, Jr.

24 (Whereupon, a black male comes forward)

25 THE CLERK: What saith the State?

1 MR. DANIEL: Please present Mr. Cooper.

2 THE CLERK: Defendant?

3 MR. BROOKER: Please present the juror.

4 THE CLERK: I didn't hear him.

5 MR. BROOKER: Please present the juror, I apologize.

6 THE CLERK: Okay. Have a seat in the juror box.

7 Number 187, Adrian S. Nelson.

8 (Whereupon, a black male comes forward)

9 THE CLERK: What saith the State?

10 MR. DANIEL: Please seat Mr. Nelson.

11 THE CLERK: Defendant?

12 MR. BROOKER: Please seat the juror.

13 THE CLERK: Have a seat in the jury box please,

14 sir. Number 120, Nazia A. Johns.

15 MR. BROOKER: I apologize, what number was that,
16 again?

17 THE CLERK: One twenty.

18 MR. BROOKER: Thank you.

19 THE CLERK: You're welcome.

20 (Whereupon, a black female comes forward)

21 THE CLERK: What saith the State?

22 MR. DANIEL: Please excuse Ms. Johns for services in
23 this case.

24 THE CLERK: You're excused, ma'am. Number 195,
25 Chiquita W. Pernell.

1 (Whereupon, a black female comes forward)

2 THE CLERK: What saith the State?

3 MR. DANIEL: Please present Ms. Pernel.

4 THE CLERK: Defendant?

5 MR. BROOKER: Please present the juror.

6 THE CLERK: Have a seat in the juror box please,
7 ma'am. Number 119, Mary S. Jenkins.

8 (Whereupon, a white female comes forward)

9 THE CLERK: What saith the State?

10 MR. DANIEL: Please present Ms. Jenkins.

11 THE CLERK: Defendant?

12 MR. BROOKER: Please present Ms. Jenkins.

13 THE CLERK: Have a seat in the jury box please,
14 ma'am. Number 97, Bobby C. Henderson.

15 (Whereupon, a white male comes forward)

16 THE CLERK: What saith the State?

17 MR. DANIEL: Please present Mr. Henderson.

18 THE CLERK: Defendant?

19 MR. BROOKER: Please excuse Mr. Henderson.

20 THE CLERK: You're excused, sir. Number 178, Zi
21 Mean R. Mcllellan.

22 (Whereupon, a black male comes forward)

23 THE CLERK: What saith the State?

24 MR. DANIEL: Please excuse Mr. Mcllellan for the
25 services in this case.

1 THE CLERK: You're excused, sir. Number 227, Joseph
2 Tart.

3 (Whereupon, a white male comes forward)

4 THE CLERK: What saith the State?

5 MR. DANIEL: Please present Mr. Tart.

6 THE CLERK: Defendant?

7 MR. BROOKER: Please present Mr. Tart.

8 THE CLERK: Have a seat in the jury box please,
9 sir. Number 31, Robert L. Bridges.

10 (Whereupon, a white male comes forward)

11 THE CLERK: What saith the State?

12 MR. DANIEL: Please present Mr. Bridges.

13 THE CLERK: Defendant?

14 MR. BROOKER: I apologize, if you can excuse me for
15 just a second. Please present Mr. Bridges.

16 THE CLERK: Have seat in the jury box please, sir.
17 Number 36, Jaymie L. Butler.

18 (Whereupon, a white female comes forward)

19 THE CLERK: What saith the State?

20 MR. DANIEL: Please excuse Ms. Butler for the
21 services in this case.

22 THE CLERK: You're excused, ma'am. Number 199,
23 Robert E. Poston.

24 (Whereupon, a white male comes forward)

25 THE CLERK: What saith the State?

1 MR. DANIEL: I have no challenge.

2 THE CLERK: Defendant?

3 MR. BROOKER: Please excuse, Mr. Poston.

4 THE CLERK: You're excused, sir. Number 171, Rachel
5 A. McInnis.

6 (Whereupon, a black female comes forward)

7 THE CLERK: What saith the State?

8 MR. DANIEL: I have no challenge for cause.

9 THE CLERK: Defendant?

10 MR. BROOKER: Please present Ms. McInnis.

11 THE CLERK: Have a seat in the jury box, ma'am.
12 Number 100, Tiffany Hodges.

13 (Whereupon, a white female comes forward)

14 THE CLERK: What saith the State?

15 MR. DANIEL: I have no challenge.

16 THE CLERK: Defendant?

17 MR. BROOKER: Excuse Ms. Hodges.

18 THE CLERK: You're excused, ma'am. Number 148,
19 Walter B. Long.

20 (Whereupon, a white male comes forward)

21 THE CLERK: What saith the State?

22 MR. DANIEL: I have no challenge.

23 THE CLERK: Defendant?

24 MR. BROOKER: We have no challenges for cause.

25 THE CLERK: Have a seat in the jury box please,

1 sir.

2 THE COURT: All right. With the Covid situation
3 were gonna expand the alternates as to four.

4 THE CLERK: Yes, sir.

5 MR. BROOKER: That's two and one, right? One, State?
6 Two us?

7 THE COURT: Correct. Per alternate

8 THE CLERK: Number 56, Allison S. Danielle, Daniel,
9 (Whereupon, a white female comes forward)

10 THE CLERK: What saith the State?

11 MR. DANIEL: Please seat Ms. Daniel.

12 THE CLERK: Defendant?

13 MR. BROOKER: Please excuse Ms. Daniel for purposes
14 of this trial.

15 THE CLERK: You're excused, ma'am. Number 127
16 Bobby D. Jones.

17 (Whereupon, a white male comes forward)

18 THE CLERK: What saith the State?

19 MR. DANIEL: Please present Mr. Jones.

20 THE CLERK: Defendant?

21 MR. BROOKER: Please present the juror.

22 THE COURT: Have a seat in the alternate seat
23 please. Number 154, Carmen L. Mann.

24 (Whereupon, a white female comes forward)

25 THE CLERK: What saith the State?

1 MR. DANIEL: Please seat Ms. Mann.

2 THE CLERK: Defendant?

3 MR. BROOKER: Excuse Ms. Mann.

4 THE CLERK: You're excused, ma'am. Number 179,
5 Drapier McNeil.

6 (Whereupon, a black male comes forward)

7 THE CLERK: What saith the State?

8 MR. DANIEL: Please excuse Mr. McNeil for services
9 in this case.

10 THE CLERK: You're excused, sir. Number 235,
11 Samuel Dean Watts.

12 (Whereupon, a white male comes forward)

13 THE CLERK: What saith the State?

14 MR. DANIEL: I have no challenge.

15 THE CLERK: Defendant?

16 MR. BROOKER: Excuse Mr. Watts.

17 THE CLERK: Number 115, Kimberly A. Jackson.

18 (Whereupon, a white female comes forward)

19 THE CLERK: What saith the State?

20 MR. DANIEL: I have no challenge.

21 THE CLERK: Defendant?

22 MR. BROOKER: Excuse Ms. Jackson.

23 THE COURT: Nope.

24 MR. DANIEL: Your Honor, can we talk about that for
25 a minute.

1 THE COURT: That's two. The juror will be seated
2 unless there is a challenge.

3 THE CLERK: Right.

4 MR. BROOKER: There is no challenge for cause.

5 THE COURT: Okay.

6 THE CLERK: Be seated in an alternate seat. Number
7 78, Emma M. Goings.

8 (Whereupon, a black female comes forward)

9 THE COURT: These strikes on the alternates get
10 confusing. Just keep in mind is two and one for each
11 alternate.

12 MR. BROOKER: For each alternate.

13 THE COURT: Otherwise, you get confused.

14 THE CLERK: What saith the State?

15 MR. BROOKER: What number is she?

16 MR. DANIEL: Seventy-eight.

17 THE CLERK: Seventy-eight.

18 MR. DANIEL: Please present Ms. Goings.

19 THE CLERK: Thank you. Defendant?

20 MR. BROOKER: Present Ms. Goings.

21 THE CLERK: Have a seat in one of the alternate
22 seats please, ma'am. Number 246, Tonya M. Woodle.

23 (Whereupon, a white female comes forward)

24 THE CLERK: What saith the State?

25 MR. DANIEL: Please excuse Ms. Woodle for services

1 in this case.

2 THE CLERK: You're excused. Number 6, Latoria M.
3 Alls.

4 MR. BROOKER: I apologize, what's that ---

5 THE CLERK: Number 6.

6 MR. BROOKER: Thank you, ma'am.

7 (Whereupon, a black male comes forward)

8 THE CLERK: What saith the State?

9 MR. DANIEL: Please present Ms. Alls.

10 THE CLERK: Defendant?

11 MR. BROOKER: Please present Ms. Alls.

12 THE CLERK: Have a seat in the alternate seat.

13 Thank you.

14 THE COURT: All right. Ladies and gentlemen of the
15 jury now that the jury selection is complete. You've had a
16 few minutes to reflect on all the proceedings up until this
17 point and I'll now ask you, does any juror feel that they
18 cannot be fair and impartial to both the state and the
19 defense in this case? Please raise your right hand but
20 don't make any comment.

21 (Whereupon, no one on the jury raised their hands)

22 THE COURT: All right. Counsel?

23 MR. DANIEL: I beg the court's indulgence.

24 THE COURT: I guess I should go ahead and say any,
25 any matters of law concerning jury selection at this point?

1 MR. DANIEL: None from the State.

2 MR. BROOKER: We have no challenges to the jury, Your
3 Honor, jury selection.

4 THE COURT: Thank you, gentlemen. What time do we
5 need to have the jury back, gentlemen?

6 MR. DANIEL: May we approach about that?

7 (Whereupon, a bench conference is held off the record)

8 THE COURT: All right. Ladies and gentlemen, we,
9 obviously, have other matters we have to handle this
10 afternoon since it's the first day of the term. So what
11 we're gonna do is we're gonna ask you all to go home and
12 relax, get a good night's sleep and be back here at 9:30 in
13 the morning. Report to the jury room that the staff will
14 show you that you report to. Listen to me very carefully,
15 do not allow anyone to approach you in any, shape, form or
16 fashion and try to discuss this case with you. That would
17 be highly improper for that to happen. You are to try this
18 case on evidence and the testimony that's presented in
19 court. Do not even discuss this case with family members.
20 All right. Approaches may take many different forms. It can
21 be in person. It could be by interne. It could be by
22 telephone call. It could be a third person that another
23 person may put up to it. Should anybody make an attempt to
24 communicate with you or try to influence you about service
25 on this jury, do not discuss it with them and immediately

1 notify the sheriff's department of any such attempt. Please
2 avoid any local press coverage until this case is
3 completed. Don't mind you watching national news, but any
4 local press coverage, they usually pretty fair in their
5 coverage, but something might be said that unduly influence
6 you. Like I said the case is to be tried on the evidence
7 and the testimony presented here.

8 All right. We will see at 9:30 in the morning, but
9 before I say that finality, anything of the jury before
10 they are dismissed for the evening?

11 MR. DANIEL: Nothing from the State.

12 MR. BROOKER: Nothing from the defense, Your Honor.

13 THE COURT: All right. You will be put under oath
14 in the morning. Let's see I can go ahead while I'm thinking
15 about it, Mr. Long, you are the last regular juror drawn, I
16 will go ahead and name use the foreperson for the jury.
17 Okay.

18 All right. We'll see you in the morning. Everybody
19 else remain seated while the jury departs. The court staff
20 will show you where to report in the morning.

21 Yeah, don't leave any personal belongings in the
22 court.

23 (Whereupon, the jury exits 3:30 p.m.)

24 THE COURT: All right. What else do we need to do?

25 MR. DANIEL: After you let the jury loose we do have

1 a couple of pretrial matters, I believe, that need to be
2 heard.

3 THE COURT: All right. With that said we appreciate
4 you coming in. Make sure you got that telephone number. We
5 will need you to call in tomorrow evening. We don't need to
6 call back in this evening. Call in after five - will that
7 be all right or do we want to say 5:30?

8 MR. DANIEL: Five o'clock will be fine.

9 THE COURT: We need you to call in to that number
10 to get an update as to when and if we may need you. All
11 right. Make sure you got that telephone number. With that
12 said once you have that number y'all are free to go with
13 the thanks of the court one more time for coming in and
14 being willing to help. And we may need you later on in the
15 week. The jury is dismissed.

16 (Whereupon, the jury panel exits 3:35 p.m.)

17 THE COURT: All right. The jury is clear.

18 MR. DANIEL: Your Honor, if it pleases, the court?
19 actually, these two -- well a couple of -- can they do
20 their plea first?

21 (Whereupon, the court takes up another matter not related
22 to case)

23 **Motion:**

24 MR. DANIEL: Your Honor, if it pleases, the Court?
25 We're back on the record on the State versus Marc McKeiver

1 case. The defense has a motion or two. Maybe one we can
2 handle now. One we might need to wait for a witness to get
3 here tomorrow, but I think that in order for the court to
4 fully understand what these motions are going to be, and
5 I'm aware of it. Mr. Brooker and I have talked about it.
6 It might help for me to just briefly kind of summarize what
7 this case is about and what we're doing.

8 I gave the court and defense some form of a trial
9 brief just to kind of let you know what's going on. This is
10 a trafficking in meth case. As the court is well aware
11 under Section 44-53-375 (c) (3). This is, because of the
12 weight of the drugs, is a mandatory 25 years sentence if
13 convicted and a mandatory \$50,000 fine if convicted. I want
14 to put on the record that in December we had a hearing, a
15 status conference, pursuant to an email that I sent to Mr.
16 Brooker on Friday, October 22nd, October 22nd of last year.
17 Mr. Brooker and I had multiple conversations about this
18 case. Mr. McKeiver has several sets of charges from
19 multiple days, several undercover buys. There's a few
20 search warrant executions. There has been some weapons
21 charges. So my offer on all of his charge, I think he was
22 looking at - if you add it all up - something like a 150
23 years, 125 years, 150 years something like that, if you add
24 everything up and run it consecutively. I offered back in
25 October, a negotiated term of 17 years. Then Mr. Brooker

1 talked me down to 15, so 15 is where I stopped. That offer
2 was valid through our December 6th term of court. We had a
3 status conference on December 9th, I believe it was, the
4 Thursday of that week and Mr. McKeiver had until sine die
5 of that week. So we had until Friday afternoon, we had
6 court all five days that term. He had until the end of
7 court. We gave him his TIA notice. We put all this on the
8 record then, but I just, since we have a clean record here,
9 I wanted that also noted, he did not come back in to plead
10 that Friday so the offer at that time was formerly rejected
11 so here we are.

12 It is the State's intention to try, of course, this
13 case this week. And then based on the outcome of this case,
14 will go to the next one, and then the next one, and then
15 the next one and so forth, until we exhaust all of his
16 charges. That's what we have to do with anybody who is
17 charged with multiple crimes. About this case and again, I
18 think factually, it's important that the court know before
19 you hear these motions a little bit about, a little bit
20 about what's happening.

21 On September 9, 2019 law enforcement, Sled, the DEA,
22 sheriff's department, police department, several agencies
23 had this joint task force. Mr. McKeiver was the "A target"
24 of that task force. There were several of the targets they
25 went after and Mr. McKeiver was one of them. They had a

1 confidential informant who was working with law
2 enforcement. This confidential informant is now dead. He
3 was murdered in an unrelated situation a while ago. The
4 confidential informant met with law enforcement on
5 September 9th at whatever meeting location they had. The
6 confidential informant was searched by Sled agents. He had
7 to make sure he didn't have any drugs, money, weapons,
8 anything on him. He did not. They outfitted him with a
9 camera. They get in the car. An undercover Sled agent drove
10 the under, drove the confidential informant to Mr.
11 McKeiver's house. On the, I believe it was all the way to
12 the house, it was either right before they got the car to
13 go and all the Sled agents were around or once they got in
14 the car - we'll clear that up tomorrow - at least two phone
15 calls were placed from confidential informants phone to Mr.
16 McKeiver phone. Mr. McKeiver answers. They have a
17 conversation that was on speaker phone and the sled agent
18 heard the conversation where the CI was setting up the buy
19 that was to take place shortly, thereafter. Sled agent
20 drives confidential informant to the house. Broad daylight.
21 Let's confidential informant out in the front yard.
22 Confidential informant walks up - and you see all this on
23 video - walks up to the door and Mr. McKeiver answers the
24 door. Mr. McKeiver takes the confidential informant back to
25 a back bedroom. You see in the, in the video, it's a little

1 blurry, this particular part of it, but you see something
2 that looks like a plastic bag in Mr. McKeiver's hand to CI,
3 has some sort of conversation. The only -- there's only one
4 other person that is visible in the video and that is the
5 defendant's girlfriend, Winter Bennett, who's on the
6 defense witness list. There's some kind of conversation
7 that's really not relevant to anything, but happens between
8 these parties when they're in there. Confidential informant
9 returns to the sled agent's car. He's only in the house
10 for, I mean, not even two minutes. When he returns to sled
11 agent's car he gives the Sled agent, two bags of pastel
12 colored oddly shaped pills. These pills were sent to Sled
13 and they turned out to be methamphetamine, 134, 136 grams
14 of methamphetamine.

15 Law enforcement issued a search warrant on Mr.
16 McKeiver's Snapchat account. He is quite active on
17 Snapchat. I'm going to show you what's been marked - again
18 this is not arguing anything I'm just telling you so you
19 know what you're about to hear from the defense. This is a
20 photograph, this is State's 6 pre-marked State's Exhibit 6,
21 this is a photograph of two bags of pastel colored pills
22 that the CI brought from McKeiver's house and gave to law
23 enforcement, which we contend were sold to the CI by Mr.
24 McKeiver. That same day, September 9, 2019, Mr. McKeiver
25 posted on his Snapchat what I'm showing you State's Exhibit

1 5, these are pastel colored pills and same kind of
2 wrappings. They're tied the same way it appears. He posted
3 this at least twice on September 9th alone the same day he
4 sold these two bags of pills to the confidential informant.
5 He also posted, I'm showing you State's Exhibit 4 a few
6 pictures of himself on that same day. Without getting, I'll
7 reply to Mr. Brooker's argument after he makes it, but
8 that's the case from the State. It is -- even with a dead
9 CI we have a video that depicts defendant, we have a
10 undercover Sled agent who hears a phone conversations so he
11 can testify to it because I believe that the evidence will
12 show that the undercover agent was aware of Mr. McKeiver's
13 voice because of pursuant to that search warrant where we
14 got those, those Snapchat pictures also collected were 330
15 photographs and 135 videos and 598 text messages. A ton of
16 pictures of the defendant. Most of these are pictures of
17 similar bags of drugs that look identical to the ones
18 seized or collected from law enforcement. Several pictures
19 of him with guns. There are several offers to sell drugs in
20 all of these photographs. There's offers, there's offers to
21 sell drugs in the, in all the Snapchat messages that we
22 have. It really was on operation that was conducted, a
23 large part at least, through Snapchat and we have all that.
24 Pursuant to recent case law the State is not intending to
25 introduce all these other pictures because it's, it would

1 be extremely prejudicial given all of these pictures of
2 defendant with drugs with stacks and stacks of cash, plenty
3 of weapons. I think that'd be too prejudicial. And I don't
4 think it's fair.

5 However, if identity becomes an issue, and I guess
6 we're about to find that out, but if identity, in other
7 words, if the defense says, "this wasn't his account" or
8 which by the way it's, it's Duke and some other letters
9 that he goes by, Duke, that's the name of the account, um,
10 if the defense tries to say this is not his account, then I
11 believe that will open the door for us to get in to a bunch
12 of these photographs. At least, the ones where he post of
13 himself. We'll try to sift through the ones that don't have
14 illegal substances in them. But the State is prepared if
15 that's where the defense goes to walk right through that
16 door that the defense may open with that argument. That's,
17 that's one of the issues. But Mr. Brooker can, obviously,
18 he can articulate for the court whatever his arguments are.
19 But I think it's important for the court to know that's my
20 case. I've got nothing to hide. That's the State's
21 presentation. The only thing I might add to this may be
22 like I just said some other photographs based on the
23 defense argument. If the defense wants to stipulate this is
24 account, great. We don't have to get into all of these
25 other pictures. But if the State, but if the defense argued

1 that this was not his account, then I think that will allow
2 me to get into multiple photographs, multiple messages, and
3 other things which they may not want to do, but we'll see
4 what happens. But that's -- I think it's important that you
5 know where we are.

6 THE COURT: All right. With that statement and
7 your brief that Mr. Brooker has before we get in to these
8 matters of law, Mr. Brooker, I guess I'm directing this to
9 you more so, now that you've got a better understanding
10 where the State is coming from. Do you feel that you need a
11 few minutes to speak with your client to see if there may
12 be some kind of resolution of this case?

13 MR. BROOKER: I don't if there is, Your Honor,
14 because I think there is no offer on the table. I think the
15 offer expired in December. So I don't think there's any
16 offer for us to even accept,

17 THE COURT: Solicitor, any offer out there?

18 MR. DANIEL: We hadn't to talked about it anything,
19 but the 15 years is certainly not on the table anymore. And
20 Mr. McKeiver wasn't interested 15 years earlier, so I don't
21 know how he'd be interested in something greater than that
22 today. It would be greater than that. This charge, as the
23 court as well aware, is it mandatory 25 years and \$50,000
24 because of the amount of drugs, the 100, 200 grams. If we
25 were to, if I were to drop it down the trafficking that

1 under 100 grams, the sentence for that is 7 to 25 so it
2 certainly greatly reduces his exposure. But we would have
3 to come up to some negotiated number that would be higher
4 than 15. If he's interested, I'll be glad to have that
5 conversation with him, but I'd be real surprised.

6 THE COURT: I'll be glad to send y'all out to talk.

7 MR. BROOKER: Probably from my previous conversations
8 with, Your Honor, I think anything greater than 15 years I
9 think he's expressed to me on numerous occasions that he
10 has no interest in such an offer. And it's my understanding
11 that any offer would be, would be greater, greater than the
12 15 years so I don't think there's ---

13 THE COURT: All right. Let's cut to the chase,
14 would 15 do it? I know you're not bound to do it. There's
15 nothing, no control I have over it. It would have to be
16 strictly, at this point time, both of you know your cases
17 and any use or any possibility of discussing 15, at this
18 juncture?

19 MR. DANIEL: No, sir, not from the State.

20 THE COURT: All right.

21 MR. DANIEL: We don't -- and I just want to say for
22 the record, we don't, I'm not in the practice of making
23 offers months ahead of trial. That offer is rejected. We do
24 all this work. And then here we are Monday morning at trial
25 and he gets the same benefit that I offered before, I can

1 come down from 25 but I -- listen, I've talked to Mr.
2 McKeiver many times in my career. I've got no personal
3 issue with him. We had, we had a great conversation in
4 December when Mr. Brooker invited me in the room to talk
5 with him about this case and about what my presentation at
6 trial was going to be, and he, Mr. McKeiver said - I'm not
7 divulging anything of secret - he said, Ship I just don't
8 think I can signed up for 15 years and I understand, 25 is
9 a whole lot more than 15. And it's possible with a great
10 lawyer he might walk out of here with nothing. But if he's
11 not, the court, obviously, your hands are tied, it's 25 and
12 that 85% violent offense. So while 15 was a lot, again, I
13 can't give him 15 now. We can talk something less than 25,
14 but it's not gonna be 15.

15 THE COURT: All right. Well, you are correct, I
16 don't have any leeway to try, to try to help in any form or
17 fashion with the particular charge that's going to the
18 juror most likely so. And y'all, I mean, if you think 16,
19 17 or whatever might do it then y'all talk and if that's
20 out of the question then let's hear this out.

21 MR. BROOKER: I, Your Honor, I think he just advised
22 me that, that he doesn't have an interest in that offer.

23 THE COURT: Okay. All right. What you got?

24 MR. BROOKER: Your Honor, we have a least a few
25 motions that we need to deal with, pretrial motions, and

1 specifically, these motion deal with the suppression of
2 evidence that I think the State intends to introduced at
3 trial. I think some of these, we may already agree on. And,
4 of course is that so they may be very brief, but I'll put
5 them on the record. And, obviously, if I'm incorrect, then,
6 you know, then Mr., Mr. Daniel can correct me.

7 I think in light of what Mr. Daniel indicated is that
8 this was a control buy that was set up on September 9,
9 2019. And of course, they used a CI. And, of course, that
10 CI is no longer available because he is deceased. So the
11 first motion that we would have would be as is that any
12 testimony or a statement and I think that CI did give a
13 statement to law enforcement, so any statement that CI
14 gave, and of course is, that would include any written
15 statement. It would include any statement that the CI gave
16 I think on the audio, on the audio/video recording that,
17 that evidence would need to be suppressed. Because in order
18 for that evidence to be admitted, then of course, the CI
19 would have to be available. It is testimony or evidence.
20 It's not non- testimony in evidence. And so and, and of
21 course, there's case file out there that, basically, that
22 that CI would have to be available for cross-examination.
23 Obviously, in this particular situation the CI is not
24 available. So I'm assuming that any statements that were
25 made, that was made by the CI whether written statements or

1 either recording statements, and that would include any
2 statements that was made by the CI on the video should be
3 suppressed.

4 MR. DANIEL: The State intends to show the video,
5 but mute the video and so we don't plan to show any or let
6 anybody hear any audio from the video recording made by the
7 CI's camera.

8 THE COURT: Okay.

9 MR. BROOKER: So I think if my statement is correct,
10 then, of course, the testimony would be, would be that the
11 State agrees that the audio, any audio statement, any, any
12 statement made by the CI is suppressed.

13 MR. DANIEL: On the video that was recorded on the
14 CI's camera. What we're going to show on that big screen
15 with the CI getting out of the sled car, seeing Mr.
16 McKeiver, any audio that's underneath that video will be
17 muted.

18 MR. BROOKER: Okay.

19 THE COURT: Okay.

20 MR. BROOKER: The next issue that we're going to deal
21 with Your Honor, and obviously, this is a novel one, but of
22 course is, that I've been making this argument I think in a
23 lot of my cases, and of course, you know, for purposes of
24 the record, we're making a motion, Your Honor, to suppress
25 the audio based upon a violation of his Fourth Amendment

1 Rights.

2 And this argument is based Your Honor, ---

3 MR. DANIEL: Suppress the audio or video?

4 MR. BROOKER: Excuse, I'm sorry, suppressed the
5 video. And I think we've already agreed that the audio is
6 suppressible. We suppress the video on hisself based upon
7 that the use of the video by law enforcement violates the
8 Fourth Amendment to South Carolina, to the Federal
9 Constitution, and of course is, that South Carolina is
10 equivalent, South Carolina is constitutionally equivalent
11 to the Fourth Amendment. And Basically, Your Honor, very
12 briefly is that we all know that the Fourth Amendment,
13 basically, says is, is that law enforcement is prohibited
14 from searching or seizing any property in which an
15 individual having expectation of privacy, you know, unless
16 it is, unless that search or seizure is done by a warrant
17 secured by probable cause unless there is an exception to
18 the warrant requirement. In this particular situation what
19 law enforcement did, and of course, this is done on a
20 regular basis and I imagine this is going to be a novel
21 issue, is that law enforcement has a CI, and course, that
22 CI works for law enforcement. There is a case out there,
23 Your Honor, and I don't have the case with me, but I've ran
24 across it in connection with another case that basically
25 says, "that when a law enforcement uses a confidential

1 informant that that confidential informant becomes an agent
2 of law enforcement." Specifically, because law enforcement
3 directs and controls the conduct of that confidential
4 informant. So when that confidential informant is acting
5 that confidential informant is acting under cover of state
6 law. He is acting as an agent of law enforcement. And I
7 think there is a case out there that makes that clear. So
8 the question then becomes, is, is that, at least our
9 argument is, is law, that confidential informant under at
10 least in theory, would not be able to do anything that an
11 law enforcement officer would not, wouldn't be able to do
12 him or herself under the same circumstances. So we're
13 arguing that the law enforcement officer, I cannot escape
14 the, the protection of the Fourth Amendment by simply
15 saying well we will take a private citizen, and of course
16 is, is that, that works for us and we will then direct and
17 control that private citizens authority, and of course,
18 send that private citizen into a place to conduct a control
19 buy without a search warrant to do something that we would
20 not be able to do ourselves. And our argument is that you
21 can't do that. When that confidential informant walks into
22 -- if a control buy is conducted on the outside, if it's
23 conducted on the outside of a house, but then of course,
24 there is no expectation of privacy. And of course, the wire
25 that's being worn by that confidential informant and I

1 think, Your Honor, is that my understanding is that, with
2 that wire that video and audio is a live feed video and
3 audio, which means that law enforcement is seeing
4 everything that the confidential informant sees. Okay. So
5 when the confidential informants then walks inside of a
6 house and when that confidential informant walks inside of
7 a private residence and that confidential informant who is
8 now an agent to law enforcement is wearing a wire and it's
9 a live wire and law enforcement is on the other hand, and
10 law enforcement is watching everything that's happening so
11 every move that that confidential informant makes law
12 enforcement is looking on the interior of that person's
13 house. If he walks into the bedroom law enforcement sees
14 into the bedroom. If he walks into the dining room law
15 enforcement has a, has a view in the dining room. If he
16 walks into the kitchen law enforcement is seeing
17 everything. Law enforcement, through technology, has been
18 brought into the interior of a private citizens residence
19 without warrant or without permission, or any other
20 exception to the warrant requirement. And of course, this
21 is a control buy that was conducted on the interior of the
22 home with law enforcement on a live feed watching
23 everything that goes on and has, even though they were not
24 physically, they were technically brought into the interior
25 of the home.

1 Now, physically law enforcement would not have been
2 able to enter that home under those circumstances, unless
3 they had gotten permission, unless they had gotten a
4 warrant. So the question then becomes is, is that whether
5 or not law enforcement can do something through technology
6 that they would not be able to otherwise physically do. If
7 a law enforcement officer could not physically enter the
8 home and the Fourth Amendment would prohibit that law
9 enforcement from physically entering the home, the question
10 then is, that can the law enforcement use technology to
11 bring him or herself on the inside of a home and see the
12 same thing that they would see if they were physically
13 present? We believe that that happened in this particular
14 case. We believe that there is no exception, there is no,
15 there was no warrant that was obtained. There is no
16 exceptions to the warrant requirement underneath the Fourth
17 Amendment from South Carolina equivalency that is
18 available. So we believe that that video represents the
19 violation of his Fourth Amendment Constitutional Rights and
20 South Carolina equivalency. And also I think underneath the
21 South Carolina Constitution in addition to requiring a
22 warrant for search and seizure, South Carolina provides an
23 additional protection that the, you know, that the United
24 States Constitution doesn't provide. South Carolina
25 basically says, that you have to have a warrant for to

1 enter someone's home to search or seize and South Carolina
2 provides also the additional protection against invasion of
3 privacy underneath its equivalency. And so in this
4 particular situation of the way in which that audio camera
5 was used would be a violation of these constitutions and
6 specifically in violation of the Fourth Amendment Right
7 against unreasonable search and seizure without a warrant,
8 but also a violation, specifically under South Carolina's
9 Constitution that prohibits against violation of someone's
10 privacy rights under that constitution.

11 Now, I don't know, Your Honor, whether or not you want
12 me to move on or you want Shipp to address these as we go
13 along one by one?

14 THE COURT: Let's hear from the State.

15 MR. BROOKER: Thank you, Your Honor.

16 MR. DANIEL: Thank you, Your Honor. If it please,
17 the Court? Mr. Brooker mentioned several times this is a
18 novel argument and I realize he's got to, he's got to put
19 whatever argument he can. But this is a novel argument
20 because CI's are used all the time or all over the place in
21 every municipality and every jurisdiction in this country.
22 We have -- Mr. Brooker said that he had some case about
23 something, but he couldn't recall the case. I can't argue
24 against the case that I don't know what the case is. But
25 there is, there's a body of case law about the use of

1 confidential informants both on the federal and the state
2 levels including this, quote, "An informants controlled buy
3 of drugs can constitute probable cause to issue a warrant."
4 And that's U.S. vs. Clyburn, 24 F.3d 613. That's a Fourth
5 Circuit Federal case from 1994 which is also cited by State
6 v. Depree. A South Carolina case, Court of Appeals 2003.
7 That's 583 S.E. 2d 437. And that's, that sentence goes on
8 to say, "even if the informant is of unknown reliability",
9 which is a Supreme Court case, a United States Supreme
10 Court case from 1983. And that's just one example or well,
11 three examples of how confidential informants are commonly
12 used in law enforcement investigations. No warrant is
13 required for a confidential informant to go inside a house
14 whether there's a live feed or not. That's just not the
15 law. But -- and I understand Mr. Brooker's is making, and
16 he said it, a novel argument but that's just, he's just
17 wrong on the law.

18 THE COURT: All right. What flies in the face of
19 your argument, Mr. Brooker, is the fact that if you had to
20 get a warrant for a CI to go in and make a buy, you got to
21 serve that warrant and no supplier of drugs is gonna sell
22 somebody drugs or give them drugs after a warrant has been
23 served on them so, I mean, that -- I understand. That's a
24 good try. But I'll deny your motion to in limine on that.

25 MR. BROOKER: Certainly, Your Honor, if I can just

1 add something very quickly for the record, it will be less
2 than 20 seconds.

3 THE COURT: Yeah.

4 MR. BROOKER: And I know that you've already made
5 your decision. But of course, Your Honor, our argument is
6 not based upon, it's not based upon whether or not a law
7 enforcement can use a confidential informants. The can use
8 confidential informants to conduct control buys. No
9 question about that whatsoever. But the question is that
10 whether or not they can, whether or not they can out fit a
11 confidential informant with a live feed wire with law
12 enforcement on the other end and walk into a private
13 residence. We're not arguing the use of confidential
14 informants, we're arguing the use of bringing in a live
15 feed video recording device with law enforcement watching
16 on the other end, as that confidential informant walks into
17 a private residence. So it's the video feed, and of course,
18 in the case in which Mr. Daniel I think cited, that case
19 basically reaffirms the use of confidential informants. No
20 question about that whatsoever. So that's not what our
21 argument is and with that being said, I'm won't argue this
22 further. And I'll move on to the next point, Your Honor.

23 MR. DANIEL: If I could just, for the record,
24 address that? This particular buy had two, the CI had two
25 cameras. He was wearing one and he had, he was holding

1 something that had something else. One of those cameras
2 had, was a live feed, the other was not. The one that was a
3 live feed is the one that didn't work. We don't have any
4 video, we don't have anything from that even came from
5 that. I'm not introducing anything that was a result of
6 that. The only thing I'm introducing is the camera, from my
7 understanding from law enforcement, we will check again
8 tomorrow when they get here. It had nothing to do with the
9 live feed. Just for purposes of the record

10 THE COURT: Okay.

11 MR. BROOKER: And I think the next motion to suppress
12 that we want to make is in reference to I think this is a
13 photographs in which Mr., in which Mr. Daniel, Mr. Daniel
14 indicates that he intends to introduce at trial. And of
15 course is, is that would deal with photographs that are
16 taken from the social media post. And of course is, is that
17 we are making a motion to exclude those photographs and any
18 other way, I think, written documents that are coming from,
19 that are coming from the social media post on the grounds
20 in which the State does not have the ability to
21 authenticate or, at least, they have not produced any Rule
22 5 or Brady disclosure, disclosure that would suggest to us
23 that they have the ability to be able to authenticate the
24 social media posts. I think Mr. Daniel says that they went
25 to, that they got a search warrant I think and sent the

1 search warrant to the social media provider, and of course,
2 was able to get, was able to get photographs. And I'm
3 assuming that these photographs was provided by the social
4 media provider, that these photographs were provided by the
5 social media provider. There would be I think two problems
6 with that, Your Honor, is that one is, is that if they
7 obtained the search warrant from the social media provider
8 and sent that search warrant to the social media provider,
9 asking the social media provider to take documents off of,
10 off of it's servers wherever those servers are located, and
11 we do this all the time when it comes to phone companies,
12 is that the law is that that the custodian of records for
13 that social media provider would have to be brought here to
14 authenticate whatever documents or whatever photographs it
15 took off of it's social media database, and of courses is,
16 that and testify to the authentication of those documents.
17 It's no different than if we were in a, you know, if we got
18 medical records from a McLeod Regional Medical Center, is
19 that McLeod, I couldn't take the records from McLeod
20 Regional Medical Center and put them in the evidence and
21 say to the court, court, we got these records from McLeod
22 Regional Medical Center, and we want to publish them to the
23 jury. Well, the first thing that you have to do and I'm
24 using this as an example because it's an example that
25 happens all the time in several cases and in criminal

1 cases, is that a custodian of records from a McLeod
2 Regional Medical Center would have to come here and
3 authenticate those records and say, yes, these are the
4 records that, that was, that was maintained on McLeod's
5 server and I took these records off of McLeod's server. And
6 these records in which the State intends to put in the
7 evidence, you know, are true and authentic, they are the
8 records that I took off our server. That expert has to be
9 here to authenticate, has to be here to authenticate those
10 records. Okay. And we do this all the time I think in, in
11 cases, in cases in which we have cell phone, cell phone
12 records, and cell site data location information. Those
13 experts have to come from Florida, Georgia, or the Midwest.
14 But wherever those records are maintained, they have to
15 come here and authenticate the records that they produce to
16 the, to the State if the State wants to introduce those
17 cell phones of the cell site data location information into
18 evidence. Now, if they obtain this information from
19 Snapchat, from Snapchat custodian of records, then one,
20 that custodian of records has to authenticate,
21 authenticate these records. And of course -- so that's
22 gonna be the first issue, Your Honor.

23 In addition to that -- and I don't know if you want to
24 address that portion of it or do you want to move to the
25 next? Because our first argument is, is that if these come

1 from, comes from Snapchats servers, Snapchat has to
2 authenticate these records and they have to have a records
3 of custodian to come here and testify and authenticate
4 where these records are coming from. That would also be a
5 part of the, I guess, the chain of custody that they would
6 have to establish as well too as to where these records are
7 coming from. And of course, is that you can't simply assume
8 that they're coming from, that they're coming from -- the
9 fact that you sent a subpoena to Snapchat and ask them to
10 provide you records is that, that is not self
11 authenticating. The custodian of records have to
12 authenticate those records. And course, it's my
13 understanding is that I don't believe that they have a
14 custodian of records from Snapchat that they intend to
15 introduce to authenticate whatever records that they
16 received from Snapchat. So if you want to address that
17 portion of it, Your Honor, I can let him address that
18 portion. Is the first part of the objection for the
19 photograph.

20 MR. DANIEL: Thank you, Your Honor. If it please,
21 the Court? Snapchat did send in response to the search
22 warrant, all of these photographs and videos that we've
23 talked about. They also sent, and this was provided to Mr.
24 Brooker in discovery, the on December 27 2019, in a letter
25 dated "this is the certificate of authenticity from

1 Snapchat." That I believe alone which this just says,
2 "attached to this is everything that we found in response
3 to your search warrant." I think that alone is enough. If
4 it's not, I have two other arguments. Some authentication,
5 9, Rule 902 (8) says, "acknowledge documents extrinsic
6 evidence of authenticity as a condition precedent to
7 admissibility is not required with respect to the
8 following", and this is number eight, "acknowledged
9 documents. Documents accompanied by a certificate of
10 acknowledgment executed in the manner provided by law by a
11 notary public or other officer authorized by law to take
12 acknowledgments." I think we're covered under 802 or 902
13 (8). I think that the letter of authentication sent by Snap
14 is sufficient. And finally, we don't have to bring in
15 somebody from Snapchat every time we want to introduce
16 something from Snapchat. We don't have to bring in somebody
17 from Facebook, or Instagram or any of those things.
18 Imagine! Imagine how that would be! Nobody would ever get a
19 case tired because they don't have enough employees to be
20 sending all over the country every time somebody wants to
21 introduced something from the social media companies.
22 Ultimately, judge, and I think this is probably the most
23 important point and I foresee myself making the same
24 argument in a minute, authentication is foundational. It is
25 not absolute proof. It's simply something which a fact

1 finder can say this is, this is what the State says is, but
2 that's up to the jury to determine. As long as we link that
3 account to the defendant, which we've been able to do, then
4 I don't think and we will do tomorrow, I don't believe that
5 authentication is an issue because it is not a high bar. In
6 fact, the Deep Keel, LLC vs. Private Equity Group, LLC, 413
7 S.C. 58, "the burden to authenticate is not high and
8 requires only the protocol for satisfactory foundation from
9 which the jury can reasonably find that the evidence is
10 authentic. The authentication requirement does not demand
11 that the proponent of evidence conclusively demonstrate its
12 genuineness." If Mr. Brooker wants to get up and argue that
13 these aren't his, that these aren't his clients records,
14 then I believe he's gonna open a door that he might not
15 want to open. But to have to have Snap here, a
16 representative of Snap here, I don't think under the rules
17 that's required. I think that the authentication that they
18 sent with when they answered the search warrant is
19 sufficient. Anything beyond that, I think that's up to a
20 jury to weigh it's evidence.

21 MR. BROOKER: I'm sorry that's 902, that's 902 (2)?

22 MR. DANIEL: 902 (A). Not A, 8.

23 MR. BROOKER: Okay, 902 (8). If you'll indulge me
24 just a second, Your Honor, and let me get to -- if you can
25 indulge me just a second, Your Honor?

1 THE COURT: Yes, sir.

2 MR. BROOKER: I'll be where I -- Your Honor, with
3 respect to the next reason why this document would not be,
4 would not be admissible would be based upon 901, would be
5 based upon Rule 901. Rule 901 is a rule that deals with
6 authentication and of course, in addition to Rule 901, Your
7 Honor, in State vs. Benson --

8 COURT REPORTER: I'm sorry State versus what?

9 MR. BROOKER: I'm -- that is State vs. Benton, I'm
10 sorry, B-e-n-t-o-n. Let me see what I have. This is a 2001
11 case, Your Honor. Let me see if I have the citation,
12 October 13, 2001. And then also another relevant case law
13 in connection, relevant case would be State vs. Smith. And
14 of course, I think State versus -- Your Honor, in State vs.
15 Benton and this is a South Carolina Appellant Court case,
16 and of course is, is that this is a case that and I'll,
17 I'll read this. What the court -- this is actually a case
18 that dealt with authentication of specifically this social
19 media post in text messages. And of course is that, it says
20 "this order addresses the authentication of social media
21 messages in Green in which explained that circumstantial,
22 circumstantial evidence related to the content, texture and
23 timing of such messages may serve as efficient
24 authentication to meet the lower bar Rule of 901 (B) (4).
25 Still the court noted that social media messages are

1 writings and that evidence law has always viewed the
2 authorship of writings with a skeptical eye. Authentication
3 of social media messages, like writings requires more than
4 mere offering the writings on its own. This is, this is
5 likewise true for text messages such as those admitted
6 here. We acknowledged the Circuit Court erred in stating
7 the fact that the message, the messages were sent from
8 Benton's phone provided sufficient proof to establish
9 Benton's author, that Benton author them the authentication
10 of text and social media messages requires more than
11 proving mere ownership of the device which, from which
12 messages are originated." So in that case, Your Honor, I
13 think and this is the second basis, basis for the
14 objection, those social media post, and that is, is that
15 what Mr. Daniel is basically saying that it's his intention
16 to present those social media post to the jury, and of
17 course, argue to the jury that Mr. McKeiver is the author
18 of those social media posts. And of course is, is that what
19 the court in State vs. Benton I would just basically
20 citing, and, I think Green - and I'll get the, um, I'll get
21 the citation for Green is, is that it is not evidence, it
22 is not evidence that someone is the author of a text
23 message, or a social media message, or anything that is on
24 that person's social media account simply because that
25 person is the author or owner of that social media account.

1 Is that what, what Benton and Green states is, is that you
2 have to provide more than simply saying that this person
3 owns the account. Therefore, anything that, that is on this
4 person's account is authored by this person and is produced
5 by this person. So if a, if a photograph of drugs, let's
6 say for instance, and we don't submit that whenever he has,
7 the photograph of drugs, there's gonna be another issue
8 that we're going to deal with, another reason of why they
9 should be excluded, but let's say for instance is, is that
10 if those were drugs, if those were pictures of drugs and
11 they were on Mr. McKeiver's account then what Green and
12 Benton says simply because those photographs of those
13 messages appear on his accounts, that that alone is not
14 evidence that he is the author or he is the originator, you
15 know, of those documentation that you have to provide more
16 And I think what Mr. Daniel is arguing to the court is Your
17 Honor we took these photographs, or we took these messages
18 from a social media post that we believe belongs to him and
19 Your Honor we want to present them to the jury and tell the
20 jury that he is the originator and the author of these
21 things. And of course is that, what Benton citing Green
22 says that ownership of the account is not evidence that the
23 person who owns the account, or either ownership of the
24 device, for instance, I think in that particular case, text
25 messages that originated from a person's device, a person's

1 phone, and of course, the court says, simply because those
2 text messages originated from that person's phone that that
3 is no evidence that that person is the author of those text
4 messages. And of course is, that if messages originated
5 from social media post is that it says that that is not
6 evidence that that person is the author. You have to be
7 more than just simply saying that this person owns the
8 site, or this person owns the phone, therefore, this person
9 is the author or the creator, you know, of whatever content
10 that is contained or even comes from that device or comes
11 from that phone. And of course, Benton says, Benton citing
12 Green, says that you can't make that leap of logic. Now -
13 says that you have to ---

14 THE COURT: Wait a minute now, I'm looking at this
15 case and it says, "we acknowledge the Circuit Court erred
16 in stating that the fact the messages were sent from
17 Benton's phone provided sufficient proof to establish
18 Benton authored" and that's as far as I can read it, but
19 that self-explanatory. I don't understand why that
20 statement was made by the Circuit Court to start with. You
21 don't have worry about me making that statement.

22 MR. BROOKER: Yeah. But I think what it's saying is,
23 is that it was, it was erred for the court. And I think
24 what it says, Your Honor, and you correct me if I'm wrong,
25 that it says, "we acknowledge the Circuit Court erred in

1 stating that the fact that messages were sent from Benton's
2 phone provide sufficient proof to establish Benton's
3 authored them." And so basically what I'm saying is, is
4 that what the State is basically saying is, is that the
5 evidence that they intend to show that, that, that whatever
6 content that they took off those social media site, because
7 that social media site belongs to him that that proves that
8 he is the author of that content. And of course, what the
9 court is saying there is saying there is, is that that is,
10 that's insufficient proof. If you take, um, if you go to my
11 Facebook page and you took a post off of my Facebook page,
12 then what the court is saying is you can't come to court
13 and say that I authored that post simply because it was on
14 my page. You have to have more to proof, to prove that he
15 offered that content than simply because it existed on his
16 page. And I guess, I guess the practical reason for that
17 is, is that Your Honor, is that with respect to on social
18 media sites is, is that some of us we have more than one
19 person that have access to our social media sites. My wife
20 has the ability to be able to post things on my site. So
21 anything that you see on my site ---

22 THE COURT: But that's for y'all to argue with the
23 jury. All right. You can go on to 12 o'clock tonight and
24 you're not gonna convinced me any different. Solicitor,
25 anything you want add?

1 MR. DANIEL: Just for purposes -- first of all, can
2 I get the cite on that case?

3 MR. BROOKER: Yeah.

4 (Whereupon, the two lawyers have discusses off the record)

5 MR. DANIEL: Your Honor, I don't know if I need to
6 say much of anything after what the court just said. I just
7 want to, um, it's always true of like Facebook messages and
8 things that authentication is an issue. However, that is an
9 issue for the jury to determine. Right. The only thing that
10 the court has to consider is that there is enough evidence
11 for the jury to make the determination. The attorney is
12 making great arguments for the jury. But as for
13 authentication, as for as admissibility, that's not what
14 we're dealing with here. We -- we've -- I've already told
15 you, we haven't presented anything to the jury yet, but
16 I've already told you enough evidence I believe that is
17 significant good for the jury to make a finding that these
18 photographs were posted by him. Of course, someone else can
19 post something on someone else's account. But I'm telling
20 you, tomorrow once we get in front of the jury if that
21 becomes an issue, then I believe that opens the door for me
22 to say okay, you don't think this one thing was posted from
23 him maybe it wasn't his account, well, let me show you why
24 I really think it's his account. And then I'm gonna get
25 into all of these other photographs of him, of the

1 defendant, posting pictures of himself, multiple pictures
2 with guns, sacks of money, a ton of drugs and we can get
3 into the messages where someone from that account, I assume
4 it was him, sent people asking to buy drugs. His phone
5 number. The same phone number [REDACTED] that my CI and
6 sled called that he answered to set up the buy on September
7 9, 2019. I just think there -- I know there's recent case
8 law that from 2001, and this is State vs. Ostrowski,
9 there's not even a number it's so new. It was our Court of
10 Appeals and what this opinion says, it was a similar case
11 about text messages. And the state in this case sought to
12 introduce text messages from like six months away from the
13 data of the incident, from the date of the confidential
14 informant buy or whatever it was. Like six months away, and
15 the State said, I mean, I'm sorry, the court said that's
16 too far. It's too prejudicial and everything else. That's
17 why I limited what I was gonna to introduced from all these
18 Snapchat five hundred and something pictures to just what
19 he posted on the day that we content that he sold two bags
20 of drugs to the CI. That's it. That's all based on this
21 case law that we were going to introduce. But if identity
22 or ownership of that account becomes an issue in front of
23 the jury then, I'm going to submit, I'm gonna ask that I be
24 allowed to submit to the jury, a whole bunch of other stuff
25 that's not going to make the defendant look real good. And

1 I wasn't going to get into any of that, but if I don't have
2 a choice, I don't have a choice.

3 MR. BROOKER: I would say, Your Honor, he's welcome
4 to it. We will be back here retrying this case again for a
5 whole host of reasons. But we're not arguing ownership of
6 the account. That's not the issue. The issue is not
7 ownership of the account. The issue is, is ownership and
8 that's what Benton is talking about. Benton is not talking
9 about ownership of the account. It has nothing to do with
10 ownership of the account. It's talking about ownership of
11 the content that's on the account or authoring the content
12 that's on the account. And so Benton, basically, is saying
13 is, is that ownership of an account doesn't make you the
14 author of the content that's on that account. And of
15 course, it's his intention to basically says that this
16 content was found on his account, therefore, jury, he was
17 the author. He was the author of it. Author of it. That's
18 what Benton is saying, is that you cannot make that
19 argument unless you have something more that he was the
20 owner of the account. Now, he can do it. But Benton -- what
21 Benton and Green is saying that you have to present more
22 than simply he is the owner of the account to argue that he
23 authored the conduct or he generated that particular
24 content because, unfortunate, Your Honor, every bit of
25 content that we enter in our social media posts, does not

1 have a unique signature that says who is the author of it.
2 It doesn't have the unique signature with respect to the
3 author. So -- and that's what I think Benton stands for.
4 And course is, is that we're not arguing ownership of the
5 account, we're authorship, authorship and generation of the
6 content that's contained on them and that's Benton is
7 talking about. So it's not about ownership. And that's why
8 Benton basically says if I had a cell phone and of course
9 there were text messages coming from my cell phone, coming
10 from my cell phone that it is inappropriate to tell a jury
11 that I am the author of those text messages. That's the
12 argument we're trying to make. We're not arguing ownership
13 of the account. But Benton is saying author, author of
14 specific social media messages or social media content.
15 Benton is basically saying you have to have more than he
16 owned the account, therefore, he is the author of it. And
17 so -- now, if he's got more than that, then of course, you
18 know, Benton says you can get it in.

19 THE COURT: He's got this specific day, the
20 allegations of this gentleman committing the offense,
21 selling to a CI. He's limited to that day. And you gonna
22 have to meet the requirements that are set for here, but, I
23 mean, the case that I'm looking at now certainly validates
24 the fact that you can, you can introduce that. Now, what
25 weight the jury gives it, I don't know.

1 MR. DANIEL: Well, what ---

2 THE COURT: But I'm not gonna comment on it.

3 MR. DANIEL: What case you're talking about there?
4 The one that Mr. Brooker was citing?

5 THE COURT: This is State vs. Benton.

6 MR. DANIEL: Can I get that citation?

7 THE COURT: But to hear Mr. Brooker say, initially
8 was, you can't use it at all and now we're getting into
9 he's admitting to the court that, yes, surrounding other
10 factors, other evidence that pins it down to, in this case,
11 the defendant here, I mean, I can't sit here and bar you
12 from doing that. That's gonna have to be done and the jury
13 is gonna have to decide it or I may have to step in if it
14 doesn't mesh together to get you by Benton.

15 MR. DANIEL: Well, I'm gonna go ahead and say too,
16 that I'm going to seek it now after this, since this is
17 gonna be part of the defense, I'm going to seek to even,
18 even in line with the case I just read you, the brand new
19 case for the Court of Appeals, even in line with that, I'm
20 going to seek to introduce other photographs close in time
21 to September 9, 2019. But other photographs, not of drugs,
22 not of the defendant holding drugs, but just of him,
23 himself. Because I think, I think it's an argument -- it is
24 an argument I can and will make to the jury that the
25 defense expects the jury to believe that someone has this

1 account and is posting pictures of him that's not him.
2 Someone else's posting all these photographs of Mr.
3
4 McKeiver. That's just not accurate. But again,
5 authentication, judge, and I'll be quiet, it's not a high
6 bar. The defense argument seems premised on the faulty idea
7 that no evidence can be authenticated unless all doubt has
8 been eliminated, but that just not what the rule was
9 designed to require. We just have to have something upon
10 which the fact finder could find that something is what we
11 say it is. Strength and weight are entirely separate
12 questions and that's our argument.

13 MR. BROOKER: There's a bar that you have to, there's
14 a bar that you have, that you have to satisfy, but it's
15 established in Benton. Now, once he overcomes the bar, then
16 of course, then of course, then of course it becomes a jury
17 issue with respect to weight, but you have to overcome the
18 bar of admissibility first and that's where the court has
19 to determine whether or not he is overcome that bar of
20 admissibility. That has always in our argument, Your Honor,
21 is the bar of admissibility. Of course it's our
22 understanding that what, that what the State is saying is
23 ownership of the account satisfies the bar of admissibility
24 and ownership of the account doesn't do that. He had to go
25 beyond the ownership of the account and I think that's --

1 he's gonna have to do more to show that he authored the
2 specific content, that he is seeking to attribute to him.

3 MR. DANIEL: I'm not arguing the ownership of the
4 account is the only reason. That's not at all -- I've not
5 said that at one point during this. What I've said is I
6 believe that looking at the totality of the evidence and
7 all of the 536 pictures that Mr. McKeiver posted of himself
8 is evidence for the jury to consider because 536
9 photographs are posted of Marc McKeiver that it's Marc
10 McKeiver's doing. That's what I'm saying.

11 MR. BROOKER: I'll leave it there's Your Honor. We'll
12 move on because what that is, is that's evidence of
13 ownership of the account and that evidence is normally,
14 would normally be provided, would be provided by the
15 records custodian with something indicating ownership like
16 it's done with cell records. In a cell phone records it is
17 that, when we get cell phone records from, from cell phone
18 companies, and of course, this is the exact same thing as a
19 social media post. Because if that cell phone company
20 provides something authenticating or, excuse me, provides
21 something indicating who the account holder is. And of
22 course, they testify to who the account holder is. And I
23 guess because they don't have, they're saying, well, you
24 can look to the content to prove ownership. You can look to
25 the content to prove ownership, but I'm not going to

1 belabor the issue. I think it's on the record, Your Honor.
2 So we'll move on to the next thing that I think -- one of
3 the next things, Your Honor, I think we'll have to wait
4 until tomorrow and that is, is that voice identification or
5 authentication I think underneath 901 again. And I think
6 this is a situation I think like what Mr. Daniel says is
7 that one of the law enforcement agents, I'm assuming,
8 intends to testify that he overheard in voice on a
9 conversation with a confidential informant. And that, I
10 think it's his intention to testify and that the voice he
11 heard on the phone is Mark McKeiver. And I think under 901
12 is that he's gonna have to proffer sufficient evidence,
13 sufficient information that he is capable, that he is
14 capable of giving a layman's, layman's identification of
15 the person on that phone by voice. But I think we'll need
16 him to do that and that will have to be done tomorrow.

17 THE COURT: Unless -- I agree with you on that,
18 unless the solicitor convinces me. You're gonna have, we'd
19 do it in-camera with that particular witness.

20 MR. DANIEL: So we'll argue this tomorrow because I
21 ---

22 THE COURT: Right.

23 MR. BROOKER: Yeah, we're gonna have to.

24 MR. DANIEL: I think that there are multiple ways
25 that I can authenticate that not just that the sled agent

1 had heard his voice before. I think there are many other
2 ways, including phone number authentication of the thing,
3 but sure tomorrow, right.

4 MR. BROOKER: Okay. I want argue that for tomorrow. I
5 think one more thing.

6 (Whereupon, the lawyers have discussion off the record)

7 MR. BROOKER: Now, the other thing, Your Honor, with
8 respect to the contents that were received from, from
9 Snapchat as a result of a search warrant in this search
10 warrant I think is from a magistrate's judge, if I'm not --
11 signed on a magistrate's judge?

12 MR. DANIEL: Mmm, hmm.

13 MR. BROOKER: Okay. Again, Your Honor, this is
14 another issue that, that we think that probably that the
15 Supreme Court is going to be dealing with pretty soon. I
16 know it's been argued in a number of cases that are pending
17 before the Supreme Court and that is, is that the search
18 warrant, this search warrant is, is for I think this is a
19 search warrant that is directed to Snap, was Snap
20 Incorporated. Yeah, it's, it's a search warrant that was
21 sent to Snap Incorporated. And of course is, is that Your
22 Honor and it was a search warrant that was signed by a
23 magistrate's judge. And Your Honor and I think we all know
24 this, this is common knowledge, but I'll pull up the
25 statute if you want to hear it, but I don't think you'll

1 need it. But under South Carolina law is that magistrate
2 judges only have the authority to issue search warrants
3 within their jurisdictional boundaries. And so a
4 magistrate's judge cannot issue a search warrant outside,
5 outside to obtain and for the surge of records outside of
6 it's boundary. And so the question then becomes is, is, is
7 that is Snap Incorporated in Dillon County. Is Snap
8 Incorporated in Dillon County? Or did this search warrant
9 went beyond Dillon County? And, Your Honor, Snap
10 Incorporated is not in Dillon County. So when the
11 magistrate's judge signs a warrant, signs a search warrant,
12 signs a search warrant and there is a federal case that
13 deals with this, when the magistrate, when a magistrate's
14 judge a search warrant authorizing the Dillon County
15 Sheriff's Department or even if it's sled to, to search
16 records from an entity that is outside of it's
17 jurisdictional lines, is that that warrant is nol and void.
18 There is a federal court case and I'll get that federal
19 court case, Your Honor, if you want to hold your ruling in
20 abeyance that, basically, says, and of course, it was
21 issued by Judge Gorsuch, Gorsuch before he became a federal
22 judge that basically say that, and it dealt with a
23 magistrate's judge, a federal magistrate's judge who had, a
24 District Court judge, who has issued a, a, a warrant for
25 I think it was an FBI agent. It was some agent, it was some

1 agent of the federal government. I don't know if it was the
2 FBI or DEA to search a residents that was outside of the
3 jurisdictional district of that magistrate's judge. I think
4 that magistrate's judge was, I can't remember the state,
5 whether or not it was Virginia or Oklahoma or something
6 like that and he issued a warrant for the search of
7 property outside of his jurisdiction. And of course, the
8 court in that case basically says that that warrant was nol
9 and void because, because of the jurisdictional limits of a
10 judge is defined by statute and in South Carolina, South
11 Carolina has a statute that says a magistrate's judges
12 jurisdiction is the county in which that judge sit. A
13 magistrate's judge from Dillon County can't sign a search
14 warrant to search a home in Horry County or vice versa. A
15 magistrate's judge in Horry County can't sign a warrant to
16 search outside of his jurisdiction.

17 THE COURT: Let may help you a little bit here.

18 MR. BROOKER: I'm sorry?

19 THE COURT: I said let me help you a little bit
20 here.

21 MR. BROOKER: Sure.

22 THE COURT: If a magistrate issued that on
23 Snapchat that warrant is not gonna hold water, solicitor.

24 MR. DANIEL: Well, judge, we anticipated this
25 argument and I've talked to our people in Aiken, the

1 Attorney General.'s Office, who do criminal fields. And I
2 think it will hold water. I think it will hold water
3 because of the, because following Mr. Brooker's argument
4 you didn't have jurisdiction either because Snap ---

5 THE COURT: Oh, no! No! No! No! Y'all are both
6 wrong there. They way I understand that we've been
7 instructed by federal precedent, the magistrates the
8 jurisdiction ends at their county lines. If the legislature
9 were to come in and declare and force the issue the
10 magistrate's are a court of record, it won't be an issue
11 anymore. But any circuit judge in this state operates a
12 court of record, therefore, the circuit court judges can
13 issue warrants in the matters of these cell phones and
14 these computer records. A magistrate cannot, unless, that
15 specific servers is located in that county. Now, if the
16 Attorney General disagrees with that they're sure different
17 from what I've been instructed.

18 MR. DANIEL: There was a case argued in the South
19 Carolina Supreme Court on November 8, 2021, Justin Jamal
20 Warner over this exact issue. I think that's probably what
21 Mr. Brooker means he knows something is coming down because
22 this is certainly being litigated. But the argument that
23 was made in that case by the Attorney General's Office, the
24 argument that they told me to make here in this case about
25 this, was the good faith argument. And that is the world is

1 becoming a digital world, at one, at some point in time,
2 these, whatever was going on with Mr. McKeiver it was
3 Dillon County with Snapchat. At least, that's where he's
4 domiciled. And so at some point, something was in Dillon,
5 the location of a server has not come up in any of the
6 previous case law, at least, at this point. Now, again,
7 there might be things being argued currently, but law
8 enforcement has to have some means of obtaining this
9 information. And law enforcement and sled here in this
10 case, they knew they had to get a warrant. They went
11 through the proper judicial process and procedures that we
12 had available in South Carolina for digital evidence and
13 that's what, that's what's so new. We were not used to
14 digital evidence. Again, the world is becoming so digital
15 and this evidence was clearly created in the jurisdiction
16 of this magistrate. At one point in time it was in the
17 State of South Carolina and so the evidence clearly has a
18 connection to Dillon County. And that was the argument
19 that, that I'm gonna present to you. If we're overturned
20 later, I think is a harmless error argument because I think
21 that we will have, we would have received it at any point
22 anyway. But this is the same argument that is being made
23 currently in this other case that was just heard by the
24 Supreme Court.

25 MR. BROOKER: Your Honor, I think ---

1 THE COURT: Go ahead.

2 MR. BROOKER: And I'm familiar with the good faith
3 argument because he's right that's, that's what they're,
4 that's what the State is being instructed to argue is that
5 when this mistake is made. But, fortunately, Your Honor,
6 the reason why this is a, the reason why this is not a good
7 faith argument and the reason why I don't think it
8 satisfies the good faith standard is that every, every law
9 enforcement officer, every law enforcement agency, every
10 attorney is taught boundaries in jurisdiction. And this is
11 not a new case. This is not a new issue that's just come
12 up. I think yesterday or two days ago, this issue -- I
13 first raised this issue I think something like two, two
14 years or three years ago that it was raised. And of course
15 is that in the case in which, in which I was telling you
16 about the Supreme Court case, not the Supreme Court, but
17 the federal court case that decided that that basically
18 says that if you issue a warrant outside of your
19 jurisdiction I think that case was decided in something
20 like 2014 or '15, that's five or six years.

21 THE COURT: I know nothing about that. I'm not
22 familiar with that case, but I'm just telling you, both of
23 you, we've been instructed the magistrate's cannot issue on
24 a server that's not within that particular county where the
25 magistrate has jurisdiction.

1 MR. BROOKER: Yeah, I know we had that case. And I
2 know, Your Honor, we had this issue I think ---

3 THE COURT: But what you're saying flies in the
4 face of what we've been instructed, any court of record
5 within South Carolina can issue a warrant even though that
6 server may be in Hawaii. So -- but that ain't got anything
7 to do ---

8 MR. BROOKER: No.

9 THE COURT: --- with what you, with what y'all are
10 really -- this thing is dealing with a magistrate's.

11 MR. BROOKER: So if the magistrate's judge issue, and
12 of course, and of course is that if this is his, if this is
13 his social media account then the question then becomes is
14 if whether or not he has expectation of privacy, he has an
15 expectation and this goes back, I guess, similar to
16 Carpenter when it deals with cell phones and whether or
17 not, whether or not an individual has an expectation of
18 privacy in records that's kept by third-party cell phone
19 provided. The warrants of which they issue, the warrant
20 that they issued to obtain those records signed by a
21 magistrate's judge and sent to California seeking to
22 getting, taking records off of a server in California is,
23 is that it is unlawful. It was illegally obtained.

24 THE COURT: And that goes back to what I said it's
25 got to be a court of record.

1 MR. BROOKER: And so -- so in any, in any, in any
2 records that they obtain as a result of that illegal search
3 warrant, Your Honor, that was signed, from Snapchat, as a
4 result illegal search warrants should be suppressed.

5 THE COURT: All right. You got anything from a
6 court other than the opinion of the Attorney General?

7 MR. DANIEL: I have the opinion of the Attorney
8 General that says that the good faith argument is what it
9 is and that law enforcement did everything it could do in
10 2019 when this investigation occurred to go through it's
11 proper channels in the sense that it wasn't like they just
12 took his phone and started going through it. They got a
13 search warrant. They had probable cause. They were issued
14 that search warrant. It's for digital evidence which is a
15 verily new phenomenon. I don't know what the 2014 case is.
16 Mr. Brooker -- I don't know what the specifics of that --
17 if that was, if that was a search warrant for signing to go
18 see, look into a house in some other jurisdiction, very
19 different from what we have here, if that is, in fact, what
20 that case was. This is digital evidence. Our guys did the
21 best they could at the time. Since then there has been some
22 new form to the, um, new forum order, search warrant form
23 order that they use that has been approved, but that was
24 after this investigation took place. And so from a good
25 faith argument, again, this was three years ago when this

1 investigation took place.

2 THE COURT: Well, the present situation wasn't
3 aware of what happened as I understand it these servers
4 quit recognizing the magistrate's search warrants. And once
5 they started doing that, then law enforcement realized that
6 they gonna have to take a different angle and now it's come
7 down to the explanation that was provided to the court's
8 that magistrate's can't do it exactly like Mr. Brooker
9 says. It has to be a court of record and any circuit court
10 judge, say one in Charleston, can signed the search
11 warrants for law enforcement agency in Dillon. It doesn't
12 have to be the circuit judge in that particular circuit. If
13 it's under federal law, that's been explained to us, that
14 gives any circuit court judge in this state, it's a court
15 of record, of course, authority to do that.

16 MR. DANIEL: And would there be any merit to the
17 argument that this all occurred, this investigation, every
18 bit of this ---

19 THE COURT: In 2019 ---

20 MR. DANIEL: --- was legally obtained at the time it
21 was obtained?

22 THE COURT: No, you can't do it. Y'all are gonna
23 have to let me think about that one over night.

24 MR. BROOKER: And I'll ask for the record, for your
25 information, Your Honor, is that even if you use a

1 magistrate's court warrant is that you can still get, you
2 can still get records out of state from a magistrate's
3 court's warrant. It's more difficult is that what you have
4 to do is if you have to take, if the server is in Florida
5 and you get a warrant signed by a magistrate's judge you
6 have to send that warrant to Florida, and of course is, is
7 that get a magistrate, get a judge in Florida to patriate
8 that, that warrant in Florida where that warrant is
9 endorsed by a judge in Florida. There's actually law firms
10 out there because I know because I had this issue one time,
11 you know, where we were looking to maybe get a witness from
12 Florida. And of course is, if we got a, if we got a
13 warrant, not a warrant, but I subpoena for someone who is
14 living in Florida is that there is law in Florida where I
15 can send that warrant to, to Florida and actually have a, a
16 court there to recognize and endorse and order that, order
17 that citizen in Florida to comply with that South Carolina
18 warrant. So you can patriate warrants in the jurisdiction.
19 It takes a little bit of extra time. But like you said Your
20 Honor is, is that if you don't have that the best thing to
21 do is to go before a circuit court judge or either have it,
22 have it patriated in that way which has always existed I
23 think for a long time for many years.

24 THE COURT: It's, it's quite similar to magistrate
25 here Dillon issuing a warrant on a person who leaves in

1 Lancaster County that warrant, arrest warrant is going to
2 have to be sent to Lancaster County and countersigned by a
3 Lancaster County magistrate.

4 MR. BROOKER: That's correct.

5 MR. DANIEL: And I totally agree with that. I do
6 think that a caveat can be made that this is digital
7 evidence and that's just different. Digital evidence
8 because it's created here, it may be stored somewhere else,
9 it's created here in this jurisdiction. It's not searching
10 someone's house. It's not arresting somebody. It's digital
11 evidence which by it's very nature can exist in multiple
12 jurisdictions even at the same time. And I think that's
13 very different than arrest warrants for searching
14 somebody's car or house.

15 THE COURT: All right. If you've gotten a written
16 opinion from the Attorney General on that issue?

17 MR. DANIEL: Not like, not like one of the official
18 AG opinions that they give to agencies when they ask for
19 them, but I'm working on seeing what else they got.

20 THE COURT: All right. I'll rule on it tomorrow.
21 If y'all got anything have it ready for in the morning

22 MR. DANIEL: Okay.

23 MR. BROOKER: Thank you, Your Honor.

24 MR. DANIEL: Are you done? You got something?

25 MR. BROOKER: I don't think that I have anything

1 else, Your Honor. Let me make sure but I

2 MR. DANIEL: What was your ruling on the
3 authentication stuff that we could cover today? Well, I
4 guess all of that's gonna determine, be determined based on
5 what you rule first thing in the morning ---

6 THE COURT: Other than this Snapchat business I
7 denied any motion in limine.

8 MR. BROOKER: Yeah, I think he denied our video, of
9 our exclusion of the video. We agreed on the statements by
10 the CI that that's inadmissible because is unavailable. And
11 then of course, the social media stuff, I think that's
12 gonna be based upon Your Honor's ruling tomorrow because
13 that was obtained by the magistrate judges search warrant.

14 MR. DANIEL: The only other thing I could possibly
15 see and maybe it's a little semantical at this point, but
16 Mr. Brooker kept saying the audio from the video. The audio
17 from the video. That's what I agreed to. I was making the
18 point to say the audio, I agree we're gonna mute the whole
19 video ---

20 MR. BROOKER: And I apologize. We agreed on the
21 audio.

22 MR. DANIEL: Audio from ---

23 MR. BROOKER: On exclusion of the audio, the audio,
24 but not the video.

25 MR. DANIEL: Right. I made it a point that the

1 recorded phone calls that we have that when my CI talked to
2 Mr. McKeiver on the way to his house to set up the buy ---

3 THE COURT: That's gonna have to be handle when you
4 get your witness.

5 MR. DANIEL: Right. Okay. I just wanted to make sure
6 that was clear for the record.

7 THE COURT: Okay.

8 MR. DANIEL: Okay. So jury is at 9:30. So same time
9 for us, 9:15?

10 THE COURT: No. We'll be here at 9:30. They can sit
11 and drink coffee until y'all can get your act together.

12 MR. DANIEL: Okay.

13 MR. BROOKER: Thank you, Your Honor.

14 MR. DANIEL: Thank you, judge.

15 (Court is adjourned on Monday, January 10, 2022 at 5:03
16 p.m.)

17

18

19

20

21

22

23

24

25

1 Tuesday, January 11, 2022

2 _____(WHEREAS, this matter was scheduled for a trial, the
3 defendant appeared along with his attorney of record. The
4 proceedings began at 9:30 a.m.)

5 THE COURT: All right. The first problem we've got,
6 we got a juror sick. Went and got tested. He had
7 communication with Mr. Clerk that he was sick and he'd been
8 tested. So I just sent -- he was outside in his car. We
9 have sent him home. So Madam Clerk, while we conclude our
10 discussion about matters of law, I need for you to put into
11 the computer the four names of the alternates, and we will
12 draw one to move up to the on the jury. All right. And I'm
13 gonna -- who is the juror we lost now, Madam, Clerk?

14 THE CLERK: He's number 6, Your Honor.

15 MR. DANIEL: Number 6?

16 THE CLERK: Adrian Nelson.

17 THE COURT: Adrian who?

18 THE CLERK: Nelson.

19 MR. DANIEL: That's not number 6.

20 THE CLERK: That's his juror number I believe.

21 MR. DANIEL: Nelson, number 187.

22 THE CLERK: Right.

23 MR. DANIEL: Okay.

24 THE CLERK: I was over to the side.

25 MR. DANIEL: One eight-seven, right?

1 THE CLERK: Right.

2 MR. BROOKER: Judge, can I quickly step out and get
3 my notebook. I think I left my notebook in the room next
4 door?

5 (Whereupon, Mr. Brooker goes and retrieves his notebook)

6 **Motion:**

7 THE COURT: All right. On that last issued that we
8 stopped at 5 o'clock or little after five yesterday, I've
9 burnt a little midnight oil on it. But I don't want to
10 close it out because if y'all found something I certainly
11 want to let you get it on the record, but we don't want to
12 belabor things this morning, now. So either side got
13 anything they want to supplement the previous discussion
14 with.

15 MR. BROOKER: Judge, the only thing I can do is and I
16 know that yesterday is that at least I can give you the
17 citation to some of the case law that's referenced
18 yesterday just in case you want to look it up those cases.
19 And of course, the case that I was talking about, and of
20 course, it's a 2018 case, and of course, there was an alter
21 of 2017 one, but the one I'm ref, was referencing is the
22 United States vs. Henderson and that's 906 F.3d 1109.
23 That's a Ninth Circuit 2018 case. And that is the case that
24 I was referencing where the, where the, the Federal Court,
25 the Federal Circuit Court, basically, said that the judge -

1 --

2 (Whereupon, the court reporter motions the lawyer to speak
3 up)

4 MR. BROOKER: I apologize. That is the Federal
5 Circuit Court case that I was referencing yesterday in
6 which the court says that if a judge issues a, a search
7 warrant beyond the authority, the jurisdictional authority
8 of that judge, then, of course, constitutionally that that
9 search warrant is nol and void. It has no constitutional
10 authority. And of course, obviously -- and so that's the
11 only thing. The only thing, judge, is that just for
12 purposes of the record, I think another defect of the
13 warrant was is, is that - and I won't go into great detail,
14 I'll take less than sixty seconds. And of course, what I'll
15 do judge is that for purposes of the record, if you will
16 allow me, judge, is to go ahead and make that, that search
17 warrant and exhibit so that, you know, if this thing ends
18 up on the Court of Appeals. The Court of Appeals is gonna
19 say, you know, well that dumb defense attorney didn't,
20 didn't put the warrant into evidence so that they can
21 review it so they'll have a copy of it. So if I can be
22 allowed judge, the warrants in which we were referencing
23 yesterday, we can move to have that entered into, into the
24 record just as ---

25 MR. DANIEL: No objection.

1 MR. BROOKER: --- as an exhibit for this motion.

2 MR. DANIEL: Thurmond, let me see that.

3 MR. BROOKER: Sure.

4 MR. DANIEL: No objection.

5 THE COURT: In without objection.

6 (Whereupon, the Search Warrant Dated 11-19-2019 has been
7 marked and entered into evidence as Defendant's Exhibit No.
8 1)

9 MR. BROOKER: Your Honor, the only other defect that
10 we would note with that, with that warrant that we just
11 need to put on the record is, is that obviously, is
12 warrants, warrants have to be executed and a return back
13 given back to the judge that issued the warrant within 10
14 days and that's pursuant to statute to 17-13-140. It says
15 they have to be executed and returned, returned within 10
16 days. And of course, this warrant was, was issued on
17 November 19, 2019. And the warrants that's when marked as
18 Court Exhibit, is that just Court Exhibit Number 1.

19 COURT REPORTER: I think it's defendant.

20 MR. BROOKER: It's Defendant's 1? Okay. So what's
21 been marked as Defendant's 1 for purposes of this, for
22 these motions, I think that that defense, that warrant was
23 issued on November 19, 2019. And of course, it was served
24 on the same day, November 19, 2019. However, the return was
25 not issued until roughly April, I think, 7 of 2020. So,

1 roughly, almost, not quite about four months later, which
2 is well, well beyond that 10 day requirement of 10 days. I
3 won't go into anything further, Your Honor. That's all that
4 I think that we have to put on the record in reference to
5 Defense Number 1.

6 THE COURT: All right. Concerning the 10 day with
7 these warrants, now, cell phones, and social media,
8 internet, I note the 10 days is normal time but it's
9 practically impossible. I don't know, gosh, I don't -- all
10 these warrants that we've been issuing I don't know of any
11 that have fallen within the 10 days. It just takes
12 tremendous amount of time sometime to get through these
13 servers and these cell phone carriers, so the 10 day rule
14 doesn't give the court any concern because, like I say,
15 it's just not practical.

16 All right. Solicitor?

17 MR. DANIEL: Thank you, Your Honor. If it pleases,
18 the Court? Mr. Brooker references United States vs.
19 Henderson 906 F.3d 1109, judge, that case actually stands
20 exactly for the State's argument here. Because in that
21 case, there were, the court found that the search warrant
22 was deficient because, the wrong kind of judge signed it.
23 But, actually, the court did not suppress the information
24 received as a result of the search warrant because of the
25 good faith rule. Which is exactly the State's argument

1 here. The good faith exception to the exclusionary rule.
2 And again, the case that the defense just cited in that
3 case, "the search warrant was found to be to have been
4 signed by the wrong kind of judge, but the court still
5 allowed the information obtained by the search warrant. The
6 good faith exception was a judicially created remedy to
7 effectuate the right to be free from unreasonable searches
8 and seizures," as we all know, guaranteed by the Fourth
9 Amendment, "However, the exclusionary rule did not create a
10 personal constitutional right to the exclusion of evidence.
11 The rule itself was not designed to redress an injury
12 caused by an unconstitutional search or seizure." And
13 that's Davis v. US, 564 US 229, a case from 2011. "Instead,
14 the exclusionary rule was adopted and solely exist to deter
15 future Fourth Amendment violations." That's the same Davis
16 case and then, Elkins v. US, 364 US 206, "which held that
17 the exclusionary rule is calculated to prevent not to
18 repair." In the Leon case, the Supreme Court rejected the
19 contention that the exclusionary rule should be applied to
20 evidence, "obtained by officers acting in reasonable
21 reliance on a search warrant issued by a detached and
22 neutral magistrate, but, ultimately, found to be
23 unsupported by probable cause." Instead, the court adopted
24 in good faith exception to this exclusionary rule and
25 caution that it should be used only rarely in cases where

1 officers reasonably relied upon subsequently invalidated
2 search warrants. The Court explained in this case, that
3 suppression of evidence based on a subsequently invalid
4 search warrant was only appropriate in four situations. So
5 suppression of evidence is only appropriate in four limited
6 situations; (1) where the affiant misled the issuing judge
7 by including false information of the affidavit. It's not
8 what we have here; (2) where the issuing judge wholly
9 abandoned his neutral and detached judicial role. Not we
10 have here. (3), where the search warrant was so lacking of
11 probable cause as to render official belief and its
12 existence entirely unreasonable. Not what we have here.
13 And, finally, (4), when a search warrant was so facially
14 deficient in some technical respect, that the officer
15 executing the search warrant could not reasonably have
16 presumed it to be valid. Also, not what we have here. The
17 Supreme Court in Hudson v. Michigan, 547 US 586 has
18 admonished the exclusionary rule is to be "a last resort
19 and not a first impulse." In this case, judge, we have good
20 faith on the part of the officers. Sled got a warrant which
21 a magistrate signed. The magistrate, obviously, thought he
22 had jurisdiction because he signed off on it. And according
23 to Smith v. Millender a magistrate signing off on a warrant
24 is the clearest indication that the officer acted in good
25 faith. Chavez vs. United States is another Federal Case

1 that says, "no warrant, in which no warrant was issued at
2 all, but a good faith argument succeeded." Judge Kittredge,
3 in, Justice Kittredge in an oral argument that took place
4 just in November said, "for years magistrate's across this
5 state have signed warrants for cell phone data, even if
6 it's, even if it's improper. I don't see how this is gross
7 misconduct." That was an oral argument dealing with this
8 exact issue just in November of 2021.

9 I would also add that social media, I've made this
10 argument yesterday - this is just how law enforcement
11 investigations go these days with social media - social
12 media messages and posts are everywhere. The posts in
13 question are not private, they were not private messages
14 made by the defendant to private, in some sort of direct
15 message way. These were posts that he put out for all of
16 his followers to see. The defense wants law enforcement to,
17 apparently, to go to every state where a server may hold
18 one image or one text message or one social media post and
19 that's just not practical. Section 17-13-140 of our South
20 Carolina Code of Laws, says, "any magistrate having
21 jurisdiction over the areas where the property sought is
22 located can sign a warrant." It's plausible to argue, but
23 the digital evidence at question here, existed at some
24 point in South Carolina. We're talking about a phone used
25 in South Carolina on account owned by a person who lives in

1 South Carolina. Cell phone at some point use towers that
2 were located in Dillon County, at least, some of the
3 material would have been originated, would have originated
4 from Dillon, South Carolina. The defense's argument is just
5 that this information is stored in another jurisdiction
6 since Snap is in California.

7 Finally, the state would argue inevitable discovery
8 the defense is not arguing any lack of probable cause in
9 the search warrant. They're not saying anything else was
10 wrong with the search warrant, they're just saying the
11 wrong kind of judge signed a search warrant. There is no
12 bad faith accusation here. We haven't sworn the jury yet,
13 so we really could stop this whole thing right now. Go get
14 the right kind of judge to sign the same warrant with the
15 same probable cause asking for the same information. Send
16 it out to California. Have it countersigned, if that's the
17 process in California; and, come back here next month, with
18 the exact same information obtaining with a different judge
19 signing the search warrant. But, ultimately, judge, and I
20 think the defense, I would point to the case again that the
21 defense just cited United States vs. Henderson, which
22 argues and the court finds that because of good, the good
23 faith exception to the exclusionary rule, despite the wrong
24 judge signing the search warrant, the evidence was allowed
25 in, in the case the defense mentioned.

1 THE COURT: All right. I've heard enough. I thank
2 y'all for working on this. Like I said I spent a little
3 midnight oil on this last night. That Henderson case, I
4 looked at it. There's not a whole lot of precedent out
5 there to go by. So I'm gonna add a little common sense to
6 my ruling, but I'mma go over that and I'mma rule and then
7 that's gonna be it. Y'all are not gonna argue with me
8 anymore. Okay. There appears to the court, and I find that
9 there was good faith on the part of law enforcement it's
10 seeking this warrant. In 2019, it was still a common
11 practice for law enforcement to go to the magistrate's to
12 have such warrants issued. From my memory, it appeared that
13 the server's and the cell phone companies on their own
14 begin to require different type warrants with sometimes
15 with different certifications attached, to be issued by
16 courts of record. I haven't found anything where that was
17 directed by any court to them. I think probably the legal
18 counsel, to try to clean up and stop maybe a massive search
19 warrants coming in from various jurisdictions to clean that
20 up and somewhat they made, I'm just supposing here that the
21 legal counsel for these various servers, may have created
22 that atmosphere where, where the servers and the cell phone
23 companies change their approach about obeying these search
24 warrants. But it was common practice at that time to go to
25 magistrates to get those warrants. I'm satisfied that it

1 was good faith on the part of law enforcement.

2 Let's talk about a little difference in various
3 aspects of cell phones and computers and WebEx and social
4 media, I think it's fair to say that most Americans think
5 that their private conversations over cell phone deserve
6 privacy and many people feel that way. Personally, I don't.
7 I listened to various people over the last year talk about
8 how amazing it is that my clerk and I could be talking, not
9 on a cell phone, for example, we talk about Whirlpool
10 refrigerators compared to Samsung refrigerators and the
11 pros and cons about which one to purchase. Isn't it amazing
12 when you go on your smartphone, a cookie suddenly pops up
13 about Samsung refrigerators. Happens every day. Personally,
14 I don't expect any privacy at all on the use of this cell
15 phone. Now, where it gets tricky to these iPhones, as
16 you know, you can put your WiFi, um, your, your internet
17 services on there and then, you know, the expectation of
18 privacy certainly falls when you start dealing with social
19 media, whether it's on the cell phone or it's on this
20 computer over here. So what I was thinking about last night
21 as I was going over this, suppose you have someone that's
22 been dealing in receiving stolen goods and they go to the
23 local newspaper, say the Dillon Herald over here, and they
24 put an ad in the paper that they have certain items for
25 sale. And the victim of one of those thefts sees that in

1 the paper and they go to law enforcement. And they say
2 sheriff, look at this ad in the paper, that's got to be my
3 property. It's been advertised here. Do you think law
4 enforcement needs to go down to the Dillon Herald, who
5 probably keeps numerous copies for months or years from
6 past editions of the paper, that they got to have a warrant
7 to go down there and get a copy of that paper. That's a
8 printed copy. So, you know, in this computerized world of
9 social media, and the news media on the various servers out
10 there, there's no expectation of privacy on that.

11 Now, the next thing I thought about was if you have in
12 this situation where, for example, the defendant was having
13 private
14 communication over, let's see in this case, it wasn't --
15 which social media was it in this case?

16 MR. BROOKER: Snapchat.

17 MR. DANIEL: Snapchat.

18 MR. BROOKER: Snapchat. Well, you got Snapchat and
19 you Twitter and you got Facebook, on those, if he was
20 expecting privacy between he and one person, it makes an
21 argument maybe little stronger about the expectation of
22 privacy and the need of constitutional protection. But when
23 you go on there and you putting a product out there for
24 people to consume or buy and it's going to several people
25 or a mass of people, you know, what's the difference in

1 that than a printed newspaper? So what I'm trying to say
2 here, I'm using, I'm trying to apply a common sense
3 approach to this whole thing since there's not much
4 precedent to go out, to go by out there. So with that, with
5 that said, I'm gonna have to deny the motion in limine or
6 to suppress that particular Snapchat evidence. All right.

7 MR. DANIEL: Thank you, judge.

8 THE COURT: Now, Madam, Clerk -- well, let me close
9 out by saying by using that common sense approach with the
10 limited precedent that we have out there, I just, I trust
11 the Appellate Courts thinks about what all I applied there
12 to this situation. All right. Madam, Clerk, Did you draw
13 ---

14 THE CLERK: Yes, sir.

15 THE COURT: --- an alternate to step up?

16 THE CLERK: It's Latoria Alls. She's number 6.

17 THE COURT: All right. That's juror number 6 will
18 be moving up, gentlemen. And we lost juror Allison, Adrian
19 Nelson. THE CLERK: Adrian Nelson.

20 THE COURT: That's who we lost.

21 THE CLERK: Yes, sir.

22 THE COURT: That's 187. He would have been number
23 10 on our roster. Once again for the record, the problem we
24 had with that juror is he reported sick this morning. He
25 was so sick he had already gone and got the Covid test. We

1 don't, we don't want any covid endangerment of the court,
2 the staff or the jurors so I've excused him.

3 All right. That goes for everybody, more so including
4 me, we need, if you're in close contact with anybody, I
5 would suggest that you wear a mask, unless, you're making
6 statements to the court or testifying. Now, if you've got
7 six feet away from anybody else, I don't think you need to
8 be concerned, but court administration definitely wants us
9 to use the mask.

10 All right. Bring the jury in.

11 MR. BROOKER: Judge?

12 THE COURT: Yes, sir.

13 MR. BROOKER: I think, we're supposed to do, we're
14 supposed to do the, I guess, the motion, I think, the one
15 more motion in limine because we didn't have an officer
16 yesterday. And I think that was, that's what akin to the
17 Neil vs. Biggers hearing.

18 THE COURT: All right. Is that the first officer?

19 MR. DANIEL: No, sir. He'll be the second witness.

20 THE COURT: All right. Let's go ahead and get
21 started and then ---

22 MR. DANIEL: Well ---

23 THE COURT: --- since we got jury sitting back
24 there -- go head.

25 MR. DANIEL: Well, I, I, sorry, I just want to say

1 the first one will talk about what happened. I think this
2 whole thing is over the fact that there was a phone call
3 made once the CI and the undercover sled agent, who's my
4 second witness, once they got in the car to drive to the
5 defendant's home, they made a, they placed a phone call. It
6 was on speaker phone that my undercover agent, he didn't
7 participate in the call, but he heard the whole
8 conversation. He's going to testify about that phone call.
9 He's not going to say anything that the defendant, I mean,
10 that the CI said or even that the defendant said, he's just
11 gonna say this was a phone call that was made between the
12 CI and the defendant to set up the phone call. I think
13 authentication to prove that this, that my officer is
14 testifying that it was, in fact, the defendant on the other
15 end of the call, is Mr. Brooker's point, right?

16 MR. BROOKER: Yeah. There's two things that he has to
17 do prior, prior to that evidence being entered in. Under
18 903, then of course is, if he's gonna use voicemail
19 identifications, then of course is, is that voice
20 identification, it has to be authenticated pursuant to the
21 way that 903 and 901 says, "that voice identification has
22 to be authenticated." And then, of course, also is, is that
23 there, there also, I think, is a Neil vs. Biggers issue.
24 And of course, it would -- that deals with the, that deals
25 with the admissibility of out of court identifications and

1 whether or not out of court identifications violates, I
2 guess, due process, if the out of court, if the out of
3 court identification was unduly suggested in some way. So
4 it's authentication and, then, of course, Biggers, the
5 Biggers, and that is whether or not -- the Biggers deal
6 with whether or not the out of court identification is
7 admissible or in admissible.

8 THE COURT: All right. With the State's statement
9 there that the first witness will be getting into that I
10 certainly defer to the suggestion by Mr. Brooker. Let's go
11 ahead and do it. We'll, get started with the jury a little
12 later.

13 **The Neil vs. Biggers Hearing:**

14 MR. DANIEL: All right, judge, therefore, the State
15 would call Alex Blake.

16 THE COURT: Come around and be sworn please.

17 MR. BLAKE: Yes, sir.

18 THE CLERK: Do you solemnly swear or affirm the
19 evidence and testimony you're about to give the court on
20 this case is the truth, the whole truth, and nothing but
21 truth so help you God?

22 MR. BLAKE: Yes, ma'am.

23 THE CLERK: Be seated. State your full name for the
24 court and spell your last for us please?

25 MR. BLAKE: My name is Alexander Blake

A. Blake- Direct Examination by Mr. Daniel

95

1 MR. DANIEL: Your Honor, if it pleases, the Court?

2 ALEX BLAKE, first being

3 duly sworn, testified as follows:

4 **Direct Examination by Mr. Daniel:**

5 Q. Mr. Blake, where are you from?

6 A. I'm from Georgetown, South Carolina.

7 Q. And where do you work?

8 A. I work for the Federal Bureau of Investigation.

9 Q. Where do you work now? Where?

10 A. In Miami, Florida. And you used to work here for sled,
11 right?

12 A. I did. Correct.

13 Q. And were you involved in an operation involving this
14 defendant in 2019?

15 A. Yes, sir.

16 Q. What was your role in that, in that operation?

17 A. I was acting as an undercover agent and I was driving
18 a confidential informant to make a drug purchase on that
19 date.

20 Q. Okay. Were you aware, at the time that you were in the
21 car, who the target of that investigation was?

22 A. Yes.

23 Q. You knew who you were gonna go see?

24 A. Correct.

25 Q. Who was that person?

1 A. Marc McKeiver.

2 Q. Okay. Is he in the courtroom today, by the way?

3 A. Yes. He's sitting there in the white shirt and gold
4 chain around his neck at the table to my left.

5 MR. DANIEL: Please, please let the record reflect
6 that he has identified this defendant as being the target
7 of that investigation that Agent Blake was a part of.

8 Q. What is your title by the way, agent? Special agent?

9 A. Special agent.

10 Q. Okay. I just want to call you the right thing. All
11 right. Special Agent Blake, on the way to the, to Mr.
12 McKeiver's house, did you have a phone call placed to some
13 phone number?

14 A. Yes, sir, I did.

15 Q. Okay.

16 A. A phone call was placed by, by a confidential
17 informant to a phone number that the confidential informant
18 that we believe was being used on Mr. McKeiver. It was
19 placed on speakerphone so I could hear the entirety of the
20 conversation.

21 Q. Okay. And the -- what was the purpose of this phone
22 call?

23 A. It was simply to ensure that Mr. McKeiver was at a
24 certain address or location for us to go and purchase the
25 quantity of drugs.

A. Blake- Direct Examination by Mr. Daniel

97

1 Q. Okay. And did that all happen?

2 A. Yes.

3 Q. Okay. You heard the whole conversation, right?

4 A. Yes, sir.

5 Q. Did you recognize Mr. McKeiver's voice?

6 A. I recognized the voice after I listened to a, to audio
7 from the actual transaction that took place, later.

8 Q. Okay.

9 A. Compared the two voices and notice that they were the
10 same, yes, sir.

11 Q. Okay. So as you testify today, later in front of the
12 jury, you can identify or you can testify - true or false -
13 you can testify that the voice you heard on the phone that
14 day, was the same voice you heard Mr. that come out of Mr.
15 McKeiver's mouth on a later video that you saw?

16 A. Yes, sir.

17 Q. And the video you're talking about is the video that
18 was worn by the CI during that buy?

19 A. That's correct.

20 Q. Right. Okay. So that takes care of one of the ways
21 that we can authenticate that. Secondly -- because, because
22 you recognized his voice that it happened after the fact
23 it's still relevant, or still, it's still works for this
24 argument.

25 Q. One other thing, the phone call, the phone number that

1 was used?

2 A. Yes, sir.

3 Q. Where did you say you got the phone number from?

4 A. The confidential informant showed me his phone after
5 the phone number was dialed and then read aloud the phone
6 number to

7 me that was dialed.

8 Q. Talking about how that works and why you do that?

9 A. Okay. So I want to ensure that, you know, if I don't
10 look at the phone and verify that the phone number was
11 called, let's just say for example, someone can tell me
12 they called the number that's not the actual number they
13 called. So it's just, just a second way to, I guess, verify
14 the number was called. So, essentially, the CI picked his
15 phone up, show me the number that was dialed and I read it
16 aloud on a recorded audio so that it was there in record.

17 Q. Okay. Do you remember what that phone number was, by
18 the way?

19 A. I believe it was [REDACTED].

20 Q. Okay.

21 A. If I'm not mistaken.

22 Q. I believe that's right. And have you seen that phone
23 number in anything else associated with this investigation?

24 A. I believe I saw it in a Snapchat authentication
25 showing that a Snapchat was being, I guess, was, was

A. Blake- Cross-Examination by Mr. Brooker

99

1 attached to that phone number.

2 Q. And that phone number that was attached that Snapchat
3 name, was that Snapchat name actually the one that was
4 search warranted of the defendant?

5 A. I'm not certain on that.

6 Q. Okay. Because you didn't do the search warrant?

7 A. No, sir.

8 Q. Okay.

9 MR. DANIEL: I've no further questions. Please
10 answer any questions that the defense may have.

11 **Cross-Examination by Mr. Brooker:**

12 Q. Okay. Special agent Blakely, (ph) I think prior to,
13 prior to that to that control buy, I think it was
14 September, September 9, 2019, had you ever get introduced
15 to Mr. McKeiver?

16 A. Personally introduced, no, sir.

17 Q. Yes. Have you ever talked with him prior to that
18 control buy day of, that controlled buy date of September
19 9, 2019?

20 A. No, sir.

21 Q. Have you ever and I may have asked this, I want to
22 make sure, have you ever seen him before?

23 A. I had seen him, yes, sir.

24 Q. Okay. So prior to that date, you had no recollection
25 of what his voice was?

1 A. No, sir.

2 Q. Okay. And I think you testified that the CI made a
3 phone call to a cell phone number that the CI told you
4 belonged to a gentleman by the name of "Duke"?

5 A. Correct.

6 Q. Is that the case?

7 A. I testified Marc McKeiver, but, yes, sir, Duke was a
8 nickname for McKeiver.

9 Q. Yeah. And I want you to tell us the name, the name of
10 the CI used? Did the CI use the name "Duke"?

11 A. Yes, sir.

12 Q. Okay. So he told you that this was a cell phone for
13 the name, for a person by the name of Duke, is that
14 correct?

15 A. I don't believe -- I don't know that that's, those
16 were the exact words, but it was referenced that the phone
17 number was being used by "Duke" whose real name is Marc
18 McKeiver according to the CI.

19 Q. Did the CI tell you what his real name was?

20 A. Yes, sir.

21 Q. When did he tell you that?

22 A. I can't recollect on the exact time.

23 Q. Did he tell you on the video?

24 A. No, sir.

25 Q. So this is information that you're getting from the

A. Blake- Cross-Examination by Mr. Brooker

101

1 CI?

2 A. That's correct.

3 Q. Whose name is Duke. Did you have any other way of,
4 other than information that you got from the CI, did you
5 have any other way to verify, verify that, that, that his
6 nickname was Duke ---

7 A. No.

8 Q. --- other than what the CI told you?

9 A. The -- other than the investigation that was done by
10 the case agent with sled, Special Agent James Martin, that
11 was all relate to me as well through his investigation.
12 Again, I was acting in a supporting role as an undercover
13 agent in this. I was not responsible for the entire
14 investigation. But that was all related to me by the, the
15 other special agent.

16 Q. Yeah, I'm talking -- yeah, I know -- and, and, and
17 that officer will testify. I'm talking about your
18 personal knowledge.

19 A. Sure.

20 Q. Did you do anything through your personal, through
21 your personal knowledge to, to, to confirm that Marc
22 McKeiver's nickname was Duke?

23 A. No, sir.

24 Q. Okay. Now, I think your testimony was is, is that
25 later on when you heard the control buy, later on when you

1 watched the control buy video, and of course, is that, and
2 in that video you saw a person that you believe to be Marc
3 McKeiver, is that correct?

4 A. Yes, sir.

5 Q. Okay. And of course, is that the voice that you had
6 heard earlier when the CI placed the phone call, you
7 recognize that that was the voice from the person on the,
8 on the video?

9 A. Yes, sir.

10 Q. So the first, so the first voice -- the first voice
11 analysis that you used was from the cell phone, is that
12 correct?

13 A. That's correct. Yes, sir.

14 Q. And of course, the second, and the, the second, I
15 guess, device that you heard his voice from would have been
16 at that audio recording device?

17 A. Yes, sir.

18 Q. Okay. And of course is that, all of these, his voices
19 were filtered through a device. You didn't hear his voice
20 firsthand, is that correct?

21 A. No, sir, not first hand.

22 Q. Now, had the CI also told you that he was, he was
23 going to be talking to Duke, this Marc McKeiver?

24 A. Throughout the course of the day or on phone calls?
25 Are specifically talking about certain incidents?

A. Blake- Cross-Examination by Mr. Brooker

103

1 Q. Yeah. That day before the control buy?

2 A. Yes, sir.

3 Q. Okay. When y'all went to go to the control buy, the CI
4 told you that he's gonna call Duke?

5 A. Correct.

6 Q. And so, so the CI had already, already stated to you
7 that the person on the other end was gonna be Duke, is that
8 correct?

9 A. That's correct.

10 Q. Okay. So prior to you even, so prior to you later on,
11 I guess, making a voice identification, you'd already been
12 told, you're already been told that that was Duke?

13 A. Yes, sir.

14 Q. Is that correct?

15 A. Correct.

16 Q. Are those, are those the only two instances in which
17 you've, in which you've ever heard Marc McKeiver's voice or
18 Dukes voice is from that cell phone call and then later on
19 from watching the buy video?

20 A. Yes, sir.

21 Q. Any other times?

22 A. No sir.

23 MR. BROOKER: If you can indulge me just a second,
24 Your Honor, I maybe finished. Let me make sure that I am.

25 THE COURT: Yes, sir.

1 MR. BROOKER: I don't have any further questions,
2 Your Honor.

3 **Redirect Examination by Mr. Daniel:**

4 Q. Special Agent Blake, was this buy the first time you
5 had been involved in an operation involving this defendant?

6 A. No, sir.

7 Q. Had you actually been a part of a task force, same
8 task force that was investigating him a couple months
9 prior?

10 A. Yes, sir.

11 Q. Okay. So you're familiar with this defendant?

12 A. Correct.

13 Q. You may not have heard his voice before, but you've
14 watched recordings, you're familiar with him?

15 A. Yes, sir.

16 Q. You, and again, it is not my intention at all to even
17 bring up anything that the CI said since he is not allowed
18 or since he can't be here to testify, but you told the CI
19 to call McKeiver?

20 A. Yes, sir.

21 Q. You drove to where?

22 A. I drove to, I don't know the exact address, but it was
23 a residence that was being used by Mr. McKeiver.

24 Q. And did you see Mr. McKeiver there?

25 A. I did.

A. Blake- Redirect Examination by Mr. Daniel

105

1 Q. At what -- at which point did you see Mr. McKeiver?

2 A. It was after the transaction took place, after the
3 actual control purchase of the drugs took place. Mr.
4 McKeiver walked out on the porch stoop and kind of peered
5 his head around the door, stood on the porch stoop to see
6 who was driving the CI to the location.

7 Q. And then when the CI got back in the car, were there
8 any drugs that the CI had?

9 A. There was. There were two bags, five hundred total
10 pills. Q. Okay. And just to, to summarize, you had not
11 heard Mr. McKeiver's voice before this day?

12 A. Correct.

13 Q. You heard a voice on the phone?

14 A. Yes, sir.

15 Q. Phone call was made to a number that you knew, that
16 you had been told was, belonged to the defendant?

17 A. Correct.

18 Q. And you later heard the video, maybe later that day,
19 what you do hear Mr. McKeiver speaking, right?

20 A. Yes, that's correct.

21 Q. And, in your opinion, the voices were the same?

22 A. Yes, sir.

23 Q. Okay.

24 MR. DANIEL: No further questions.

25 THE COURT: Anything else?

1 MR. BROOKER: Just, Just one more, one or two more
2 questions, Your Honor. It's gonna be very brief.

3 **Re-cross Examination by Mr. Brooker:**

4 Q. I think you said that you were told that number that
5 was called belong to Marc McKeiver?

6 A. Yes, sir.

7 Q. Okay. Did you -- do you know who was the cell phone
8 provider?

9 A. I do not.

10 Q. Okay. So I'm assuming because you don't who the cell
11 phone provider, I'm assuming that you've never sent a
12 subpoena to a cell phone company to identify who that
13 number, that account number was connected to for that
14 phone?

15 A. I do not. No, sir.

16 Q. So you're not saying that, that -- you're not saying
17 that you have evidence from a cell phone provider, but
18 that, but that number was assigned to Marc McKeiver?

19 A. So again, I was acting in a supporting role with this,
20 in an undercover capacity, not as the investigating agent
21 so I would not have been responsible for that.

22 Q. Certainly, I understand. I just want to make sure
23 because we don't know.

24 A. Sure.

25 Q. I'll ask this last question. I think you've already

J. Martin- Direct Examination by Mr. Daniel

107

1 answered it, but I want to make sure. That you knew Marc,
2 you knew Marc McKeiver before and when the CI was making
3 the phone call, the CI told you that voice on the other end
4 was Marc McKeiver?

5 A. Correct.

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

7 THE COURT: Thank you, sir. You may step down.

8 MR. DANIEL: Your Honor, the State calls J. T.
9 Martin.

10 THE COURT: Come around and be sworn, please, Mr.
11 Martin.

12 THE CLERK: Do you solemnly swear or affirm the
13 evidence and testimony that you're about to give the court
14 is the truth, the whole truth, and nothing but the truth so
15 help you God?

16 MR. MARTIN: I do.

17 THE CLERK: Be seated. State your full name for the
18 court, spelling your last for us, please.

19 MR. MARTIN: James Martin. The last is spelled, M-a-
20 r-t-i-n.

21 JAMES MARTIN, first being
22 duly sworn, testified as follows:

23 **Direct Examination by Mr Daniel:**

24 Q. Special Agent Martin, of whom are you employed?

25 A. By sled. The State Law Enforcement Division.

1 Q. How long have you been so employed?

2 A. I've been with sled for just over three years now.

3 Q. Were you involved in operation in September of 2019
4 involving Marc McKeiver?

5 A. I was.

6 Q. Actually, it was more than just September of 2019,
7 wasn't it?

8 A. That's correct.

9 Q. Did you oversee the control, several control buys
10 involving this defendant?

11 A. I did.

12 Q. Did you, after or at some point during this
13 investigation, did you issue a search warrant or have a
14 search warrant signed by a judge?

15 A. I did.

16 Q. Who was that search warrant directed to?

17 A. To Snap Inc.

18 Q. Why did you seek information from Snap?

19 A. I had received information, secondhand and also seen
20 firsthand, numerous posts involving drug activity on that
21 account that I had been told was associated with Mr.
22 McKeiver.

23 Q. Okay. Did you get any information from Snap that
24 identifies who the owner is?

25 A. I did.

J. Martin- Direct Examination by Mr. Daniel

109

1 Q. I'm going to show you what's been pre-marked State's

2 10. Do you recognize that document?

3 A. I do.

4 Q. What is that?

5 A. It's the authentication of the account information

6 from Snapchat.

7 Q. Authentication of account information from Snapchat,

8 what is the Snapchat screen name or user name?

9 A. It's Duke underscore TTG.

10 Q. Duke. And did you understand that defendant's nickname

11 to be Duke?

12 A. I did.

13 Q. Okay. Is there a phone number associated with that

14 screen name?

15 A. There is.

16 Q. What is that phone number?

17 A. It's [REDACTED].

18 Q. And that phone number, therefore, is the same phone

19 number that was called, and you know this because you

20 oversaw the investigation, that the phone call was made to

21 on the way to the, to his house?

22 A. That is correct.

23 Q. Okay.

24 MR. DANIEL: I have no further questions. Just leave

25 that right here.

1 **Cross-Examination by Mr. Brooker:**

2 Q. Agent Martin, I think you said that you got
3 information from Snapchat, Snapchat that associated a cell
4 phone number to that Snapchat account, it was called I
5 think, Duke. I think it's identified as what Duke, Duke T
6 that was a TT?

7 A. It's TTG. TTG, yes.

8 Q. Now, does Snapchat assign cell phone numbers ---

9 A. They ---

10 Q. --- is it a cell phone company?

11 A. They do not assign cell phone numbers to my knowledge.

12 Q. Okay. So the owner of that cell -- the owner of that
13 number -- the owner of that cell phone number, do you know
14 who the cell phone provider for that number was? Who issued
15 that number? The cell phone company that issued that
16 number?

17 A. I don't recall. I don't believe that I'd sent any
18 subpoenas or anything specific to that.

19 Q. And that's what I was going to ask you is that you,
20 did you send a subpoena to any cell phone company
21 identifying who that number, who the account owner for that
22 number was?

23 A. I did not.

24 Q. Okay. And so you're not telling us that, that, that,
25 that you have evidence that that account number that cell

J. Martin- Cross-Examination by Mr. Brooker

111

1 phone number was assigned to Marc McKeiver?

2 A. I am not.

3 Q. Okay. I think you also testified to is that you
4 believe that, that the name Duke is a, is a reference name
5 or for Marc McKeiver?

6 A. Yes.

7 Q. You said that was your understanding. And where did
8 you get that understanding from, did someone telling you
9 that?

10 A. They did. Initially I was -- began this investigation
11 I was asked by the City of Dillon Police Department and
12 Dillon County Sheriff's Office to help them with it. They
13 told me about Mr. McKeiver and when they, with their prior
14 knowledge of him initially told me that that was his street
15 name or nickname that he went by was Duke. Then when I was
16 introduced to the CI by them, the CI also provided the same
17 information.

18 Q. So you're saying yes is that you don't have personal
19 knowledge of that, but actually is, that you were told by
20 the City of Dillon Police Department that Marc McKeiver's
21 nickname was Duke and that you were also told by the CI
22 that Marc McKeiver's nickname is Duke, is that correct?

23 A. That is correct.

24 Q. Did anybody else telling you that?

25 A. Outside of law enforcement and the CI, not that I

1 recall.

2 Q. And you have no personal knowledge of that just was
3 what you were told?

4 A. That is correct.

5 Q. I have just a couple more questions. And this is
6 pertaining specifically, I guess to the basis of hearing,
7 and that was 901, 901 Rule of Evidence, and 901 of course,
8 Biggers, prior to that control buy on September 9, 2019,
9 had you had a conversation with Marc McKeiver?

10 A. I had not had a personal conversation with him, no.

11 Q. Have you had a personal conversation with him
12 afterwards? A. Yes, I have.

13 Q. At the time in which you view the video, that video,
14 the buy video, I'm assuming that you saw the buy video
15 immediately after the buy video?

16 A. I did.

17 Q. Was that a live wire live video?

18 A. I don't recall if the video fed, feed was live.
19 There's some cell phone signal issues with that at times. I
20 do you recall the audio being transmitted live, yes.

21 Q. And were you also told that the, that the voice on
22 that video, on that buy video that that was Marc McKeiver?

23 A. Yes, I was.

24 Q. And when you told that by the CI?

25 A. Yes.

J. Martin- Redirect Examination by Mr. Daniel

113

1 MR. BROOKER: I have no further questions, Your
2 Honor.

3 MR. DANIEL: Briefly, judge, if it pleases, the
4 Court?

5 **Redirect Examination by Mr. Daniel:**

6 Q. Special Agent Martin, some of this argument,
7 obviously, we're talking about authentication of voice
8 call. Then you get to well, what was the phone number that
9 was called. Then you get the well, how do we know whose
10 phone number it was. So it's important to talk about,
11 therefore, this Snapchat account, this is why we're talking
12 about. Since what you just said, or I'm sorry, the State's
13 10, State's pre-marked of State's 10, is the authentication
14 from Snap right?

15 A. That is correct.

16 Q. That's got that account with that phone number?

17 A. Yes.

18 Q. The same number that was called that day?

19 A. Yes.

20 Q. That -- your search warrant returned, do you remember
21 how many photographs Snap sent you from this account?

22 A. I know it was 2800 and I believe 4, may not be exact,
23 within a few numbers, just a few of that, but I believe it
24 was 2800 photos.

25 Q. Two thousand, 2804. That's, that's the number of

1 photographs posted by this account ---

2 A. That is the number of photographs posted by sent and
3 received from that account.

4 Q. Okay. How many of those photographs were of the
5 defendant, was the defendant in ---

6 A. I ---

7 Q. Of those two hundred, of those 2804?

8 A. I recognized 1099 and most of those were selfies.

9 Q. One thousand ninety-nine photographs of the defendant?

10 A. That's correct.

11 Q. From that account?

12 A. Yes.

13 Q. With that Duke name?

14 A. Yes.

15 Q. With that phone number?

16 A. That is correct.

17 Q The same number that was called that day?

18 A. Yes, sir.

19 Q. Thank you.

20 MR. DANIEL: No further questions.

21 MR. BROOKER: I don't know whether or not this is
22 Biggers. We went beyond Biggers, Your Honor. But I'll ask
23 this one follow up question.

24 **Re-cross Examination by Mr. Brooker:**

25 Q. How many, how many, how many pictures did you say you

J. Martin- Redirect Examination by Mr. Daniel

115

1 saw?

2 A. In total or of the defendant?

3 Q. Total?

4 A. In total, to my recollection, it's 2804.

5 Q. Two thousand eight hundred and four.

6 Q. And how many, and how many was of Mr. McKeiver?

7 A. That I was able to positively recognize, 1099.

8 Q. So, roughly, 1800 was of other people?

9 A. That is correct.

10 Q. Okay.

11 MR. BROOKER: So I don't -- that's all the questions
12 I have, Your Honor.

13 **Redirect Examination by Mr. Daniel:**

14 Q. Since that door was just opened, what were the other
15 photographs of?

16 A. Often times they were, a good portion of them were
17 drugs, firearms, large amounts of cash, people using drugs,
18 people firing weapons up into the air in indiscriminate
19 directions.

20 Q. Would you say that the, without counting them, would
21 you say that the vast majority of photographs included
22 drugs, cash, guns, like you just described?

23 A. A large portion, if not, the majority.

24 MR. DANIEL: No further questions.

25 MR. BROOKER: If I could ask one, Your honor, and I

1 promise I will not ask another questions again.

2 THE COURT: Go ahead.

3 **Re-cross Examination by Mr. Brooker:**

4 Q. Agent Martin, can you identify drugs visuals?

5 A. I can, with a high probability, yes.

6 Q. Okay. So it's your testimony is that that you're --
7 and you're the only person on earth that can -- well let me
8 ask you this question, Your Honor -- ask you this, is that,
9 how long have you been a law enforcement officer?

10 A. Eleven years.

11 Q. And of course is, in your 11 years of experience,
12 isn't it true that, that, that, that drugs have to be
13 identified chemically?

14 A. That is correct.

15 Q. Okay. And so, so when you said that you saw drugs,
16 basically this is that, you're basically given an opinion,
17 you're not stating the fact that those were, that any
18 photographs that you saw is actually photographs of drugs?

19 A. That is correct. Yes.

20 MR. BROOKER: No further questions.

21 THE COURT: You may step down. Thank you.

22 MR. MARTIN: Thank you.

23 MR. DANIEL: I don't have any other witnesses. I'll
24 be glad to make the argument. Do you want me to make it
25 now? Or Mr. Brooker goes first with his motion?

1 MR. DANIEL: Whichever. It doesn't matter to me.

2 MR. BROOKER: Okay. I'll go ahead, Your Honor. We
3 went well beyond Biggers but I'm gonna try and stick with
4 Biggers. Biggers, and of course is that, 901, and of course
5 is, is that is whether or not, whether or not the, the
6 officers can give an authentication of Mr. McKeiver's
7 voice. And of course, Your Honor, 901, basically, says and
8 specifically, I think it's 901 (5) says, "identification of
9 voice whether heard firsthand or through mechanical,
10 electronic, electronic transmission or recordings by a, by
11 a opinion based upon hearing the voice at any time, under
12 circumstances connecting it with the alleged speaker." And
13 of course is, and I guess the records, basically, saying is
14 that there was a distinction between like hearing a voice
15 firsthand, and of course, hearing the voice transmitted
16 through a electronic device, you know, like a cell phone or
17 either some secondhand device like a recorder because,
18 obviously, is that these are digital devices that actually
19 pick up the voices, and of course, is that translate the
20 voices. And of course is that which may be different from
21 actually hearing it live. And of course, that's something
22 that the court takes into consideration in determining
23 whether or not, whether or not, whether or not the officer
24 can authenticate his voice. How many times an officer has
25 heard, you know, whether or not it's been heard one time,

1 or whether or not he's heard the voice once or either
2 whether or not he's heard the voice a thousand times,
3 whether or not the officer is familiar with the person. All
4 of those are things that the court can take, take into
5 consideration in determining whether or not the officer can
6 give a proper vocal identification of a person. And I think
7 the officers who testified that, that he had never heard
8 McKeiver's voice before. And the only time that he had ever
9 heard McKeiver's voice before was first when I think the CI
10 made a phone call, the CI made a phone call while they were
11 traveling, I guess, to the buy location, and of course, and
12 he heard it through the, through the phone. And the second
13 time would be is after they got the buy video, and of
14 course, he looked at him and listened to the buy video, and
15 then of course, heard a voice that he believed to be the
16 same that was on the phone from the buy video. We would
17 argue, Your Honor, is, is that, that 901, that the
18 authentication of the voice is, at least from, from the
19 evidence that was given, was probably I think it wouldn't
20 be sufficient to give a, I think, a credible voice
21 identification based upon the number of times in which the
22 officer is alleging that he heard the voice, and of course,
23 the fact that the officer did not hear the voice firsthand
24 and only heard those voices through electronic devices
25 transmitting the voice, transmitting the voice as opposed

1 to hearing it firsthand.

2 That's under 901. Under Biggers, Biggers is a
3 separate, separate, a separate, separate analysis, Your
4 Honor. And I think under Biggers, Biggers deals with
5 whether or not, whether or not a out of court
6 identification whether or not, out of court identification
7 is admissible or whether or not an in court identification
8 can be made based upon a prior out of court identification
9 where, where the out of court identification process may
10 have been unduly suggestive. And that is, is that whether
11 or not the identify, whether or not the out of court
12 identification was actually a proper identification or
13 either whether or not it was an improper or, at least, an
14 out of court identification that was not based upon the
15 officers ability to be able to listen to the voices and be
16 able to make a comparison as to whether or not the two is
17 the same or whether or not, you know, whether or not that
18 identification was somehow tainted or prejudice.

19 In this particular situation, Your Honor, we're
20 alleging or, at least, we're arguing that that out of court
21 identification process is not a true identification
22 process. And the reason why it's not a true identification
23 process as it's purporting to be is, is that because prior
24 to the officer alleging that he made an analysis of the
25 voice that he heard on the phone versus the one that he

1 heard on the, heard on the buy video, prior to that he'd
2 already been told, and I think he testified to this, that
3 he had already been told by the CI, you know, that the
4 voice on the phone was Marc McKeiver. He'd already been
5 told that. So this alleged analysis that he done later on,
6 but that analysis was tainted by the fact that he had
7 already been prejudiced. He had already been told about
8 this, by the confidential informant that hey, this voice is
9 Marc McKeiver. He'd already had prior knowledge of that
10 even before he made an analysis. So this wasn't a true
11 analysis, you know, where he heard this voice and then
12 later on heard it a second time and then made the
13 connection between the two. He had been told prior to
14 making the analysis. So his opinion was already prejudice.
15 So this was not in a proper our court identification that
16 should be made in court and that's Biggers stand for. And
17 Biggers, basically, says that you can't bring, you can't
18 bring an improper out of court identification process and
19 make that, and make it in court before a jury purporting,
20 you know, that it was, that it was, it was fair, and of
21 course, comported with due process. That identification,
22 out of court identification process, out of court
23 identification of, allegedly of Mr. Keiver's voice was
24 tainted and prejudice because he'd already been told before
25 he made the identification. He'd already been told by the

1 CI that hey, this is Marc McKeiver's voice. And everything
2 that he is relying on and identifying that voice is what he
3 is told, is what he was told by the confidential informant
4 who is not available. So he's asking the court, I guess,
5 because the confidential informant is not available, that
6 the State is looking for a way around that. Normally, the
7 confidential informant would've come in, and of course,
8 done this. Of course, is that, now because the confidential
9 informant is not available they're looking for way around
10 this. And of course, their way around this is saying well,
11 the detective of the, of the special agent can do the
12 identification, and that he made proper identification of a
13 voice, but he did not. He is simply regurgitating what he
14 had been told. There is no proper adequate identification.
15 And because there was not a proper out of court
16 identification he should not be allowed to come into court,
17 and that what Biggers says, and of course, testify to the
18 jury that that voice that he heard based upon his own
19 analysis was Marc McKeiver, and of course, was not based
20 upon what someone else told him which would, which, which
21 would not be proper to bring into court. So we think, at
22 least under Biggers, that in court identification of Mr.
23 McKeiver's voice is improper because the out of court
24 process, the out of court identification process was
25 tainted because the agent was told prior to the

1 identification that hey, this is Marc McKeiver. There was
2 no out of court identification process.

3 MR. DANIEL: If it please, the Court? There was no
4 out of court identification process. That's what Biggers is
5 about. We don't even get to Biggers, if there's not an out
6 of court identification process when from Perry v. New
7 Hampshire, which quotes Neil v. Biggers, "when the police
8 arrange a pre-trial out of court identification procedure
9 where an eyewitness to the crime identifies the defendant,
10 due process concerns are triggered only when the procedure
11 is both suggestive and unnecessary." I don't think we even
12 get to Biggers here. I think that the arguments that Mr.
13 Brooker are making are great, you can make for the jury,
14 but I think what he's really talking about is
15 authentication. And Mr. Brooker read for you 901(b)(5)
16 voice identification which says, "identification of a voice
17 whether - and he read this - identification of a voice
18 whether heard firsthand or through mechanical or electronic
19 transmission or recording by opinion based upon hearing the
20 voice at any time, under circumstances connecting it with
21 the alleged speaker", which means law enforcement didn't
22 have to recognize the voice at the time the speaker phone
23 call was made. It says, "as long as they can identify it at
24 any time." So it's according to the rule that Mr. Booker
25 read the court, 901 (b) (5), it's perfectly acceptable that

1 the officer heard Mr. McKeiver's voice on a video where you
2 see him speaking after he was able to identify him, based
3 on phone number and Snapchat and all that which is a whole
4 other issue, but that's perfectly acceptable. Also, he just
5 must be able to authenticate this in court which is where
6 we are now and that's what he's got to do is authenticate
7 this in court. And authentication, again, like I said
8 yesterday, is a, it's foundational, it is not absolute
9 proof. It's simply something upon which the fact finder can
10 say this is what we're saying it is. This -- these
11 circumstantial inferences supported by the phone number,
12 supported by the Snapchat identification with that phone
13 number, supported by all the photographs of Mr. McKeiver
14 that he posted on that account. Those are all things that
15 totality of circumstances would indicate go to
16 authentication. Obviously, this is something that Mr.
17 Brooker can argue to the jury. But we have met our burden,
18 our very low burden, which we have to do for authenticating
19 this voice call. And again, I just want to say for the
20 record, we are not going to get into anything that the CI
21 said because I know that that's out of bounds. So the only
22 thing that we, again, don't want to get into, but if the
23 defense opens the door in front of the jury or all those
24 other photographs, not the ones that Mr. McKeiver, the ones
25 that I, the only one that I want to introduce, but all the

1 other things, but I just want to put this on the record
2 that if that door is open, I believe the State will run
3 through it.

4 THE COURT: All right. Biggers and, then, State v.
5 Lewis, our Supreme Court requires that you have an in
6 camera hearing, we've done that, the trial judge has got to
7 look at the totality and circumstances. Considering the
8 testimony that has been put before the court much of what
9 Mr. Brooker has brought to light in his arguments here with
10 the court, it goes to the weight to be argue with the jury
11 over all. Considering everything is before the court, I'm
12 gonna deny any suppression on these issues.

13 MR. DANIEL: Thank you, judge.

14 MR. BROOKER: Your Honor, can I make one more motion
15 and it's not a ---

16 THE COURT: How many more have we got?

17 MR. BROOKER: Well, this is ---

18 THE COURT: You told me there was one more now we
19 got another one.

20 MR. BROOKER: Well, Your Honor, this is based upon
21 what the officer testified to so I did not know until he
22 testified on the stand.

23 THE COURT: Go ahead and put it on the record. We
24 need to get this case started, now. You're almost given me
25 the impression that we're stalling, now. Go ahead.

1 MR. BROOKER: Well -- and of course, Your Honor, is
2 that, it's to, it's to exclude any testimony of that, of
3 that number, I think whatever that telephone number was, I
4 think that 803 telephone number in which the, in which I
5 think the status purporting belonging to Marc McKeiver. I
6 think both officers testified that they were told that that
7 number belonged to Marc McKeiver that they have no
8 independent evidence that it belonged to Marc McKeiver. If
9 they were to testify during the trial that that number
10 belongs to Marc McKeiver, they would be testifying based
11 upon hearsay evidence and that is, is that, because I think
12 both of them testified on, um, during the, during this
13 matter 901, 901 motion and Biggers motion that they were
14 told that that number was connected. Both also testified to
15 the fact ---

16 THE COURT: I agree with you. If, if that
17 information came from that CI that's out solicitor.

18 MR. DANIEL: I understand.

19 THE COURT: But I've already heard you say that
20 it's in that Snapchat evidence.

21 MR. DANIEL: Right. Right. And I wasn't gonna
22 introduce any of this, but we also have several, like a ton
23 of Snapchat messages that were sent from this Duke account
24 to other people saying, hey, call me if you want to buy
25 some drugs and it list that number.

1 THE COURT: Now, all that's in.

2 MR. DANIEL: Right.

3 THE COURT: But I'mma, I'mma gonna grant his motion
4 all that and you already said you not gonna get into to CI.

5 MR. DANIEL: Right. So what I'll do then is I won't
6 mention anything about the particular phone number until we
7 talk about the Snapchat, State's Exhibit 10 which is the
8 authentication that has that Snapchat name associated with
9 that phone number, because then the number is in from
10 Snapchat search warrant. So I think I'm okay to talk about
11 at that point, but I will not say that law enforcement
12 heard it from the CI ---

13 THE COURT: You, I mean, if these witnesses saw
14 that number ---

15 MR. DANIEL: Right.

16 THE COURT: --- on that cell phone that's all
17 right.

18 MR. BROOKER: Well, they can mention the number, but
19 what they can't testify to is that number belongs to Marc
20 McKeiver. Because that's why I asked him specifically the
21 question, did you send a, did you send a subpoena to the
22 cell phone company asking the cell phone who number, or
23 whose, or who that number was assigned to? And of course,
24 as they said, no, we didn't send a subpoena to a cell
25 phone. And that's the only way of knowing who that cell

1 number was assigned to, assigned to is sending a subpoena
2 to the cell phone company that issued it to see who is the
3 account holder for that number.

4 THE COURT: Are you trying to talk me out of ruling
5 in your favor that I've already ruled?

6 MR. BROOKER: No, I'm sorry, Your Honor. I wasn't
7 trying to do that. I apologize. The only other one, Your
8 Honor, it's along the same lines and that is the name
9 "Duke". I ask them, did they have any, did they have any
10 first name, heard firsthand knowledge, personal knowledge
11 themselves is that whether or not Duke is the nickname for
12 Marc McKeiver? I think both testified to the fact that no,
13 they have no firsthand knowledge that was what they were
14 told. I think officer, I think the Special Agent Martin
15 testified that he was told that by, he didn't -- he wasn't
16 specific, he said Florence City Police Department told him.
17 And he said also the CI told him that.

18 THE COURT: You can't -- you not gonna get into the
19 CI. Now, what he knew going in this investigation if he
20 picked that up from regular investigative and working with
21 law enforcement, now that's a little different story. But,
22 yes, I agree with you, we're not going to get into anything
23 that CI told them.

24 MR. DANIEL: The State certainly agrees with that
25 and, and will abide by that. I've already instructed my

1 witnesses that we are not to talk about anything the CI
2 said. The only thing I think we are inching very close to
3 is necessarily getting into the fact that the Snapchat name
4 which has Duke in it is associated with this particular
5 phone number that they saw on the phone also during that
6 call, and if -- so, obviously, we are saying that this
7 account is Marc McKeiver's account, right? And so in order
8 to prove that, if the defense is going to make a big deal
9 about that, then we're going to be able to introduce all
10 these photos, these one thousand and something photos of
11 Duke to prove the point that no one post a thousand plus
12 pictures of someone else on their own account. That's just
13 not how it works. And so when we get into all these
14 photographs, I just -- I'm trying to keep it really narrow
15 by only introducing pictures posted on the day that this
16 occurred. But I think that we're getting really close to
17 opening the door to something that the door might not need
18 to be open. I'm just

19 MR. BROOKER: The only thing I can say, Your Honor,
20 and I'll say this and I'll sit down is, is that he's
21 certainly welcome to do that. If he wants to, we'll our
22 proper motions at that time. And, then of course, we'll
23 deal with prior bad acts, and of course, any other things.
24 So he's talking about introducing photographs, photographs
25 and pictures of conduct in which Mr. McKeiver is not being

1 charged for it and is not on trial today, and of course,
2 conduct that, you know, that he's not, not even allege,
3 that, at least, to my understanding is, is not somehow
4 involved in this control buy that took place on September
5 9. I'm so if that's the case, you know, ---

6 THE COURT: Yeah. We're not, we're not gonna get
7 into prior conduct, prior bad acts unless that door is
8 opened so.... Just be careful about what you ask.

9 MR. DANIEL: Yes, sir.

10 THE COURT: Now, can we get started with the trial.

11 MR. DANIEL: Let's go.

12 MR. BROOKER: Yes, sir, Your Honor.

13 (Whereupon, the jury enters 10:59 a.m.)

14 THE COURT: Ladies and gentlemen of the jury, thank
15 you so much for your patience this morning. When we get
16 started with a trial I want to speak to you about matters
17 of law, matters of fact, and I have to do the matters of
18 law, but I'll talk with you about that later. Madam Clerk,
19 we need to put them under oath. Madam, Clerk, if you'll
20 swear the jury, I'll take over from there.

21 THE CLERK: Would you stand and raise your right
22 hand, please. You shall well and truly try and true
23 deliverance made between the State of South Carolina and
24 the prisoner at the bar and a true verdict renders
25 according to the law and the evidence so help you God?

1 (Whereupon, all the jurors takes the oath)

2 **Judge's Instructions:**

3 THE COURT: Once again, thank you so much for your
4 patience. Before I get started with you and explain to you
5 how we gonna progress with the trial and phases we're going
6 to go through, I just need to poll you and I'm gonna a
7 general poll this morning instead of individual. I'm gonna
8 ask you to raise your hand if the question applies. Were
9 any of you contacted by any individual in-person or by
10 third-party or by any means or an attempted contact made
11 with any of you that discussed this case with you, please
12 raise your right hand?

13 (Whereupon, go jurors raises their hand)

14 THE COURT: Let the record reflect no juror has
15 been contacted or any attempt to contact.

16 All right. We're gonna go through some phases here.
17 What's going to happen, I'm going to talk with you just a
18 little bit about the trial and how we're gonna go through
19 these different phases. Kind of give you an idea of what to
20 expect. Then we're going to turn it over to the attorneys,
21 where they will make opening arguments to you. That's not
22 mandatory, mandatory for them to do that, but generally
23 they do. And they basically are gonna outline their
24 position and the case to you.

25 I'mma tell you right off the bat, now, what attorneys

1 say is not the evidence in the case. They may tell you what
2 evidence may be forthcoming and what their idea of it may
3 be, but their, their statements are not evidence.

4 The evidence in the case comes from this, this stand
5 right here after a witnesses properly sworn and also from
6 any evidence, items of evidence and pieces of evidence
7 that are introduced properly through the court, will be for
8 you to review.

9 You will be the finders of fact in this case. The
10 judge handles matters of law. So time to time, if an issue
11 of law comes up, which has already happened this morning, I
12 have to decide that so I maybe playing musical chairs with
13 you. I may have to send you out to the jury room, handle
14 that matter of law and bring you back. But you are the
15 finders of fact. I don't get involved in the fact finding
16 South Carolina judges just do not get involved in facts.

17 Now, how do you reach a verdict in the case which is
18 the end result of any trial, whether it be criminal or
19 civil, you listen to the witnesses and the evidence. And
20 you apply what you find that evidence to be to the law that
21 the court that the, I, the judge will give to you and thus,
22 reach a verdict.

23 All right. The phases of trial. My little statement to
24 you now. Then the arguments or the opening arguments or
25 opening statements is more properly said, will come from

1 the attorneys if they so desire. Then there will be the
2 evidentiary part of the trial where you will receive that
3 evidence I just spoke. After that, we'll come to the part
4 where both attorneys will be given ample opportunity to
5 make closing arguments and that's where they make statement
6 to you to outline their case and try to persuade you to see
7 the evidence that's been presented. After all those phases
8 are completed. We'll come to judge's charge of the law
9 where I will charge you the law of the State of South
10 Carolina. Now, that's the conclusion as far as the
11 presentation. Please do not discuss this case. Do not
12 deliberate this case until I instruct you to do so after
13 the judge's charged of the law.

14 As I said to you yesterday, don't discuss this case
15 amongst yourselves, don't discuss this case with family
16 members. Any, anybody do not discuss it with them. Do not
17 do any independent research. You must decide this case
18 based on the proper evidence presented in the court. So to
19 go on independent research or an independent investigation
20 would be highly improper. Please avoid any press coverage
21 of this case. And when I say that I'm talking about local
22 press coverage until the case is concluded because
23 sometimes the press is right and sometimes they're wrong
24 and sometimes opinion they're injected in press coverage
25 so we don't want that going on.

1 All right. That's the phases of the trial that we'll
2 go through. Now, this is a criminal case. The defendant has
3 been indicted by the grand jury of Dillon County with that
4 offense, trafficking in methamphetamines. That's the issues
5 that's going to be before you that you will have to reach a
6 verdict on. The verdict could be either guilty or not
7 guilty according to how you find evidence. And since it is
8 a criminal case, proof, the burden of proof is beyond a
9 reasonable doubt. Proof beyond a reasonable doubt. In civil
10 cases it's not to say bird. It by the preponderance of
11 evidence in civil cases so two different, two different
12 courts there and two different burdens of proof, but in
13 this one is proof beyond a reasonable doubt. And I'm gonna
14 give you a full charge about reasonable doubt.

15 All right. I will turn it over to counsel to make
16 opening statements. We will try to take breaks every so
17 often. And Madam, Clerk, I believe has stepped out, and we
18 try to arrange lunch for you where we can keep everybody's
19 distance to try keep you safe. And we will, we will move on
20 from here.

21 Now, one other thing that I haven't mentioned to you,
22 this is criminal cases so the State has the burden of
23 proof. So they get to make an opening statement to you
24 first. And you've already met the attorney so Solicitor
25 Daniel, the floor is yours.

1 **Opening Statement- Mr. Daniel:**

2 MR. DANIEL: Thank you, Your Honor. If it pleases,
3 the Court? Mr. Brooker? Good morning, ladies and
4 gentlemen, this is a case about drugs. Plain and simple and
5 straightforward. While it's very important to both the
6 defendant, Marc McKeiver, and to the people of Dillon
7 County, this is about as straightforward a case we're gonna
8 have.

9 The defendant, Marc McKeiver, as you just heard, has
10 been charged with trafficking in methamphetamine. In order
11 for you to find him guilty, you must be convinced beyond a
12 reasonable doubt of these things: That in Dillon County, on
13 or about September, 9, 2019, Marc McKeiver sold or
14 possessed 100 to 200 grams of methamphetamine. That's what
15 I got to prove to you beyond a reasonable doubt. But what
16 does beyond reasonable doubt mean? I doesn't mean beyond
17 all doubt, but it means beyond a doubt that would make a
18 reasonable person hesitate to act. That's what beyond
19 reasonable doubt means.

20 Now, as this defendant sits here right now, he is
21 presumed innocent of these, of this charge. Not guilty. He
22 remains innocent of this charge, until I prove to you,
23 those elements I just told you, beyond a reasonable doubt.

24 Now, how am I going to prove to you those elements
25 beyond a reasonable doubt? You're gonna hear from three

1 witnesses. That's it. This ain't gonna be a long one. Three
2 witnesses. They're all law enforcement agents. You're going
3 to hear from J.T. Martin of sled, who was overseeing a task
4 force that was investigating the drug trade in Dillon
5 County back in 2019, right before covid hit which is why
6 it's taken us so long to get this case to court. You're
7 going to hear from Alex Blake, who used to be with sled,
8 now, works for the FBI. You're going to hear about what
9 they did. How they targeted this defendant. You're going to
10 hear how they used a confidential informant, we call them
11 CI's. He was a confidential informant. To go to where Mr.
12 McKeiver was and buy a bunch of pills from him.

13 And finally, you're gonna hear from Maribeth
14 McCormick, who also works with sled. She works in the lab
15 in Columbia. She's the one who analyzed the pills and
16 weighed them and you'll read her report. That's it. You're
17 not going to hear from the confidential informant himself
18 because, unfortunately, he died a while back, a while, a
19 while ago, in a completely unrelated situation having
20 nothing to do with this defendant. So you can't hear from
21 him. But you will hear from, from these three sled agents.
22 That's it. Plain and simple, straightforward, but very
23 important. Very important to this defendant. Very important
24 to the people of Dillon County. I asked you as you hear
25 this evidence to use your common sense. It's all pretty

1 straightforward. Don't be distracted by things that don't
2 matter. Use your common sense. This burden of beyond a
3 reasonable doubt is a high burden for the State to meet,
4 but it is the same burden that is used in criminal courts
5 all over the United States. While it's a high burden, it is
6 a burden that I welcome and I look forward to meeting that
7 burden. Proving those elements to you beyond a reasonable
8 doubt so that you will find, at the end of this trial, Marc
9 McKeiver guilty of trafficking in methamphetamine.

10 Thank you for your time.

11 THE COURT: Thank you, solicitor. Mr. Brooker?

12 **Opening Statement- Mr. Brooker:**

13 MR. BROOKER: Thank you, Your Honor. Good morning,
14 ladies and gentlemen.

15 (Whereupon, the jury response)

16 As you just heard this is a criminal trial and I want
17 to talk with you a little bit about criminal trials because
18 probably most of you have probably seen television programs
19 in which you've seen depictions of trials, some civil and
20 criminal. But of course, there's a distinction between
21 civil trials and criminal tracks.

22 Criminal trials, I would say are the type of trials in
23 which the burden of proof that we have is the highest
24 burden that we have in our judicial system. It's the
25 highest that we have in our judicial system. In addition to

1 that, criminal trials have principles that you, the jury,
2 must abide by in order for our judicial system to work. And
3 you heard one of those important principles and I gonna, I
4 will talk a little about this, but you heard one of those
5 important principles just a minute ago. And that is
6 innocence. As Marc McKeiver sits right there at that table,
7 Marc McKeiver is completely innocent of the allegations in
8 which the government has brought against him. Completely
9 innocent, whatsoever. And for any moment in your mind at
10 this time, or either throughout the course of this trial,
11 if you allow yourself to believe at any point in time that
12 he is not innocent, then of course is, is that you have
13 failed as a juror and our criminal justice system doesn't
14 work. He is innocent. He is just as innocent as I am. And
15 he is just as innocent as any one of you are that sitting
16 in some other capacity in this courtroom and that innocence
17 remains with him until the State has proven beyond a
18 reasonable doubt. And this, this will occur when you go
19 into the jury room and when you deliberate all the evidence
20 that the State has presented. That presumption of innocence
21 remains with him until the State strips it away.

22 Now, how does the State strip that away? Well, the
23 State, the State has to prove beyond a reasonable doubt
24 that on that day of September 9, 2019 that Marc McKeiver,
25 either saled or possess drugs. Specifically in this case, I

1 think it's methamphetamines between the weight of 100 and
2 200 grams, or at least above 100 grams. That's what they
3 have to prove.

4 Now, the defendant, what does the defendant has to
5 prove? Absolutely nothing. In a criminal case, defendants
6 don't have to prove their innocence. The burden is always
7 on the government. It never leaves the government. Every
8 question that you have in reference to this case, every
9 question that you have in reference to the evidence of the
10 light thereof, it is not Mr. McKeiver's responsibility to
11 answer those questions. The responsibility is on the
12 government. It's always on the government and never leaves
13 the government. And in this particular case, as Mr. Daniel
14 stated, is, is that the type of evidence that they intend
15 to introduce, it's going to be evidence from I think three
16 witnesses. And I think two of them are law enforcement
17 agents, and of course, the third one is a chemist from
18 sled. And of course, at the conclusion of their testimony
19 or at the conclusion of this case, you have to be convinced
20 that they prove every last one of those elements beyond a
21 reasonable doubt. And as Mr. Daniel says, and I won't go
22 into this in great detail, and the judge will instruct this
23 to you also at the end of the case, what beyond a
24 reasonable doubt means.

25 But Mr. Dan, Mr. Daniel, I think, gave you an idea of

1 what that is. It's the type of doubt that causes a person
2 to hesitate to act. It's the type of doubt that cause a
3 person to hesitate to act. So if at the conclusion of this
4 case when you hear the evidence and you have a reasonable
5 hesitation with respect to whether or not Mr. McKeiver was
6 the person that done these things that they are accusing
7 him of, then, reasonable doubt exist. And reasonable doubt,
8 if our judicial system is to work the way in which it was
9 designed to, reasonable doubt, then would require a verdict
10 of not guilty. And I would submit to you at the conclusion
11 of this case, after you've heard the evidence, I submit to
12 you that you will have unanswered questions that the State
13 has failed to answer, that you will have situations in
14 which the State will ask you to draw conclusions, to draw
15 conclusions or speculations about Mr. McKeiver's conduct
16 and that constitutes reasonable doubt. You can't speculate
17 about his guilt. You can't speculate about his actions.
18 They have to prove to you, the government has to prove to
19 you beyond a reasonable doubt he's done these things. And
20 the only thing that Mr. McKeiver would ask you to do, as
21 jurors, is to hold the government to its responsible. We as
22 citizens, we are entitled to these rights. And of course,
23 before the government can take these rights away from us is
24 that, that they have to live up to the responsibility and
25 to the promises that they gave to us underneath the

1 Constitution, under these principles. And your job, as
2 jurors, is to hold them accountable to that. Make them live
3 up to their responsibilities. And if they have not lived up
4 to those responsibilities, it's your job, as jurors, to
5 send them back and say, no. Go back and fulfill those
6 obligations and responsibilities, you know, those wonderful
7 principles of law that you promised that each and every one
8 of us will have. Don't forget your role and don't forget
9 your responsibility. You have to hold them accountable. You
10 have to make them prove this stuff beyond a reasonable
11 doubt. You can't let them get away with speculation and
12 assumption.

13 Thank you very much.

14 THE COURT: Thank you, Mr. Brooker. Okay. The one
15 thing I didn't mention to you is and probably somebody
16 noticed, one of the jurors is not here this morning.
17 Unfortunately, he got sick last night and he's gone to
18 tested so we've had to step in on that. So alternate, Ms.
19 Latoria M. Alls, you will be moved to the first 12 jurors.
20 (Whereupon, the juror takes her seat a juror)

21 MR. DANIEL: May it please, the Court? Your Honor,
22 State calls James Martin.

23 THE COURT: Mr. Martin, Madam, Clerk will put you
24 under oath.

25 THE CLERK: Do you solemnly swear the evidence and

J. Martin- Direct Examination by Mr. Daniel

141

1 testimony you're about to give the court and jury on this
2 case is truth, the whole truth and nothing but the truth so
3 help you God?

4 MR. MARTIN: I do.

5 THE CLERK: Be seated. State your full name for the
6 court and spelling your last?

7 MR. MARTIN: Special James Martin. Last name spelled
8 M-a-r-t-i-n.

9 JAMES MARTIN, first being
10 duly sworn, testified as follows:

11 **Direct Examination by Mr. Daniel:**

12 Q. Special Agent Martin's, good morning.

13 A. Good morning.

14 Q. By whom are you employed?

15 A. By State Law Enforcement Division with sled.

16 Q. How long have you been working for sled?

17 A. I've been sled a little bit over three years now.

18 Q. Were you with another law enforcement agency before
19 that?

20 A. I was. I've been a little over 11 years total in law
21 enforcement at this point.

22 Q. Okay. Did you work an operation in September of 2019
23 involving Marc McKeiver?

24 A. Yes, I did.

25 Q. What agencies were involved in that operation?

1 A. Myself, being the lead investigator, other sled
2 agents. I also had some assistance. I was actually asked
3 for assistance, originally, by the City of Dillon and
4 Dillon County Sheriff's Office and they helped me along
5 with the US Drug Enforcement Administration.

6 Q. So a bunch of agencies?

7 A. Yes.

8 Q. Were working on the drug issues in Dillon County. And
9 Mr. McKeiver was a target of, at least some degree, of that
10 investigation?

11 A. Yes, he was.

12 Q. Okay. Was a confidential informant involved in this
13 investigation?

14 A. Yes.

15 Q. What is a confidential informant and how does that
16 work?

17 A. Typically, in drug cases, you know, sometimes law
18 enforcement will come across something on a traffic stop or
19 something like that. But for an actual investigation, we,
20 typically, need proof or we always need proof, but
21 typically that the defendant is actually selling the drugs
22 and not just that they happen to be possessing them or a
23 user or something to that, of that nature. So in this case,
24 we utilize what we called a confidential informant who is a
25 person who has a knowledge or an existing relationship with

J. Martin- Direct Examination by Mr. Daniel

143

1 the defendant. And they're able to, basically, take us into
2 their life and purchase the drugs on our behalf under our
3 control and using our money and our equipment.

4 Q. Did that happen in this case?

5 A. It did.

6 Q. Did it happen on September 9, 2019?

7 A. Yes, it did.

8 Q. Okay. All right. The confidential informant that you
9 used in this case, is he still alive?

10 A. He is not.

11 Q. So let's talk exactly about what happened then on
12 September 9, 2019 with the CI, what's the first thing y'all
13 did?

14 A. We first met and discussed the plan for the day which
15 was to conduct a controlled purchase of 500 pills from Mr.
16 McKeiver.

17 Q. And when you say controlled purchase, what does that
18 mean exactly?

19 A. So that is, like I explained with the confidential
20 informant, we have them conduct a purchase of drugs in a
21 controlled environment. So we do our best to control the
22 time, the location, things of that nature, where they're,
23 you know, for the safety of them as well as the defendant,
24 if something were to go wrong or an altercation were to
25 take place. We provide the money and document the money

1 that they use. We equip them with cameras, audio and video
2 recording and transmitting equipment to document everything
3 and, again, to ensure safety of all parties.

4 Q. And all that happened in this case?

5 A. It did.

6 Q. So on this day, September 9, 2019, you and this whole
7 task force met, right?

8 A. Yes, we did.

9 Q. Okay.

10 A. Yeah, we met and talked. Like I said, talked to the
11 informant, discuss the plan. Special Agent Blake searched
12 him to make sure that he didn't bring any contraband any
13 drugs or anything of that nature with him. So he was
14 completely, you know, clean of any, anything else prior to
15 the purchase.

16 Q. When you say he, you talking about the confidential
17 informant?

18 A. Yes, the informant. Yes.

19 Q. So he's fully searched?

20 A. He has been fully searched at this point.

21 Q. You saw that search happen here?

22 A. I didn't.

23 Q. You didn't conduct it, but you were there and you
24 witnessed it?

25 A. That is correct. Yes.

J. Martin- Direct Examination by Mr. Daniel

145

1 Q. Okay. Did the confidential informant have any drugs on
2 him? A. No, he did not.

3 Q. Did he have any cash on him?

4 A. No.

5 Q. Did he have any weapons on him?

6 A. No.

7 Q. Okay.

8 A. And then I personally outfitted the informant with
9 cameras and transmitting equipment so that we can record
10 and also monitor live the purchase as it happened.

11 Q. So he was wearing a camera?

12 A. He was, yes.

13 Q. Okay. On -- somewhere on his clothing?

14 A. Yes.

15 Q. Okay.

16 A. Then I issued \$700 of documented government funds. It
17 was provided to me by the DEA in order to conduct this
18 investigation. I issued the \$700 to the informant. And at
19 that point, he entered the vehicle with Special Agent Blake
20 and they, the informant placed a telephone call to Mr.
21 McKeiver.

22 Q. Okay. We can get into all that later. You saw the CI
23 get in the car with Special Agent Blake, who will testify
24 next?

25 A. Yes.

1 Q. And they took off to see Mr. McKeiver?

2 A. That is correct.

3 Q. Right. Okay. What is the next thing that you observed?

4 A. Next thing that I observed was, after being notified
5 by Special Agent Blake that they, everything was, that the
6 deal was complete. They returned to the meeting location.
7 And the informant told me that he did have ---

8 MR. BROOKER: Objection to hearsay, Your Honor.

9 Q. Don't say anything that ---

10 A. Yes, sir.

11 Q. --- anyone told you. Just what did you see? What
12 happened?

13 A. I saw two bags of multicolor pills in the cup holder
14 of the vehicle ---

15 Q. Okay.

16 A. --- that they had gone to the control buy in.

17 Q. Do you have those pills with you?

18 A. I do.

19 Q. I'm showing you what has not been marked yet because I
20 don't, I didn't have possession of these until this
21 morning. I'm showing you what's been marked State's 12,
22 can you identify that?

23 A. I can. This is the pills that were provided to me by
24 the confidential informant that they purchased from Mr.
25 McKeiver.

J. Martin- Direct Examination by Mr. Daniel

147

1 MR. DANIEL: Okay. Your Honor, at this time

2 Q. Are these pills in the same, approximately the same
3 condition they were when you saw them other than they've
4 been tested, obviously?

5 A. The pills themselves are still in the same condition.
6 They are packaged in different packaging, now, due to the
7 analysis process. But the pills themselves, yes, they are
8 still here and intact.

9 Q. Okay.

10 MR. DANIEL: Your Honor, I would move to admit
11 State's 12 into evidence.

12 MR. BROOKER: Your Honor, we object just simply based
13 upon the fact that right now the complete chain of custody
14 has not been established. We object, Your Honor, based upon
15 the grounds of right now the complete chain of custody
16 hasn't been established and he would need to establish a
17 chain of custody before he enters those into the record, I
18 believe. Probably it's gonna be through the chemist.

19 MR. DANIEL: I believe I can introduce what he was
20 given the pills with the report that we're going to get
21 into later, obviously, will come in through the report. But
22 as the law says as far as practicable on to, at least, have
23 through testimony what happened to the pills. He just
24 testified, this witness did, that he received them from the
25 CI. I think that's sufficient.

1 THE COURT: Overruled. If you got another witness -
2 --

3 MR. DANIEL: I do.

4 THE COURT: --- after this witness.

5 MR. DANIEL: Certainly, we'll complete that chain
6 with the other witness.

7 THE COURT: All right.

8 (Whereupon, the Bag of Drugs has been marked and entered
9 into evidence as State's Exhibit No. 12)

10 MR. DANIEL: I beg the court's indulgence as I see
11 if I can make this thing work.

12 THE COURT: Yes, sir.

13 Q. All right. Can you see that screen there?

14 A. I can. Yes.

15 Q. Okay. What is that a picture of?

16 A. That is the picture that I took of the two bags of
17 pills that were provided by Mr. McKeiver to the informant.

18 Q. So did you take that picture -- at what point, did you
19 take picture?

20 A. Immediately after I took possession.

21 MR. BROOKER: Your Honor?

22 THE COURT: Yes, sir.

23 MR. BROOKER: Just an objection on the grounds that
24 he can't, he testified that those pills were provided by
25 Mr. McKeiver to the informant. He's not a witness to that.

J. Martin- Direct Examination by Mr. Daniel

149

1 I think those pills was provided to the informant by him.
2 And so we certainly don't want him to testify at this time.
3 If he can't testify at this time to things that he did not
4 see or either reviewed himself so if we can restrict it to
5 that.

6 MR. DANIEL: Certainly.

7 Q. Who gave you these pills?

8 A. The informant provided those pills to me.

9 Q. Okay. I'm showing you now what's been marked State's
10 6. Do you recognize that?

11 A. That is the same photo, yes.

12 Q. Obviously, of what just shown you here. I would move
13 State's 6 into evidence, Mr. Brooker?

14 MR. BROOKER: Thank you, Your Honor. Just nothing
15 other than subject to previous pretrial objections, Your
16 Honor.

17 (Whereupon, the Photo of Drugs has been marked and entered
18 into evidence as State's Exhibit No. 6)

19 Q. Okay. That picture that you just saw, that is the form
20 of the drugs, that's how they would packaged? That's how
21 they were given to you, right?

22 A. Yes.

23 Q. Okay. And again, they were given to you from the CI or
24 by the CI?

25 A. Yes. All that's correct.

1 Q. You weren't in the house when someone allegedly gave
2 these drugs to the CI, so you wouldn't know about that?

3 A. Right.

4 Q. At least, not direct knowledge?

5 A. Right.

6 Q. Okay. I'm going to show you now what's been marked
7 State's, 7 and 8, do you recognize those two photographs?

8 A. I do.

9 Q. What are those?

10 A. So the first one is the best kit that the drugs are
11 packaged in. It's, basically, a standardized way that we
12 use to package and submit drugs to our laboratory. A manila
13 envelope that's got specific markings and unique number on
14 it. And then they're in that is the second photo, which is
15 a safety sealed evidence bag. It's got some more
16 information. The matching number that the pills are sealed
17 into in the photo.

18 Q. And you sealed those drugs in that bag?

19 A. I did. I personally placed them in here and took these
20 photos.

21 Q. And is that normal protocol ---

22 A. It is.

23 Q. --- when you have any kind of drugs?

24 A. That is per policy. Standard operating procedure and
25 everything of the above.

J. Martin- Direct Examination by Mr. Daniel

151

1 MR. DANIEL: Your Honor, I would ask permission now
2 to enter those two pictures into evidence, that would be
3 State's 7 and 8.

4 MR. BROOKER: Just subject to pretrial objections,
5 Your Honor.

6 THE COURT: Okay. All right. Let me clear the last
7 three photographs, those two and one before are in, but
8 they're subject to previous object, objection, okay. All
9 right. Solicitor?

10 (Whereupon, the Photo has been marked and entered into
11 evidence as State's Exhibit No. 7)

12 (Whereupon, the Photo has been marked and entered into
13 evidence as State's Exhibit No. 8)

14 MR. DANIEL: Thank you, Your Honor.

15 Q. Now, just so the jury can see what we're talking
16 about. What is this -- what I'm showing you now it State's
17 8, what's that?

18 A. That is the two bags of pills and the outer envelope
19 of the best kit.

20 Q. Okay. And that best kit you said that's just what
21 y'all always use ---

22 A. That is our standardized method of packaging drug
23 evidence to submit to our lab.

24 Q. All right. Now, I'm showing you the other one, which
25 is ---

1 A. That is the pills, the pills sealed within the inner
2 evidence security envelope that goes inside of the manila
3 envelope.

4 Q. All right. Once you put these drugs sealed in this
5 envelopes, what happens ---

6 A. I ---

7 Q. --- with them?

8 A. They are transported to the lab. In this case, I
9 personally transported them the following day and submitted
10 them to our laboratory or to our evidence control which
11 moves them to the laboratory.

12 Q. And that's a Columbia?

13 A. It is.

14 Q. Okay. And then you're done with them, right?

15 A. Yes.

16 Q. Why are they taken to the lab?

17 A. Just for chemical testing to confirm that they really
18 are what they are.

19 Q. Okay. Let's go back for a moment to, once the CI and
20 Agent, Special Agent Blake returned back to y'all's meeting
21 location, is the CI searched again?

22 A. Yes. Special Agent Blake, again, in my presence,
23 searched the CI and he did not have anything on him, any
24 drugs, money, weapons or anything of that nature.

25 Q. So the only thing he brought back would be these

J. Martin- Direct Examination by Mr. Daniel

153

1 drugs?

2 A. That is correct.

3 Q. And was there any cash left over?

4 A. There was an additional \$200. I did -- I issued him
5 \$700 and he only used \$500 of that during the purchase. He
6 gave the remainder of that, the \$200 back.

7 Q. Okay. All right. Let's talk, now, about the video. The
8 confidential informant, as you've testified, is outfitted
9 with a camera, ---

10 A. Yes.

11 Q. --- right? He was in this case?

12 A. Yes, he was.

13 Q. Have you reviewed that recording?

14 A. I have.

15 Q. I'm showing you what's been marked State's 1, pre-
16 marked State's 1, do you recognize that DVD?

17 A. I do.

18 Q. Have you looked at this DVD?

19 A. I have looked at that. I personally burnt that DVD.

20 Q. Okay. And I believe that's actually, there's some
21 writing on there, is that your handwriting?

22 A. That is my handwriting, yes.

23 Q. Okay. Is there a video on here that's a recording of
24 what the CI ---

25 A. There is, yes.

1 Q. Okay. Have you reviewed that specific video?

2 A. Yes.

3 Q. Because there's some other stuff on this video, right?

4 A. Right.

5 Q. But the only thing ---

6 A. There's some screen shots and things of that nature.

7 Q. Okay.

8 A. But, yes, the video. Yes.

9 Q. For the record, the only thing I'm asking to introduce
10 here is that one video, but we'll get to that. Is this
11 video a fair and accurate depiction of what, at least, you
12 were aware of that took place that day?

13 A. Yes, it is.

14 Q. Okay.

15 MR. DANIEL: Your Honor, at this time I would move
16 number one into evidence and would like to publish.

17 MR. BROOKER: Just simply subject to pre-trial
18 objections, Your Honor.

19 THE COURT: All right.

20 MR. DANIEL: I actually have the one video that we
21 need on my hard drive so we don't have to worry about the
22 CD.

23 THE COURT: Okay. It's in. Subject to that prior
24 objection.

25 (Whereupon, the Flash Drive has been marked and entered

J. Martin- Direct Examination by Mr. Daniel

155

1 into evidence as State's Exhibit No. 1)

2 Q. All right. Let's talk just a minute before I play this
3 about timing, when, when do you hit the record button?

4 A. In this instance, and in most, as the informant is
5 leaving the meeting location.

6 Q. Has -- when he's leaving -- so you outfit him and he
7 gets in the car and that's when you ---

8 A. Yes.

9 Q. --- when you hit record?

10 A. That's correct.

11 Q. Is that what happened in this case?

12 A. It is.

13 Q. All right.

14 MR. DANIEL: I'm going to show, for the purpose of
15 the record, from the five minute mark of this video to the
16 about 7:24 mark so only about, a little under two and a
17 half minutes, judge, just for time sake because there's
18 nothing that goes on other than a car ride for the first
19 five minutes of it. And also for purposes of the record, no
20 audio from this video will be played. It is muted. Both in
21 Windows and in the media player, there will be no audio
22 played because the confidential informant can't be here to
23 justify so there's no audio played.

24 (Whereupon, the video is played for the jury)

25 Q. All right. You can only testify as to what you saw,

1 right?

2 A. Yes.

3 Q. You weren't there?

4 A. No, I was not.

5 Q. What happened in that video?

6 A. Purchase of drugs was made in that video ---

7 Q. Okay.

8 A. --- the informant to Mr. McKeiver.

9 Q. When the CI walked up to the front door, who answered
10 the door?

11 A. Mr. McKeiver.

12 Q. Did it look like they had a long conversation to you?

13 A. No.

14 Q. Looks like he took him right back to a back bedroom
15 immediately, right?

16 A. Yes. That's correct.

17 Q. I'm going to show ---

18 MR. BROOKER: Just, just objection to the leading.

19 Q. I'm going to show you, now, what's been marked, we've
20 seen these yesterday, State's 2 and 3, these are -- what
21 are these?

22 A. These are screenshots from the video. Both showing --
23 one shows Mr. McKeiver's face as clear as it can be on a
24 still shot from a video. Very recognizable, a screenshot of
25 this face. And the other, is a screenshot from the video

J. Martin- Direct Examination by Mr. Daniel

157

1 showing the bag of the drugs, one of the bags that was
2 purchased in his hand.

3 Q. Okay.

4 MR. DANIEL: Judge, I would ask these two
5 screenshots from the video that's already in evidence be
6 introduced as State's 2 and 3.

7 MR. BROOKER: Just subject to previous pre-trial
8 objections, Your Honor.

9 THE COURT: In. Subject to those pre-trial
10 objections.

11 (Whereupon, the Photo has been marked and entered into
12 evidence as State's Exhibit No. 2)

13 (Whereupon, the Photo has been marked and entered into
14 evidence as State's Exhibit No. 3)

15 MR. DANIEL: Thank you, Your Honor.

16 Q. This is State's 2 that we're looking at right now,
17 what exactly is this?

18 A. It is a screenshot from the video of Mr. McKeiver.

19 Q. That's when he answered the door, right?

20 A. That is right after he answered the door, yes.

21 Q. Now, State's 3, another screenshot from the video,
22 what does this show?

23 A. This is one of the bags of pills that was purchased
24 from him. This screenshot is after the informant and Mr.
25 McKeiver went to the back bedroom.

1 Q. And it appears to be a bag, right?

2 A. Yes.

3 Q. You don't really know what that is, but it certainly
4 appears ---

5 A. Appears consistent with the bags that were brought
6 back.

7 Q. Okay. Let's talk about search warrants. As part of
8 your investigation, did you get a search warrant signed by
9 a magistrate?

10 A. I did.

11 Q. What was that search warrant for?

12 A. For the Snapchat account records associated with the
13 account Duke underscore TTG.

14 Q. Okay. Through your investigation -- well, let me ask
15 you this way, how did you come to find out or believe, how
16 did you come to believe that this particular Snapchat name
17 was associated with the defendant?

18 A. I had been shown previous posts by other law
19 enforcement officers from this account and those posts
20 showed multiple pictures and videos containing Mr.
21 McKeiver.

22 Q. Okay. Did you -- did -- as part of the search warrant,
23 did you receive from Snapchat some, their way of
24 authenticating an account?

25 A. I did. Yes.

J. Martin- Direct Examination by Mr. Daniel

159

1 Q. And does that authentication match a screen name with
2 some other, possible, identifying information?

3 A. It does. It shows the screen name Duke TTG which Duke
4 is the nickname or street name that I had known Mr.
5 McKeiver to be called on a consistent basis, regularly,
6 but pretty much everyone he knew.

7 Q. All right. And did that account information include a
8 phone number?

9 A. It did.

10 Q. All right. I'm showing you what's been marked State's
11 10, what is that?

12 A. This is the account information authentication sent
13 from Snapchat along with the results in the search warrant.

14 Q. What's the phone number on that that is associated
15 with Duke Snapchat name?

16 A. It's [REDACTED].

17 Q. So you believe that to be whose phone number?

18 A. I believe that to be Mr. McKeiver's phone number.

19 Q. All right. Did you send to Snapchat, -- oh, I'm sorry,
20 can I ask ---

21 MR. BROOKER: Your Honor, we just make an objection
22 to speculation because he said he believes that to be Mr.
23 McKeiver's phone number. Just objection to the speculation.

24 THE COURT: Well, I'mma overrule that based on his
25 testimony as to his actions in this particular

1 investigation.

2 MR. DANIEL: That's what he believes. It's not
3 speculative that he believes it. So thank you, judge.

4 Q. Okay. Again, [REDACTED], right?

5 A. Yes.

6 Q. Duke underscore TTG?

7 A. That's correct.

8 Q. All right. You sent to sled, I'm sorry, to Snapchat a
9 preservation request, what is that?

10 A. Basically, with electronic communication that
11 accompanies that only to these social media or phone
12 companies or whatever, only store the records for a certain
13 amount of time. The preservation letter is, basically, me
14 sending them a formal request to store it for longer than
15 that so that I can send them a search warrant later on and
16 have the records for that extended period of time that they
17 wouldn't have normally stored.

18 Q. Okay. And you actually issued the preservation request
19 in August of '19, right?

20 A. Yes.

21 Q. Actually, before this date?

22 A. Yes.

23 Q. As part of your ongoing investigation?

24 A. That's correct, yes

25 Q. All right. Sometime after the preservation request was

J. Martin- Direct Examination by Mr. Daniel

161

1 issued, did you get a search warrant signed for ---

2 A. I did.

3 Q. Okay. And did you get anything back from Snapchat?

4 A. I did.

5 Q. What ---

6 A. I received ---

7 Q. What did yo get?

8 A. A large amount of records, chat records, photos,
9 videos, um, combination of sent/received, posted videos,
10 photos, chat conversations, and the account information.

11 Q. Do you remember how long the time period was that you
12 asked for the records from Snap?

13 A. I don't remember exactly.

14 Q. Okay. It was several months, right?

15 A. Yes. It was an extended period, yes.

16 Q. Okay. Do you remember how -- do you know how many
17 total images, tell me how many, how many total pictures you
18 got from this, from Snap associated with this account?

19 A. Two thousand, eight hundred and four images.

20 Q. Two thousand, eight hundred and four images?

21 A. Yes.

22 Q. How many of those images ---

23 MR. BROOKER: Your Honor, can we approach?

24 THE COURT: Yeah.

25 (Whereupon, a bench conference is held off the record)

1 Q. Okay. We're going to narrow this focus now to Snapchat
2 records.

3 A. Mmm, hmm.

4 Q. What they showed this account posting on the date in
5 question. That's it. Not, not a six month period, just that
6 date. All right. September 9, 2019, are you able to see
7 from the records that Snap, that Snap sends you, exactly
8 the day and time that certain images are posted to an
9 account?

10 A. Yes.

11 Q. Were there images posted on this account on September
12 9, 2019?

13 Q. Yes, there were.

14 Q. I'm going to show you what's been pre-marked State's 4
15 and 5, can you identify those two?

16 A. Number 4, is a photo of Mr. McKeiver that is timestamp
17 September 9, 2019. And number 5, is a photo of pills that
18 are consistent in their own appearance and in the packaging
19 as to those from the control purchase.

20 MR. DANIEL: All right. Your Honor, I would ask that
21 both of these photographs be introduced as the State's 4
22 and 5?

23 MR. BROOKER: Subject to pre-trial objections, Your
24 Honor.

25 THE COURT: In. Subject to pre-trial objections.

J. Martin- Direct Examination by Mr. Daniel

163

1 (Whereupon, the Photo has been marked and entered into
2 evidence as State's Exhibit No. 4)

3 (Whereupon, the Photo has been marked and entered into
4 evidence as State's Exhibit No. 5)

5 MR. DANIEL: Permission to publish.

6 THE COURT: Yes, sir.

7 Q. State's 4, what's this?

8 A. That is a photo of Mr. McKeiver on that day.

9 Q. You posted it on the -- so the Snapchat records that
10 came to you in electronic form, the file name had the date

11 ---

12 A. Yes.

13 Q. Said that it was posted on September 9th, right?

14 A. That is correct.

15 Q. And is there a date stamp on the picture itself?

16 A. There is.

17 Q. And what is that date?

18 A. It's September 9, 2019.

19 Q. All right. Now, let me show you the other one that was
20 just introduced, the other picture from Snap, what's that?

21 A. That is multiple bags of pills that are, again,
22 consistent with the one's from the control purchase and
23 consistent with the same packaging.

24 Q. So that State's 5, and again, where, where did this
25 picture come from?

1 A. That came from the results of the search warrant to
2 the Snapchat account, Duke TTG. The one that I, prior to
3 this had a belief and then was confirmed with these results
4 that belonged to Mr. McKeiver.

5 Q. So just to be clear, this picture on September 9, 2019
6 was posted on the same account that posted a picture of the
7 defendant?

8 A. That is correct.

9 Q. All on September 9th ---

10 A. On September 9th ---

11 Q. --- on September 19, 2019?

12 A. Yes.

13 Q. September 9th, sorry, September 9, 2019, okay. State's
14 6, what's that again?

15 A. It's the two bags of pills from the control purchase.

16 Q. And when did you get those?

17 A. On September 9, 2019.

18 Q. They look quite similar to you?

19 A. They look identical to me.

20 Q. This is one of those still shots from the buy, what
21 did you say that appeared to be?

22 A. That appears consistent to me with to the packaging
23 that those pills, the ones in Snapchat pictures and the
24 ones in the, that were returned as evidence. It appears to
25 be the same packaging as those pills.

J. Martin- Cross-Examination by Mr. Brooker

165

1 Q. And the pills -- these are the pills that you sent to
2 sled or ---

3 A. Yes.

4 Q. --- you dropped off yourself to sled for testing?

5 A. Yes. Those are the ones that I've received from the
6 informant and took to the lab for testing.

7 Q. Can you identify Marc McKeiver in the courtroom today?

8 A. I can. He's seated with the defense in a white button
9 up shirt with a gold chain.

10 MR. BROOKER: Just objection to the in court
11 identification, Your Honor ---

12 COURT REPORTER: You're gonna have to speak up for
13 me.

14 MR. BROOKER: I apologize, just objection to the end
15 court identification based upon previous pre-trial
16 arguments.

17 MR. DANIEL: I have to ---

18 THE COURT: Objection is overruled.

19 MR. DANIEL: Thank you. I have no further questions.
20 Please answer any questions the defense may have.

21 **Cross-Examination by Mr. Brooker:**

22 Q. Special Agent Martin

23 (Whereupon, the attorneys had discussions off the record
24 concerning TV and computer)

25 Q. Special Agent Martin, I think you testified that you

1 are with sled, you're with sled now for about three years,
2 is that correct?

3 A. That is correct.

4 Q. And I think you testified that you were in law
5 enforcement for a total of 11 years?

6 A. Yes. That's correct.

7 Q. Okay. And who are the other agencies that you are were
8 employed with?

9 A. The first agency I worked for was the Iron County
10 Sheriff's Office in Missouri. And after that, I was with
11 the North Myrtle Beach Department of Public Safety in North
12 Myrtle Beach, South Carolina. I was also deputized by the
13 FBI and DEA at different points to work with them under
14 their umbrella.

15 Q. Okay. And of course, how long have you been -- and of
16 course is, your title right now, are you an investigator?

17 A. Special Agent, yes.

18 Q. A special agent is -- and of course, are you assigned
19 to drug investigation?

20 A. I am.

21 Q. How long have you been doing drug investigations?

22 A. A little bit over six years at this point.

23 Q. And of course, I want to ask you a couple of
24 questions, I think in reference to this investigation. I
25 think you testified to the fact that y'all were, that y'all

J. Martin- Cross-Examination by Mr. Brooker

167

1 were conducting, I guess a drug investigation, and of
2 course, is that normally when you conduct a drug
3 investigation, or at least a drug buy, and generally most
4 of the times you use a CI to do that?

5 A. Typically, yes.

6 Q. Okay. And I think you testified to the fact that what
7 you normally do is, is that, that you will meet with that
8 CI, and of course, you will then search that CI, is that
9 correct?

10 A. That's correct.

11 Q. And of course, you conducted that search, is that
12 correct?

13 A. I did not personally conduct it. I was present when a
14 Special Agent Blake did.

15 Q. Okay. Special Blake did the, did the search?

16 A. Yes.

17 Q. Okay. And you correct me if I'm wrong, it's my
18 understanding that the reason why that y'all do those
19 drugs, those searches is to ensure that the confidential
20 informant doesn't have any drugs on him, or either any
21 weapons?

22 A. That's correct.

23 Q. Is that correct?

24 A. That's to ensure safety first and foremost. And then
25 of course, the second and almost as important, is that they

1 don't try to plan any evidence on the defendant ---

2 Q. Okay.

3 A. --- so that we know where the drugs definitely came
4 from.

5 Q. Okay. And so basically, what you're trying to do is
6 that you're trying to make sure that the confidential
7 informant -- that when you use a confidential informant,
8 you're trying to control exactly where the confidential
9 informant obtained those drugs that the confidential
10 informant eventually brings back out to the, I guess, to
11 the arranged location or the checkpoint, if you will?

12 A. Yes.

13 Q. Okay.

14 A. That's correct.

15 Q. So you want to make sure that he didn't have them on,
16 he didn't have them in his car and, and of course, he takes
17 them underneath, takes them from underneath his seat of his
18 car, and then gives you drugs ---

19 A. Right.

20 Q. --- that he then got from, from the subject, is that
21 correct?

22 A. That's correct.

23 Q. Okay. Okay. And so -- and that's why you control, you
24 control exactly what he has, he or she has, the CI has, and
25 then of course, is that you also, if the CI is riding

J. Martin- Cross-Examination by Mr. Brooker

169

1 alone, do you normally would search the vehicle if the CI
2 is riding alone?

3 A. If they were in their vehicle, yes, it would be
4 searched prior to. That wasn't the case in this one but....

5 Q. Absolutely.

6 A. Normal practice, yes.

7 Q. Absolutely. And that's for the same purposes is that
8 you're trying to control where the CI may potentially get
9 drugs at because you only want to make sure that that's the
10 CI is getting drugs from the alleged target, is that
11 correct?

12 A. That's correct.

13 Q. And that he's not getting it from any other place.

14 A. That's correct.

15 Q. Okay. Now, you can control the -- you can control the
16 CI, is that correct?

17 A. To a certain extent ---

18 Q. To a certain extent and that's why you do the search.
19 And of course is, is that if the CI is riding in a vehicle,
20 then of course in this particular situation, you have
21 control of that vehicle, is that correct?

22 A. That is correct.

23 Q. Okay. Do you have control of the buy location?

24 A. To a certain extent, not always. We try to dictate,
25 but that's not always a possibility.

1 Q. Okay. I think in this, in this film, in this
2 photograph that you showed, this buy took place in a house,
3 is that correct? A. That's correct.

4 Q. Or a mobile home, is that correct?

5 A. Yes.

6 Q. Okay. And so you wouldn't have control of that
7 location, is that correct?

8 A. No. I do not have control of that location.

9 Q. Okay. Do you, do you know whether or not the CI,
10 whenever the CI is gone to make a buy at a specific
11 location, do you check to see whether or not the CI has any
12 connection with that specific location?

13 A. Maybe not specifically, that question, but yes, that
14 is part of the considerations, yes.

15 Q. Okay. But the CI in, the CI in this particular case,
16 is that I think and I don't have the address, do you have
17 the address of that locations?

18 A. [REDACTED] in Hamer.

19 Q. One forty-four?

20 A. Yes, sir.

21 Q. Do you know whether or not the CI has any connector
22 with that location prior to the CI going to that location?

23 A. Yes, I do.

24 Q. So in the video, I think the video shows that the CI
25 gets out of the vehicle, is that correct?

J. Martin- Cross-Examination by Mr. Brooker

171

1 A. That's correct.

2 Q. And of course, the video shows I think someone
3 greeting the CI at the door, is that correct?

4 A. Yes, sir.

5 Q. And of course is, is that ---

6 MR. BROOKER: If we can get the still photograph.

7 MR. DANIEL: You want to -- it's up there do you
8 want displayed too?

9 MR. BROOKER: Let me ask them first.

10 MR. DANIEL: Okay.

11 MR. BROOKER: And then I'll decide.

12 Q. This is the still photograph ---

13 MR. BROOKER: If I can approach, Your Honor?

14 THE COURT: Sure.

15 Q. And I'm looking at what's been marked as State's
16 Exhibit 2, this is the still photograph, is that correct?

17 A. That is correct.

18 Q. Okay. And this is the individual that greeted, that
19 greeted the CI at the door, is that correct?

20 A. It is.

21 Q. And then of course is, and I think also in that video,
22 you have what's been marked as State's Exhibit 3, is that
23 correct?

24 A. Yes.

25 Q. Okay. If you'll take a look at State's Exhibit 3?

1 A. Yes, sir.

2 Q. And I think you were, you were asked on State's
3 Exhibit 3 is that, is that, it appears to be that there's
4 something in the hands of that person on State's Exhibit 3?

5 A. Yes.

6 Q. Okay. Can you clearly, and I think you've already
7 testified to this, but you testified on direct examination,
8 on direct examination that you could not clearly identify
9 what that is, is that correct?

10 A. That is correct.

11 MR. BROOKER: If I can put State's Exhibit Number 3
12 up ---

13 MR. DANIEL: Sure.

14 MR. BROOKER: --- for the jury.

15 Q. Do you have a monitor up there?

16 A. Yeah, I've got one, a monitor.

17 Q. Okay. This is State's Exhibit Number 3, and of course
18 is, what I was asking you is that on State's Exhibit 3, I
19 think what is in the, in the hands of this particular
20 individual, can you clearly identify what that is?

21 A. I can not clearly identify it, no.

22 Q. Okay. You're not telling the jury, you're not telling
23 the jury that you can identify that as being drugs in that
24 person's hands, is that correct?

25 A. That is correct.

J. Martin- Cross-Examination by Mr. Brooker

173

1 Q. Okay. All right. So, and of course is, I'm looking at
2 this, and of course is, that can you clearly see what's,
3 what's on the inside of that whatever that object is, the
4 container is?

5 A. No.

6 Q. Okay. So you can't clearly see on the inside of it?

7 A. No, I can not.

8 Q. Okay. So you're not telling the jury that, that, that
9 this item in the hand is actually drugs, is that correct?

10 A. No. That is -- I'm telling them that what it appears
11 to be consistent with.

12 Q. Okay. Okay. Okay. And so what does it appear to be
13 consistent with?

14 A. With the packaging of the drugs.

15 Q. Okay. But you're not telling them, you're not telling
16 them proof beyond a reasonable doubt that's drugs?

17 A. I cannot say that about that specific image, no.

18 Q. You can't say that, okay. All right. Now, is there any
19 other image that you are aware of on that video, and I
20 don't want to play the video for the jury, is there any
21 other image on that video where there is, where there is a
22 depiction of an exchange, a picture of an exchange that
23 clearly shows the existence of drugs?

24 Was this the best image that you got off that video?

25 A. Yes, it was.

1 Q. Okay. And so -- and when I saw that video, you correct
2 me if I'm wrong, there was nothing else on that video that
3 shows an exchange, is that correct?

4 A. That is correct.

5 Q. There's nothing on there that shows, what's clearly
6 identify as drugs, be an exchange or given to your CI, is
7 that correct?

8 A. That's correct.

9 Q. Okay. And of course is, is that -- and because there
10 was no depiction of an exchange any drugs that your CI may
11 have brought back at the, brought back at the checkpoint
12 where you in any other officer was located at, is that,
13 you're assuming that those drugs was given to that CI at
14 the buy, is that correct?

15 A. That is correct, yes.

16 Q. Okay. But it's not depicted on the video, is that
17 correct? A. That's correct.

18 Q. There's no hand-to-hand exchange of drugs on that,
19 that's given to your CI on the video?

20 A. Not on the video, no.

21 Q. Okay. So to some extent, that you're speculating to
22 some extent, is that correct, based upon the video?

23 A. Based upon the control of the situation, sterilizing
24 CI prior to and after the control purchase.

25 Q. And the reason why I'm asking you that is, is that,

J. Martin- Cross-Examination by Mr. Brooker

175

1 because you testified on direct examination, you testified
2 on direct examination that this video, this video depicted
3 a drug exchange between Mr. Keiver and the confidential
4 informant and so other than this - and I want to make sure
5 that I get it straight for the jury - other than this,
6 there is nothing else on that video that shows a direct
7 exchange of what you can clearly see as drugs between your
8 CI and anybody, is that correct?

9 A. That is correct.

10 Q. So if that's correct, to some extent, to some extent,
11 than of course is that -- let me withdraw that question. I
12 don't think it's necessary. I think you've answered it.
13 Now, first, you testified and I think what's been
14 identified as State's Exhibit Number 8, State's Exhibit
15 Number 8, and I'll show it to you first, is that this is
16 the, this is the two bags of drugs that you believe that
17 appear to be drugs that that the CI gave to you when he got
18 back to the checkpoint, is that correct?

19 A. That's correct.

20 Q. Now, just one more question, and of course if, and
21 I'll just hold this up for the jury to see is that, these
22 two bags of drugs as identified as State's Exhibit Number
23 8, okay, State's Exhibit Number 8, now, can you clearly
24 identify these two bags of drugs as the object that's in
25 this person's hands?

1 A. No, I can not.

2 Q. Now, I think your testimony was that you sent a
3 subpoena to, I think, Snap Incorporated, is that correct?

4 A. Preservation letter and then the search warrant.

5 Q. Okay. I'm sorry. I apologize. Not a subpoena. A
6 preservation letter, and then of course, then a search
7 warrant?

8 A. Yes, sir.

9 Q. Is that correct?

10 A. That is correct.

11 Q. And I think you it was your testimony that State's
12 Exhibit Number 5, is a picture that was posted on that, on
13 that, you got that from Snapchat?

14 A. That's correct, yes.

15 Q. And of course and I think your testimony was is, is
16 that this picture was assigned to a Snapchat account that
17 was identified as, my memory serves me correctly, as Duke
18 TTG, is that correct?

19 A. That's correct.

20 Q. And of course is that, is that you say that, that you
21 believe and I think your testimony was that Duke TTG is
22 Marc McKeiver, is that correct?

23 A. Yes.

24 Q. And I think you said that, that, that you got that
25 information and, I don't want to get into any hearsay and

J. Martin- Cross-Examination by Mr. Brooker

177

1 I'm certainly not trying to elicit hearsay, is that you,
2 you ran across that information you said as a part of your
3 investigation, I believe is how you describe it, is that
4 correct?

5 A. Yes. Yes.

6 Q. Okay. Do you know Marc McKeiver personally?

7 A. I do not.

8 Q. Okay. Do you have any personal knowledge as to whether
9 or not he goes by the name of Duke?

10 A. I do not.

11 Q. Okay. And I think also, you said that you got his
12 picture off that account?

13 A. Yes.

14 Q. I think it's been, it's already been marked as State's
15 Exhibit, State's Exhibit Number 4.

16 A. Yes, sir.

17 Q. Is that correct?

18 A. That's it.

19 Q. Now, you also testified to the fact that, that, that
20 you made identification based upon, identification or
21 connect that that account is Marc, and correct me if I'm
22 wrong, I don't want to misstate anything that you testified
23 to on direct examination so if I did, if I misstate
24 something that you testified to on direct examination,
25 please correct me?

1 A. Okay.

2 Q. Okay. Did you testified on direct examination that,
3 that, that you also connected that account to Marc McKeiver
4 based upon a telephone number?

5 A. Yes. That was after the results of the search warrant
6 by further confirmation that it did belonged him.

7 Q. Okay. That that account belonged to him?

8 A. Yes.

9 Q. Okay. And of course, the, the, the telephone number
10 was, you're saying is that that was a further confirmation
11 of that?

12 A. Yes, it was.

13 Q. Okay.

14 MR. BROOKER: And just, just so I don't make a
15 mistake, has State's Exhibit Number 10 been entered into
16 evidence?

17 MR. DANIEL: Yes.

18 MR. BROOKER: It has been entered into evidence?

19 MR. DANIEL: Yes.

20 MR. BROOKER: Okay. I don't want to accidentally
21 enter it myself.

22 THE COURT: What is it?

23 MR. BROOKER: State's Exhibit Number 10. I don't know
24 if it's in evidence or not. I think the court reporter just
25 answered my question that it has not been entered into

J. Martin- Cross-Examination by Mr. Brooker

179

1 evidence at this point.

2 MR. DANIEL: Yeah, it was. Yes, I got that in
3 through Martin.

4 MR. BROOKER: That's pre-trial.

5 MR. DANIEL: No. I pre-marked it and then I ask that
6 it introduced after he identified it.

7 THE COURT: Well, do you object to that coming in?

8 MR. BROOKER: It's just subject to pre-trial
9 objections like I've been doing everything, Your Honor. But
10 that's why I didn't know. I did not know whether or not it
11 was entered and I didn't want to introduce something that
12 had not been entered yet, and I didn't recall whether or
13 not this had been injured yet.

14 THE COURT: And I don't either. All right. The
15 State -- we've got to clear this. You entered that how now
16 or when?

17 MR. DANIEL: When, when I asked Mr. Special Agent
18 Martin ---

19 MR. BROOKER: Pre-trial motions.

20 MR. DANIEL: No. No. I, I ---

21 MR. BROOKER: Before?

22 MR. DANIEL: Yeah, I got that in while he was just
23 testifying on direct.

24 THE COURT: Okay. I was looking at those pictures -
25 --

1 MR. DANIEL: I'll be glad to do it ---

2 THE COURT: Subject to your prior project. Okay.

3 (Whereupon, the Snapchat Information has been marked and
4 entered into evidence as State's Exhibit No. 10)

5 Q. I think Your Honor just entered this into evidence, I
6 think State's Exhibit Number 10. And of course, that cell
7 number that you talk about, that you identified with Mr.
8 McKeiver is [REDACTED], is that correct?

9 A. Yes, sir.

10 Q. Is that correct?

11 A. Yeah. That is correct.

12 Q. Okay. And to your knowledge, and you tell me I'm
13 wrong, is that Snapchat doesn't assign cell phone numbers,
14 do it?

15 A. Not that I'm aware of, no.

16 Q. Okay. To my knowledge, and you correct me if I'm
17 wrong, is that cell phones are issued by cell phone
18 providers when someone opens up, open up account, but with
19 a cell phone provider?

20 A. That's correct. To my understanding, yes.

21 Q. Yeah. That's what I'm talking about your understand?

22 A. Yes, sir.

23 Q. You know, it would be like if, and you correct me if,
24 if anything I say is wrong to your knowledge, it would be
25 like if, if you were to go to At&t and opened up an account

J. Martin- Cross-Examination by Mr. Brooker

181

1 and bought a cell phone, they would give you a cell phone
2 number associated with that account ---

3 A. Yes, sir.

4 Q. Is that correct?

5 A. Yes, sir.

6 Q. Okay. Did you determine what cell, what cell phone
7 provider issued this cell ---

8 A. I did not.

9 Q. --- phone number?

10 A. No, I did not.

11 Q. Okay. Did you receive any documentation from any cell
12 phone provider indicating who is the account holder for
13 this number?

14 A. No, I did not.

15 Q. Now

16 MR. BROOKER: If you can indulge me for just a
17 second, Your Honor?

18 THE COURT: Yes, sir.

19 Q. Mr. Martin, I'm almost finished.

20 A. Yes, sir.

21 Q. Invest -- I'm sorry, Special Investigator Martin. Now,
22 I just want to make sure for purposes of the jury, I think
23 what's identified as State's Exhibit Number 5 is that, this
24 is one of the photographs I think you said Snapchat sent to
25 you pursuant to the search warrant that you sent?

1 A. That is correct, yes.

2 Q. Okay. So these are not, these sub, these substances

3

4 MR. BROOKER: We'll you put up number 5 on ---

5 MR. DANIEL: Which one?

6 MR. BROOKER: State's -- I think it's yours, State's
7 Exhibit Number 5, I apologize.

8 Q. Now, I just want to make clear to the jury, State's
9 Exhibit Number 5, I think this is simply a photograph, is
10 that correct? A. Yes, sir.

11 Q. Okay. These, these items that are depicted in these
12 photographs, these are nothing that you have possession of,
13 is that correct?

14 A. Not to my knowledge. But I can't confirm that I have
15 possession of any of those.

16 Q. Yeah. And that's why I'm asking is, do you have
17 possession of these?

18 A. Not to my knowledge.

19 Q. Not to your knowledge. Okay. So I want to make sure
20 that the jury understands that. And so these are not
21 substances that you're, that you're telling the jury that,
22 that, that you have actual physical possession of, this is
23 just simply a picture that you're saying that you took off
24 of Snapchat, is that correct?

25 A. Yes.

J. Martin- Cross-Examination by Mr. Brooker

183

1 Q. Or that was, that was produced to you from Snapchat?

2 A. Yes. Yes.

3 Q. And I think you testified that, that the substances
4 that CI did brought back to you is that, that those
5 substances was handed to you by the CI, is that correct?

6 A. Yes, sir.

7 Q. And of course, the next day if you took them to sled,
8 is that correct?

9 A. That's correct.

10 Q. Did you keep them overnight?

11 A. I did.

12 Q. Where did you keep them at overnight?

13 A. Our policy dictates that we store them in our locked
14 toolbox of our truck.

15 Q. So they was in a locked tool box ---

16 A. Yes, sir.

17 Q. --- in your truck? Okay. Don't sled has, has evidence,
18 has a an evidence facility, and evidence custodian?

19 A. They do in Columbia.

20 Q. Okay. In Columbia?

21 A. Yes, sir.

22 Q. Okay. And of course -- and so this was kept in your in
23 the lockbox of your truck overnight?

24 A. Yes.

25 Q. Okay. And then the next day that you drove them to

1 Columbia to sled?

2 A. Yes, sir.

3 Q. And how did you turn them over to sled?

4 A. I'm sorry?

5 Q. How do you turn them over to sled? I don't know -- do
6 you give them to a specific person or do you put them ---

7 A. So we ---

8 Q. --- on a night box ---

9 A. We log me them into a computer system, pre-log them
10 prior to going. And then depending on the day and time
11 sometimes there's an individual there to take them and
12 sometimes you put them in a box. I don't recall,
13 specifically, that day what's happened. It'll be on the
14 chain of custody. We'll address that, though.

15 Q. Okay.

16 A. It was attached to the report. But they're turned over
17 either to the person or into the box. And from that point
18 the evidence custodians take possession and transfer them
19 to the lab.

20 Q. Okay. And I'm assuming that, I'm assuming that you,
21 that you get these from sled, I think, in preparation of
22 this trial, did you get them from sled?

23 A. I did. Yes.

24 Q. Okay.

25 MR. BROOKER: If you can indulge me, Your Honor, I

J. Martin- Redirect Examination by Mr. Daniel

185

1 may be finished with my questions. Let me make sure I don't
2 have any additional ones. No further questions, Your Honor.

3 **Redirect Examination by Mr. Daniel:**

4 Q. I don't have many for you, Special Agent Martin. About
5 the chain of custody since that's where just went with
6 that, did you follow all procedures and protocols in place
7 that, that sled has in place in the handling of drugs?

8 A. I did, yes.

9 Q. What you do with them from the minute you get them
10 from a CI, to the minute you turn them over to the lab in
11 Columbia?

12 A. Yes, I did.

13 Q. Okay. Ballpark in your 11 years of law enforcement
14 experience, ow many confidential informants buys have you
15 been a part of?

16 A. I would say multiple hundreds that I've been part of.

17 Q. Do you always have on these confidential informant
18 buys, every time they were camera, right?

19 A. Yes. At any time that it's, it's possible.

20 Q. Right. And you've dealt with hundreds and hundreds of
21 cases where CI's wear cameras?

22 A. Yes.

23 Q. Okay. Do you always have perfect videos of the
24 exchange ---

25 A. Rare ---

1 Q. --- in these ---

2 A. Rarely is there a perfect video.

3 Q. Do you still successfully prosecute people?

4 A. Yes.

5 MR. BROOKER: Objection, Your Honor.

6 Q. Do you see -- do you still charge people?

7 A. Yes.

8 Q. Okay. Do you -- are you aware, in all of your law
9 enforcement experience, of any law that requires you to
10 produce a video showing the exact exchange before you can
11 get a warrant ---

12 A. No.

13 Q. --- for arrest?

14 A. No, I'm not aware of one.

15 Q. Are you allowed to use your common sense when you look
16 at a video from a CI and make a decision on what to do next
17 in your investigation?

18 A. Yes, I am.

19 MR. DANIEL: Beg the court's indulgence. Your Honor,
20 I've got a few more questions for only one issue. I think
21 that's gonna require, it is gonna require me to look up
22 something, a record and it's also probably gonna require a
23 legal argument. So it might be a good time to take a break,
24 if we can?

25 THE COURT: We can do that. I need to make a call

J. Martin- Redirect Examination by Mr. Daniel

187

1 to Columbia. So, ladies and gentlemen of the jury, step
2 back to your room. We gonna take about a 15 minutes break
3 and then we'll come back, hopefully, in about 15 minutes.

4 (Whereupon, the jury exits the courtroom at 12:23 p.m.)

5 (Whereupon, the court goes back on the record at 12:45
6 p.m.)

7 MR. DANIEL: Judge, since the defense has made an
8 issue of the account, who owns the account? Whose account
9 is it? I have chosen nine photographs, selfies, posted by
10 the defendant of the defendant in close proximity to
11 September 9, 2019. In my research, including that case that
12 I argued yesterday, I'm not allowed to get into the
13 plethora of photographs that the defendant posted posing
14 with guns and drugs and other things. So I'm not getting
15 into any of that. These are all photographs without a
16 single gun, without a single substance that may or may not
17 be illegal. These are just selfies all posted around, let's
18 see between August 24, 2019 and September 14, 2019. Because
19 identity has been such an issue, identity or ownership of
20 this account. I'm introducing this to show that this was
21 his account. People don't post selfies, not this many
22 anyway, on someone else's account of someone else so that's
23 State's argument and I'm going to seek to introduce all
24 these. I believe that Thurman and I have, I think, we've
25 agreed to the dates, the dates of these photographs, the

1 dates that were posted, are all in each file name that came
2 from Snap, which of course the defense has. I've written
3 the date on the back of these and Thurman said that he's
4 okay with that. Obviously, that's my argument as these
5 pictures were posted on this account very close in time to
6 this incident so I think it's relevant given the argument
7 the defense has made.

8 MR. BROOKER: Your Honor, I would just reiterate all
9 the other, all the pre-trial objections that we made and of
10 course is, and I'll just quickly add to that, Your Honor,
11 is that I think, previously, I thought that there was going
12 to be a limited exception and that, that, that, that the
13 court indicated that the photographs that were taken on
14 that date, the date of this alleged transaction was
15 admissible. But of course, once we started expanding around
16 that then, of course, is that, you know, we start, I
17 guess, getting into the bulk of all of these social media
18 content that was taken off this Snapchat account. And I
19 think, again, is that and this goes back to the argument
20 that we made pre-trial is I think Mr. Daniel, basically,
21 says that the purpose of introducing these photographs is
22 to, is to establish ownership, ownership of the account and
23 the purpose of those photographs is going to be used to
24 authenticate ownership of the account. And I'm assuming is
25 that ownership of, of product, any product that's obtained

J. Martin- Redirect Examination by Mr. Daniel

189

1 on those account. And I think from the case that we
2 mentioned yesterday that says, is that ownership of account
3 does not, is not a proper argument to suggest ownership of
4 content on account. And again, Your Honor, we would argue
5 that, you know, obviously, I think Mr. Daniel said that the
6 reason why he's introducing these photographs, of
7 photographs is, is that because we have call in to question
8 the ownership of the Snapchat account. We just simply, like
9 any defense attorney do, we simply point out what they have
10 and what they don't? And of course, we ask them questions,
11 do you have this? Do you have that? Do you have this? But
12 if not at any point in time, have we have said that, hey,
13 he is not the owner of this account. But we asked them
14 whether or not they have evidence to prove ownership. And
15 of course is that, that's simply, if that simply had been
16 done, you know, through a, through a much simpler means
17 that, that they did not take and so they're asking Your
18 Honor to allow these photographs to be evidence of
19 ownership. And we're asking the court to exclude these
20 photographs that goes beyond the date of this alleged
21 incident. And of course, there is no evidence that these
22 photographs has any pertinent or evidentiary value to this
23 control buy. The whole case is about this control buy. What
24 is the pertinent or evidentiary value to these case, to
25 these photographs as it relates to the control buy. They

1 have no evidentiary of the control buy.

2 THE COURT: It would be circumstantial evidence to
3 show to the jury the ownership of that account. Am I wrong?

4 MR. DANIEL: No sir. Of course I agree with that. I
5 think that respectfully I don't think the defense can have
6 it both ways. They can't argue, hey, whose account is this?
7 Who's posting the stuff? And then when I tried to then
8 combat that or reply to that argument, say oh, no, but we
9 don't want you introducing any these pictures to prove the
10 point we're trying to make. I don't think that's ---

11 THE COURT: Based on the limited purpose that you
12 want to introduce this and you have assured the court that
13 there is no indication on those photographs that could be
14 considered prior bad acts and hearing all the questions
15 that have been posed on direct and cross, I'm gonna allow
16 you put them in, of course, it's going to be subject to
17 prior objection and to the objection that Mr. Brooker has
18 just entered.

19 MR. DANIEL: Thank you, judge. And there is not a
20 single -- they're nine pictures here, which I need to mark
21 by the way, there's not a single one in here that shows Mr.
22 McKeiver in the presence of, holding any kind of legal or
23 any kind of substance or weapon, at all.

24 MR. BROOKER: The only one, Your Honor, we would
25 object is that, Your Honor, is that one of them and of

J. Martin- Redirect Examination by Mr. Daniel

191

1 course me and Shipp was talking about this is, is that I
2 don't know anything about gang activity whatsoever and if
3 there's, there's one that has a, kind of a finger sign, and
4 of course is that, that this is plethora of photographs
5 here, and of course is that, that I don't want the jury to
6 assume that this is some sort of gang sign that might
7 create - Oh, I'll bring it up to you so you can see, Your
8 Honor ---

9 MR. DANIEL: I'll pull that one.

10 MR. BROOKER: Okay.

11 MR. DANIEL: It's not a gang sign he's giving the
12 finger which people to fingers all the time. That's all
13 that is, it's just that. But I'll one that one. That's
14 fine.

15 MR. BROOKER: Okay.

16 THE COURT: All right.

17 MR. DANIEL: The dates, judge, and this is other
18 thing that we've talked about and agreed to. I believe the
19 dates on, the dates are, the photographs were posted are on
20 the file name. I have written the date I believe, Thurman
21 is okay, I've written the date that each was posted to Snap
22 on his Snapchat account, on the back which we're about
23 testify to that. But that's the writing on the back and I
24 think Thurman has check that out.

25 (Whereupon, Mr. Daniel talks to court reporter concerning

1 exhibits)

2 MR. DANIEL: Judge, I think we're ready.

3 (Whereupon, the jury enters the courtroom at 12:54 p.m.)

4 THE COURT: Solicitor? You read?

5 MR. DANIEL: You ready for me, judge? Thank you. If
6 it pleases, the Court?

7 **Conti- Redirect Examination by Mr. Daniel:**

8 Q. Mr. Martin, I got a few questions for you and a few
9 things to show you and then we'll be done. All right.
10 What's Snapchat?

11 A. It's a ---

12 Q. We've talked about all this Snapchat, but some people
13 don't know what Snapchat is. What's Snapchat?

14 A. It's a social media platform kind of serves, I guess,
15 multiple purposes. Two primary is you can post to a story
16 which is a public post that either is completely public or
17 available to your subscribers. And that is videos,
18 pictures, text that you can post for others to see or
19 there's a direct message option. You can directly message
20 to individuals on groups as well.

21 Q. Okay. These posts that we're seeing from the Snapchat
22 search warrant, they were posted to Duke TTG followers
23 publicly for everybody to see, right?

24 A. Yes.

25 Q. All right. There's been some question as to ownership

J. Martin- Redirect Examination by Mr. Daniel

193

1 of that account, maybe who owns it, who manages it, or
2 whatever. I'm going to show you what's been marked State's
3 11, 13, 14, 15, 16, 17, 18, and 19. Can you identify those
4 please?

5 A. These are all photos Mr. McKeiver.

6 Q. And were those all posted on his, on this Snapchat
7 account that you believed to be his?

8 A. Yes, they were.

9 Q. Pursuant to agreement by the defense the date -- so
10 let me ask this first, when you get the Snapchat results,
11 they come on a computer like on a DVD or something?

12 A. They're electronically transferred ---

13 Q. Okay.

14 A. --- through a zip file through email.

15 Q. Every picture that's posted to Snapchat, is that a
16 separate computer file?

17 A. Yes, it is.

18 Q. And is that file -- does that file have a date on it
19 that tells you when it was posted?

20 A. The date is part of the filename ---

21 Q. Okay.

22 MR. DANIEL: That is what -- Your Honor, for the
23 record, that is what the defense and I have agreed to. Mr.
24 Brooker, of course, has had all these records for two years
25 now. But we have looked at the dates of these eight

1 photographs and I have written on the back of each
2 photograph, the picture, I'm sorry, the date that the
3 picture was posted.

4 Q. Can you -- I'm going to show these

5 MR. DANIEL: Well, no, let me first ask that they be
6 introduced since they have been testified to as results
7 from search warrant.

8 MR. BROOKER: Just subject to all previous
9 objections, Your Honor.

10 THE COURT: In. Subject to previous objections.

11 MR. DANIEL: This is 11 and then we skip 12, 13.
12 Through 19. Okay.

13 (Whereupon, the Photo has been marked and entered into
14 evidence as State's Exhibit No. 11)

15 (Whereupon, the Photo has been marked and entered into
16 evidence as State's Exhibit No. 13)

17 (Whereupon, the Photo has been marked and entered into
18 evidence as State's Exhibit No. 14)

19 (Whereupon, the Photo has been marked and entered into
20 evidence as State's Exhibit No. 15)

21 (Whereupon, the Photo has been marked and entered into
22 evidence as State's Exhibit No. 16)

23 (Whereupon, the Photo has been marked and entered into
24 evidence as State's Exhibit No. 17)

25 (Whereupon, the Photo has been marked and entered into

J. Martin- Redirect Examination by Mr. Daniel

195

1 evidence as State's Exhibit No. 18)

2 (Whereupon, the Photo has been marked and entered into

3 evidence as State's Exhibit No. 19)

4 MR. DANIEL: All right. Permission to publish?

5 Q. This is State's 11, I'm gonna hand you these so we can
6 go over the dates. When was that picture posted to that
7 particular Snap account?

8 A. That one is from August 24, 2019.

9 Q. Okay. And who is that?

10 A. That is Mr. McKeiver.

11 Q. Alright. The second one, who's that?

12 A. That is Mr. McKeiver.

13 Q. When was it posted?

14 A. August 26, 2019.

15 Q. Next one, who's that?

16 A. Mr. McKeiver.

17 Q. When was that posted?

18 A. August 29, 2019.

19 Q. All right, what about that one -- oh, we're not
20 introducing that one. What about that one?

21 A. That is Mr. McKeiver on August 30, 2019.

22 Q. What about that one?

23 A. It is Mr. McKeiver on September 4, 2019.

24 Q. What about this one?

25 A. Mr. McKeiver on September 5, 2019.

1 Q. What about next to last?

2 A. Mr. McKeiver on September 11, 2019.

3 Q. And finally?

4 A. And that is Mr. McKeiver on September 14, 2019.

5 Q. Okay. So there are multiple pictures posted on this
6 Snapchat account which is associated with, what phone
7 number?

8 A. The [REDACTED] 1.

9 Q. Right. All around the same day that this incident
10 occurred that we're all here for?

11 A. Yes.

12 Q. September 9, 2019?

13 A. That is correct.

14 Q. The same day, but on the same account was posted a
15 picture of bags of pills, right?

16 A. Yes.

17 Q. Those bags of pills, are they shaped any kind of
18 certain way?

19 A. They are shaped the same as the ones that the
20 informant brought back from the control purchase.

21 Q. So they're not all just circles or round like balls?

22 A. No. There are several different shapes.

23 Q. You can see in this picture that was posted, if this
24 is the last thing I got, you can see these photographs, can
25 you identify what some of those might look like?

J. Martin- Re-cross Examination by Mr. Brooker

197

1 A. Batman logos. Some that are shaped, I believe, likes
2 skulls. The Snapchat logo ghost. And then some are just,
3 just round shaped.

4 Q. And this is a picture that was posted to Snap, right?

5 A. That is correct.

6 Q. And then the picture of the two again, that the CI got
7 from McKeiver's house, what are those shaped like?

8 A. Batman logos, skulls, Snapchat ghost logos, and some
9 plain round ones.

10 MR. DANIEL: The risk of belaboring the point, I'm
11 done to my questions. Thank you very much. Please answer
12 any questions that the defense may have.

13 **Re-cross Examination by Mr. Brooker:**

14 Q. I'm just gonna go over this and ask you once again so
15 it's made clear to the jury. State's, State's Exhibit
16 Number 10, State's Exhibit Number 10 - thank you, sir - and
17 they are in evidence?

18 A. Yes, sir.

19 Q. I think you said you got this from Snapchat?

20 A. I did.

21 Q. Okay. Pursuant to your arrest, excuse me, your search
22 warrant, is that correct?

23 A. Yes.

24 Q. And of course is that, is Marc McKeiver's name
25 identified any place on here?

1 A. No, it is not.

2 Q. Okay. But like you testified before there's a cell
3 number, is that correct?

4 A. That is correct.

5 Q. And I'll be very quick, not to belabor the point is,
6 is that did you run a check on that cell number to see who
7 it was prescribed to?

8 A. I did not.

9 Q. Okay. So you don't know who the owner of that cell
10 phone number -- let me rephrase that, you didn't contact
11 the cell phone company to see who account that cell phone
12 numbers is prescribed to?

13 A No, I did not.

14 Q. Now, I think you also testified to on redirect, let me
15 find these photos, State's Exhibit Number 5, we've already
16 established you testified to picked this off that Snapchat
17 account, is that correct?

18 A. That's correct.

19 Q. Okay. Now. when you get this, when you get a Snapchat -
20 - when you got your records from Snapchat, each and every
21 content that is posted on Snapchat, does it tell you who's
22 the author or who generated that that image?

23 A. It indicates, to the best of my memory without having
24 been referenced back to the download, indicates whether
25 it's a post or a message that was sent or received.

J. Martin- Re-cross Examination by Mr. Brooker

199

1 Q. Okay. But what we're saying here is, is that does it
2 indicate the author?

3 A. As far as who was ---

4 Q. Yes.

5 A. --- physically holding the phone?

6 Q. Yeah.

7 A. No, it does not.

8 Q. Okay. And so, so, so you're not telling the jury that
9 -- and let me ask this question, also, and I think you've
10 already testified to the fact is, is that this is nothing
11 that you're in possession of, is that correct?

12 A. Not to my knowledge.

13 Q. This is just a photograph, is that correct?

14 A. That is correct.

15 Q. Okay. So this is nothing that you sent to sled, is
16 that correct?

17 A. Not that I know.

18 Q. And to -- and, and, and this is nothing that you can
19 send and have sled to analyze, is that correct?

20 A. That's correct.

21 Q. To be able to determine whether or not these are
22 illegal substances, is that correct?

23 A. That's correct.

24 Q. Okay. Is it your intention to try to tell the jury
25 that, that, that you believe that this is an illegal

1 substance, is that what your intentions are?

2 A. I wouldn't say that's an intention, but that -- if
3 you're asking if that is my belief? That is my belief, yes.

4 Q. Yeah, I know. And of course, is that is your belief,
5 but what I'm saying is, is that, is that belief based upon,
6 based upon any sort of chemical analysis of what these
7 substances are?

8 A. No. It is not based on chemical analysis of those
9 specific pills.

10 Q. So you can't tell the jury, you can't tell the jury
11 that these are illegal drugs?

12 A. I cannot say that for one hundred percent, no.

13 Q. But you want the jury to draw that conclusion, is that
14 what you're saying?

15 A. I'm saying that it is my opinion that those are
16 illegal drugs.

17 Q. Okay. And it's your opinion based upon shapes, I
18 think, is what your testimony was?

19 A. Shapes consistent to those that were testing, the
20 packaging consistent to those that were tested, and as
21 well, my training experienced in drug identification and
22 recognition.

23 Q. Mmm, hmm. All right. Now, you also indicated, let me
24 make sure I understand everything. Now, I think you just,
25 you just indicated, and I'll ask you this question, were

J. Martin- Re-cross Examination by Mr. Brooker

201

1 you able, I already know the answer to this but I'll ask it
2 anyway, exhibits, State's Exhibit 8 and State's Exhibit 9,
3 excuse me, State's Exhibit 5, were you able to, I guess,
4 chemically compare what's in State's Exhibit Number 5, to
5 what's in State's Exhibit Number 8, is that, were you able
6 to chemically compared these two, these two items?

7 A. I was not.

8 Q. Okay. So you can't do any chemical comparison?

9 A. No.

10 Q. Okay. And so, and I want to make sure, and I want to
11 make sure that, you know, the jury understands is, is it
12 your conclusion -- are you asking the jury to conclude
13 that's that, that the, that these pills that are identified
14 in State's Exhibit Number 8, that they come out of the same
15 bag, assuming these are real drugs that's contained in
16 State's Exhibit 5?

17 A. I'm saying that that is my opinion, yes.

18 Q. Okay. And I'll ask you, again, is that you said that's
19 your opinion, but I'll ask you again is, that State's,
20 State's Exhibit Number 5. these, you know, these, these
21 images, these are not in your possession, is that correct?

22 A. That is correct.

23 Q. Okay. And of course, you can't make any chemical
24 analysis between the two, is that correct?

25 A. That is correct.

1 Q. Okay. But you're saying that that's just your opinion?

2 A. That is, yes.

3 Q. Okay.

4 MR. BROOKER: If you can indulge me for just a
5 second, Your Honor.

6 THE COURT: Sure.

7 MR. BROOKER: Let me make sure that I have any
8 further questions. No further questions, Your Honor.

9 THE COURT: Solicitor?

10 **Redirect Examination by Mr. Daniel:**

11 Q. Really briefly. I want to be real clear about what I'm
12 asking. I'm holding up State's 5 and state's 6. I'm not
13 asking you if you can prove that these drugs in State's 6
14 came from the same pile as State's five. I'm asking you,
15 did the defendant post a picture of these pills? Did
16 someone on that account, Snapchat, post a picture of these
17 pills, State's 5 on September 9, 2019?

18 A. Yes.

19 Q. On September 9, 2019, did your CI targeting the
20 defendant buy these pills depicted in State's 6?

21 A. He did.

22 Q. Okay.

23 MR. DANIEL: Finally, I just want to make sure that
24 we've gotten in all this evidence because there might be a
25 question about that. This is kind of a housekeeping thing.

J. Martin- Redirect Examination by Mr. Daniel

203

1 But the DVD is in through Mr. through Special Agent Martin.
2 That State's 1 in evidence. State's 2, should be in
3 evidence. This is still shot from the video, right, we're
4 good there. State's 3, is the other still shot from the
5 video. State's 4, is selfie posted on that day. State's 5
6 is the Snapchat posted picture of pills. State's 6, pills
7 that the CI bought.

8 (Whereupon, the Photo of Drugs has been marked and entered
9 into evidence as State's Exhibit No. 6)

10 MR. DANIEL: State's 7, the drugs in the sled bag.

11 (Whereupon, the Photo has been marked and entered into
12 evidence as State's Exhibit No. 7)

13 MR. DANIEL: State's 8, pictures of the two drugs,
14 two bags of drugs and the best kit.

15 (Whereupon, the Photo has been marked and entered into
16 evidence as Sate's Exhibit No. 8)

17 MR. DANIEL: Is there a 9? Okay. State's 10, is the
18 Snapchat authentication. No, 11.

19 A. Oh, here's 11.

20 MR. DANIEL: That's right. There's one of these.
21 This is 11. The first one is 11. Number 12, the drug that I
22 asked him to be introduced by this witness earlier, but I'm
23 gonna do it again. Permission to, I believe, because
24 Thurman even objected to it, right, subject to prior
25 objection. That's in.

1 (Whereupon, the Drugs has been marked and entered into
2 evidence as State's Exhibit No. 12)

3 MR. DANIEL: And then 13 through 18, Snap pictures.
4 All of those pieces of evidence having been introduced, I
5 have no further questions for this witness.

6 THE COURT: Wrap it up.

7 MR. BROOKER: That's it, Your Honor.

8 THE COURT: Thank you, sir. You may step down. All
9 right. We are way over to the lunch hour. Unfortunately,
10 Dillon is much like my hometown. There's no restaurant
11 available to spread you out in on Monday. I don't know what
12 it is with the smaller towns. It's hard to find restaurants
13 open on Monday and it's gotten worse with the covid
14 pandemic. So I'm gonna give you an hour, you can run and
15 grab something for lunch. And I need you back here at 2:15.
16 We have another witness and I understand with talking with
17 counsel we need to get that witness in first thing this
18 afternoon. Still hold?

19 MR. DANIEL: Yes, sir. He's got to fight to catch to
20 get back home.

21 THE COURT: All right. Everybody else remain seated
22 while the jury departs for lunch. Remember don't discuss
23 the case with anyone. Don't let anybody approach you about
24 it. See you back at 2:15.

25 (Whereupon, the jury exits the courtroom at 1:13 p.m.)

A. Blake- Direct Examination by Mr. Daniel

205

1 THE COURT: All right. We'll reconvene in an hour.
2 (Whereupon, the court breaks for lunch at 1:15 p.m.)
3 (Whereupon, the court goes back on the record at 2:21 p.m.)

4 THE COURT: The jury is coming in.
5 (Whereupon, the jury enters the courtroom at 2:22 p.m.)

6 THE COURT: Have we got everybody? Yep. Solicitor?

7 MR. DANIEL: Thank you, Your Honor. If it please,
8 the Court? The State calls Alex Blake.

9 THE COURT: Come around and be sworn, please.

10 THE CLERK: Do you solemnly swear or affirm the
11 testimony you're about to give the court and jury on this
12 case is the truth, the whole truth, and nothing but the
13 truth so help you God?

14 MR. BLAKE: Yes, ma'am.

15 THE CLERK: Be seated. State your full name for
16 the court and spell your last for us.

17 MR. BLAKE: All right. My name is Alexander Blake.
18 Last name is B-l-a-k-e.

19 Alex Blake, first being
20 duly sworn, testified as follows:

21 **Direct Examination by Mr. Brooker:**

22 Q. Agent Alex Blake, is an agent? Special agent?

23 A. Special agent.

24 Q. By whom are you currently employed?

25 A. The Federal Bureau of Investigation, the FBI.

1 Q. And where do you work, now?

2 A. In Miami, Florida.

3 Q. Okay. In 2019, for specifically, September 9, 2019,
4 where were you working?

5 A. I was working for sled.

6 Q. In South Carolina?

7 A. Yes. In South Carolina. The State Law Enforcement
8 Division.

9 Q. Were you part of the operation that we've heard about
10 today involving the Defendant, Marc McKeiver?

11 A. Yes, sir, I was.

12 Q. What was your role in that investigation?

13 A. I was acting, it was support role, but I was acting as
14 an undercover agent. So I was going to be coordinating and
15 driving a confidential informant to purchase quantity of
16 drugs.

17 Q. Let's talk a little bit about, about confidential
18 informants, again. I assume -- well, how much work with
19 drug investigations like this involving confidential
20 informants have you been a part of?

21 A. So I've been a law enforcement officer now for almost
22 15 years. Eleven of that was focused primarily on narcotics
23 cases and narcotics investigations, but that being said, I
24 worked with confidential informants. I've probably been a
25 part of control purchases involving informants upwards of

A. Blake- Direct Examination by Mr. Daniel

207

1 five hundred plus times.

2 Q. How do you generally identify or assess the
3 credibility of a confidential informant?

4 A. So ---

5 MR. BROOKER: Objection, Your Honor. I think we might
6 need to approach.

7 (Whereupon, a bench conference is held off the record)

8 THE COURT: The objection is sustained. And you're
9 gonna rephrase your question.

10 MR. DANIEL: Thank you, judge. I'll rephrase it.

11 Q. When you're dealing with a confidential informant, why
12 do you search them before and after a buy?

13 A. Yes, sir. So there are many reasons that we search
14 them before and after a buy. Obvious reasons are, the first
15 being, that you want to ensure there are no drugs or other
16 illegal items on the CI, confidential informant, before the
17 buy, certainly. And, then, you're gonna send them somewhere
18 to purchase drugs. So of course, you want to know that they
19 have nothing on them as far as that. The other reason is
20 for safety, obviously. You don't want them to have any
21 weapons on them, not only for officer safety, but as well
22 for the safety of the entire investigation. Then another
23 reason it's just a series of checks and balances. It's a
24 way for us to ensure that the CI's are being as truthful as
25 possible with us. It's just a way for us to gauge that

1 cooperativeness with them. So a lot of times what we'll do
2 as well is in corroborate other things that and informant
3 might tell us. By that, we're kind of gauging their
4 truthfulness and lending truthfulness to the informant. We
5 don't just take them on their word for being truthful, but
6 we'll do other things. So they may give us some information
7 that we're able to corroborate or verify. We'll do that and
8 then it lends a little credibility to that informant.
9 Again, it's just a series of checks and balances just like
10 the search.

11 Q. Okay. So it -- now, let's focus on this case. This
12 particular case. You met with the CI, I believe the
13 testimony has already been, all of you, law enforcement
14 agents, met with the CI at this undisclosed or at this
15 location, right?

16 A. Yes, sir.

17 Q. And then what was your role immediately?

18 A. Okay. My role immediately upon meeting with the CI was
19 to search him.

20 Q. And you did that?

21 A. I did and there no contraband or anything on him that
22 would have been an issue.

23 Q. He didn't have any drugs on him?

24 A. No drugs.

25 Q. Do he have any weapons on him?

A. Blake- Direct Examination by Mr. Daniel

1 A. No weapons.

2 Q. Any money?

3 A. No money.

4 Q. Anything?

5 A. Nothing.

6 Q. Except for the clothes he was wearing?

7 A. Maybe a driver's license.

8 Q. Okay. Was he outfitted with a camera?

9 A. He was.

10 Q. Who did that?

11 A. Special Agent Martin outfitted him with the camera and
12 we, then, got into the vehicle together. He got into the
13 passenger seat of a vehicle that was being driven by me,
14 acting in an undercover capacity. Once inside of the
15 vehicle, I activated the cameras that he was equipped with
16 a Special Agent Martin.

17 Q. Was anybody else in the vehicle?

18 A. No, sir.

19 Q. Just you and the CI?

20 A. Correct.

21 Q. Okay. What, if anything, happened on your drive from
22 the location where you all met to the home where Mr.
23 McKeiver was?

24 A. Yes, sir. I instructed Mr. McKeiver, I'm sorry, I
25 instructed the CI to place a phone call to the subject, we

1 were supposed to be purchasing the drugs from, the phone
2 number, I believe, that was dialed. I confirmed this after
3 the phone call was made. It was [REDACTED]. The CI made a
4 phone call to that number. Placed the phone on speaker
5 phone so that I could hear the entirety of the conversation
6 which was also being recorded. And there was a brief
7 conversation about the location of where the subject was.
8 And then after that phone was hung up. I, again, had the CI
9 show me the phone so that I can verify the number myself
10 that that number that I just listed was dialed.

11 Q. And that was, in fact, the number that was dialed?

12 A. It was indeed.

13 Q. Did you -- and you said it was on speaker phone, so
14 you heard the whole conversation?

15 A. Correct.

16 Q. And again, this was when you were on the way to the,
17 Mr. McKeiver's place, right?

18 A. That's correct.

19 Q. All right. Had you ever heard Mr. McKeiver's voice
20 before?

21 A. No. Not before the phone call.

22 Q. Okay. At any point, after the phone call, did you hear
23 a voice that you believe to be Mr. McKeiver's again?

24 A. Yes, I did. I reviewed the buy video. The video that
25 you guys saw. I reviewed it's entirety also with the audio

A. Blake- Direct Examination by Mr. Daniel

211

1 and heard Mr. McKeiver speak with the CI. And from, to me
2 the voice that was coming out of Mr. McKeiver's mouth when
3 he was speaking during the buy video, matched the voice
4 that I heard on the other side of the phone when we made
5 the phone call that was recorded.

6 Q. And the phone number match, as well?

7 A. Correct.

8 Q. And as for the voice that you heard, is there any
9 doubt in your mind that the voice you heard on the cell
10 phone call that was on speaker phone, matched the voice of
11 Mr. McKeiver that we muted today, because we have to, but
12 that you were able to listen to?

13 A. No, there's no doubt that it matched.

14 Q. Okay. It did match?

15 A. They did match, yes.

16 Q. Okay. All right. The testimony has already been that
17 law enforcement or that you guys gave the CI money to make
18 a purchase. You drive to the house. You said phone call
19 happened. What happened when you get to the house?

20 A. So was we arrived to the house, I had a brief
21 conversation with the CI on where I should park. I pulled
22 up almost straight to the front door. It was a double wide
23 mobile home. The CI gets out of my vehicle. And, he is
24 again, equipped with audio and recording devices and
25 transmitting devices. So for his safety and for the

1 integrity of the operation, we're monitoring that, other
2 agents are monitoring that information. The CI walks to the
3 front door and the door is opened from the inside. The CI
4 then enters the mobile home.

5 Q. Do you remember about how long the CI was inside?

6 A. It couldn't have been more than a couple of minutes,
7 maybe two minutes.

8 Q. Okay. And then what happened -- what did you see next?

9 A. So I saw the door to the mobile home open. I saw the
10 CI walk out. And this mobile home, there's a - similar to
11 most - there's a porch stoop like a wooded steps, wooden
12 steps that come up with no cover. So just kind of a stoop.
13 The CI walks out onto the stoop. I then see Mr. McKeiver
14 who's sitting here in the white shirt, beside his defense
15 attorney, walk out on the front porch stoop and kind of
16 look to see who's driving the vehicle that the CI is
17 getting back into.

18 Q. This house you went to was in Dillon County, right? A.

19 A. Correct. I believe it was in Hamer.

20 Q. Which is Dillon County, right?

21 A. Yes, sir.

22 Q. Okay. When the CI, then, walks back, gets in your car,
23 what happens next?

24 A. The CI gets into the car. I ensured that everything
25 was okay with the CI that he was safe first. And then

A. Blake- Direct Examination by Mr. Daniel

213

1 secondly, asked for him to show me the drugs. The CI pulled
2 out two bags of multicolored pills. I specifically remember
3 the pills because I thought the designs were interesting.
4 One of the designs that I remember was a ghost shape. It
5 was the Snapchat logo. And another design was a Batman
6 logo. And the pills were all mixed together, but it was two
7 bags of them. And it was two bags, I believe it was 500
8 pills. And I had the CI also show me the remainder of the
9 money that was given, that he was given. I believe to CI
10 was given \$700 by Special Agent Martin, paid \$500 for 500
11 pills, so \$1 a pill and then came back. I had the CI show
12 me the extra \$200, again, checks and balances, to ensure
13 that the money was there. At that point, we left the
14 residence and drove back to our meeting location.

15 Q. Okay. Where did you say you told him to put the drugs
16 when he got in the car?

17 A. He put the drugs right in the center console in the
18 cupholder area of my, my vehicle.

19 Q. Why do you do that?

20 A. I just -- I want to know that the drugs are there. I
21 want to be able to visually see it myself. And then you
22 take away any kind of guesswork. Sometimes, not in this
23 case, but other times, there's sometimes a lengthy ride. So
24 you may be riding sometimes 20 or 30 minutes. There's the
25 potential there for questions to arise of where the drugs

1 were. And if they were inside of an informant pocket. I'd
2 much rather have the drugs where I can physically see them
3 in a cupholder of a vehicle.

4 Q. So the drugs were immediately placed when he got in
5 the car in the cupholder and did anybody touch them?

6 A. No, sir. Not until Special Agent Martin retrieved
7 them.

8 Q. Okay. In fact, when you got to the ---

9 A. Correct.

10 Q. All right. I'm gonna say what's marked State's and
11 what's introduced as State's 12. Do you recognize those?

12 A. I do.

13 Q. What are they?

14 A. They are the pills that the CI placed in my cupholder
15 on the date of, on September 9, 2019. They were packaged
16 separately, but I know they've been repackaged for the drug
17 analysis. But these are the pills that were placed there.

18 Q. So, maybe more accurately then, State's 6, which is
19 already in evidence, is that the pills in the same form
20 that were handed, were placed in your cupholder from the CI
21 after leaving McKeiver's house?

22 A. Yes, sir.

23 Q. Okay. Once you get back to the location, you said
24 Special Agent Martin retrieves the pills out of the
25 cupholder. What happens next?

A. Blake- Direct Examination by Mr. Daniel

215

1 A. I'm gonna backtrack one second, because once we left
2 the location, the drugs were placed into the center console
3 where I could see them. At that point, shortly after I
4 turned off all of the audio and video equipment, generally,
5 the way we do that is I'll make a statement at the end.
6 It's just a closing statement on it with a timestamp and a
7 date saying that the equipment is being cut off. So I did
8 that on the way, on our drive back to the meeting location.
9 Then once we got to the meeting location Special Agent
10 Martin retrieved the drugs from the cupholder, center
11 console area of the vehicle. I, then again, searched the
12 informant and did not locate anything on him. The money was
13 already given to Special Agent Martin, the additional \$200.
14 The drugs were given to Special Agent Martin, and there was
15 no other contraband or anything on the informant.

16 Q. I have one other question. As it's known, we can't get
17 into anything that the CI said because he's no long with
18 us.

19 A. Sure.

20 Q. But on that speaker phone call, what did you hear the
21 defendant say?

22 A. The defendant said that he was at a certain residence
23 and that it would be fine for the CI to come there.

24 MR. DANIEL: I have no further questions. Please
25 answer any questions that the defense may have.

1 A. Yes, sir.

2 MR. BROOKER: Your Honor, can we, can we -- may we
3 approach, Your Honor?

4 THE COURT: Yes, sir.

5 (Whereupon, a bench conference is held off the record)

6 THE COURT: Court stand at ease for a few minutes.
7 I need to check something.

8 (Whereupon, the court takes a few minutes in front of the
9 jury)

10 MR. BROOKER: Your Honor, I think were ready to
11 proceed.

12 THE COURT: Okay. Thank y'all.

13 **Conti.- Direct Examination by Mr. Daniel:**

14 Q. Special Agent Blake, I think we needed with or I'm
15 going to end with, again, the way that the drugs were
16 handled, cupholder, Martin picking them up, that's all
17 following the procedures and protocols that are put in
18 place by the sled.

19 A. Yes, sir.

20 Q. Okay.

21 MR. DANIEL: I have no further questions. Please
22 answer any questions that the defense may have

23 **Cross-Examination by Mr. Booker:**

24 Q. Agent Blake, I gonna asked you at least a couple of
25 questions. I think you said that you worked I think over

A. Blake- Cross-Examination by Mr. Brooker

217

1 five hundred control buys, is that correct?

2 A. Yes, sir. Approximately.

3 Q Approximately. I understand. And of course, you said
4 that normally, before the control buy, you would search the
5 confidential informant, is that correct?

6 A. That's correct. Yes, sir.

7 Q. Okay. And one of the basis of searching the
8 confidential informant is to make sure that the
9 confidential informant, you know, doesn't have illegal
10 substances on him at that time. And that that confidential
11 informant later produces those legal substances as the buy
12 substance, is that correct?

13 A. That's correct.

14 Q. So you're trying to control -- you're trying to make
15 sure that what the confidential informant control the
16 environment enough so that you can make a determination
17 that what the confidential informant later turns back over
18 to law enforcement, you know, at the meeting location is
19 only drugs that was collected during the control buy, that
20 he didn't get to any other place or any other source, is
21 that correct?

22 A. Yes, sir.

23 Q. Okay. So you're trying to control that environment as
24 much as possible, is that correct?

25 A. Yes, sir.

1 Q. So that's why you search him to make sure that he's
2 not, he don't have anything illegal on him?

3 A. Well, like I said earlier, we're searching for many
4 reasons.

5 Q. Yeah.

6 A. One is to ensure there's nothing illegal.

7 Q. Mmm, hmm.

8 A. Two, is to ensure officer safety as well as the safety
9 of the informant and/or the defendant that they may be
10 meeting with or the potential subject they're meeting with.
11 So there's no weapons, things of that nature. And then
12 again, it's a good practice that we put in place as a
13 series of checks and balances. Q. I understand the other
14 reasons.

15 A. Yes, sir.

16 Q. But I'm concentrating on one specific reason, one
17 specific reasons out of those multitude of reasons why you
18 do it, is that you're trying to ensure that what the
19 confidential informant later brings back to meeting
20 location is only substances of that confidential informant
21 got from the control buy or from the target, is that
22 correct?

23 A. Correct.

24 Q. You know, that he didn't get -- he didn't reach
25 underneath his seat on the way to be controlled buy and had

A. Blake- Cross-Examination by Mr. Brooker

219

1 drugs on him and then, and then give those drugs back, give
2 those drugs once he goes back to meet the agents and that
3 those were not actually drugs that had gotten from the
4 target, is that correct?

5 A. Correct.

6 Q. You want to make sure the drugs comes from the target,
7 is that correct?

8 A. Yes, sir.

9 Q. Okay. All right. So that's one of the reasons why you
10 search him?

11 A. That's one of the many, yes, sir.

12 Q. Okay. And also is, is that of the confidential
13 informant, I know in this particular situation, the
14 confidential informant was riding with you and so you
15 didn't need to search the car because you can control the
16 activities or observe the activities of the confidential
17 informant in the car, is that correct?

18 A. Correct.

19 Q. You can make sure he doesn't reach underneath the seat
20 and get some drugs and then later turn those drugs back in
21 and so you control or observe him while he's in the
22 vehicle?

23 A. That's correct.

24 Q. Okay. Now, once he gets to the buy location, then of
25 course, the other thing that helps you to, to, to at least

1 observe the confidential informant's conduct and make sure
2 that the confidential informant is getting drugs from the,
3 from the target and no other, no place else is that camera
4 that the CI is wearing, is that correct?

5 A. That's one of the uses for it, yes.

6 Q. That's one of the uses for it?

7 A. Correct.

8 Q. Okay. So it's supposed to be a recording of the buy
9 transaction?

10 A. That's correct.

11 Q. Okay. All right. But to that extent, to the extent of
12 the buy location, whenever the buy location, I think, like
13 in this particular situation, whenever the buy location is
14 inside a private residence it is that officers are limited
15 to seeing what goes on based upon what's contained on that
16 video, is that correct?

17 A. Well, we use a audio, as I mentioned earlier, and
18 audio and video transmitter as well. So we can listen live
19 to what's going on.

20 Q. Mmm, hmm.

21 A. So it's not just relying on watching the video after
22 the fact, which is what I believe you're describing.

23 Q. Mmm, hmm.

24 A. It is during the actual buy, during the control
25 purchase so to speak. We're actively monitoring. And

A. Blake- Cross-Examination by Mr. Brooker

221

1 you're actively gaining information and listening to what's
2 going on at that time.

3 Q. And that's what I'm asking you is that's the purpose
4 of that, of that, of that video?

5 A. That's correct.

6 Q. Is that it allows you to follow the confidential
7 informant inside of the, inside of the buy?

8 A. Yes, sir.

9 Q. Okay. And of course is, is that you're limited, I
10 think because you didn't get out of the car and go inside,
11 did you?

12 A. No, sir.

13 Q. Okay. Are you limited by that audio/video that's your,
14 that's your eyes and ears?

15 A. Yes, sir.

16 Q. Now, the buy location in this particular situation, I
17 know you don't, you said you didn't remember the address.
18 But of course, the buy location is that, do you know
19 whether or not the, whether or not the confidential
20 informant had any connection to the buy location?

21 A. I do not know.

22 Q. And what I'm talking about do you know, and I'll
23 rephrase -- I'm talking about, I'm talking about personal
24 knowledge. I'm talking about your personal knowledge. I'm
25 not talking about anybody else's knowledge, but your

1 personal knowledge, do you have any personal knowledge?

2 A. Can you rephrase the question?

3 Q. What I'm talking about, what I'm talking about do you
4 know whether, whether or not the confidential informant has
5 any connection to the buy location? When you answered my
6 question and said, no, I wanted to make sure that that you
7 understood that I'm asking you about your personal
8 knowledge.

9 A. Sure. I understand. I do not know.

10 Q. So you didn't have any personal knowledge of that?

11 A. I do not know. No, sir.

12 Q. Now, I know that we saw the video, and of course, the
13 jury saw the video, and of course, the video, the video
14 showed, I think, at least, two persons in the residence.
15 And of course is, is that it showed the male that
16 approached the door. Have you seen the video yet?

17 A. Yes, sir.

18 Q. Okay. And have you watched the video in preparation
19 for your testimony here today?

20 A. Yes, sir, I have.

21 Q. And so your memory is refreshed?

22 A. Yes, sir.

23 Q. About what's on it. Okay. That video shows, I think,
24 two individuals, is that correct?

25 A. That's correct.

A. Blake- Cross-Examination by Mr. Brooker

223

1 Q. Okay. Other than the CI, shows the male that answers
2 the door, is that correct?

3 A. Yes, sir.

4 Q. And it shows the female, is that correct, a female in
5 there ---

6 A. It shows a female ---

7 Q. --- is that correct?

8 A. Yes, sir.

9 Q. Okay. A female. And of course is, that I know that
10 you've told this jury that the, that the male that that
11 answered the door, that, that, that it's your belief that
12 that's Marc McKeiver, is that correct?

13 A. That's correct.

14 Q. Okay. Did you ever identified the female on the
15 interior of the residence?

16 A. I personally did not, no, sir. Sir, I believe she's
17 sitting in the courtroom.

18 Q. Okay. Now, now, I think that you said that the CI
19 placed a call at a number and I think you said that that
20 number was [REDACTED], is that correct?

21 A. Yes, sir.

22 Q. And of course is, and I think -- and I'll ask you the
23 same thing that I asked Agent Martin, is that a cell -- do
24 you know whether or not that is a cell phone or a land
25 line?

1 A. I do not know which, which it is.

2 Q. Okay. That's fine. That's what -- I don't know and
3 that's why I'm asking.

4 A. Sure.

5 Q. Okay. And of course is, is that, did you try to
6 determine whether or not that was a cell phone or land line
7 by contacting a cell phone provider?

8 A. So when it comes to pertaining to toll records or to
9 cell phone providers and to trying to, I guess, determine
10 who the owner of the cell phones are, oftentimes in
11 practice, we do as law enforcement, submit subpoenas or
12 search warrants to cell phone companies to telephone
13 companies to try to determine providers or the owner of an
14 account or a line. However, oftentimes, when we do those
15 things, it's not fruitful for, for any information.
16 Oftentimes, I've noticed and I've been to numerous
17 trainings where we've learned, oftentimes people
18 specifically people, and I shouldn't say specifically,
19 oftentimes people that are involved in drug sales, illegal
20 drug sales, put cell phones in names of other people or
21 they buy prepaid phones which don't have a subscriber
22 information to them. So, although, we could subpoena cell
23 phone records, we did not in this case. Oftentimes, there
24 is no response for that. It oftentimes does not lead to, to
25 any information.

A. Blake- Cross-Examination by Mr. Brooker

225

1 Q. Well, let me ask you, did you, did you submit the
2 subpoena, to try to determine who that, to a, to a cell
3 phone provider or telecommunications provider to try and
4 determine who that number is connected with?

5 A. I did not. No, sir.

6 Q. Okay. And of course, is when you just told this jury,
7 you know, that oftentimes that people are dealing with
8 drugs will put a cell phone in somebody else's name, you're
9 not talking about this case, in specific, are you?

10 A. I'm talking about general practice that I've seen
11 through my years of investigation.

12 Q. Okay. But of course is, is that that we're here
13 talking about this cell phone number, I want to know about
14 this cell phone number, not about the general practice.

15 Okay. For this cell phone number, for this cell phone
16 number is, is that, yes or no, and I think you've already
17 given this answer and I'm gonna move on, you did not submit
18 a subpoena to a, a telecommunications provider to try to
19 see whether or not this cell phone number was listed in the
20 name of Marc McKeiver, did you not?

21 A. I did not.

22 Q. Now, I'm not going to get into this -- I'm gonna get
23 into this very briefly because you mentioned it on direct
24 examination, and of course is, that I don't want to get
25 into, I don't want to go down the road and make sure we

1 don't get into anything that's been excluded. And that is
2 that you said that, that while you were driving with the CI
3 to the, to the buy location that the CI made a call and it
4 was on speaker phone and you heard the voice on the other
5 end?

6 A. Yes, sir.

7 Q. Okay. And you said that later on that when you got the
8 buy video, and you looked at the buy video, then you heard
9 a voice from the buy video and you believe that the voice
10 from the buy video is the same voice from the cell phone
11 call?

12 A. Yes, sir. It was the same voice.

13 Q. And you told this jury that you were, you have no
14 doubt that those two voices were the same?

15 A. That's correct.

16 Q. Okay. All right. Now, and just for purposes of the
17 jury, do you have -- are you qualified as a voice analyst?

18 A. No, sir, I'm not.

19 Q. So you're making that opinion based upon your lay
20 observation, is that correct?

21 A. That is my belief, yes.

22 Q. I know it's your belief. I know. I know. But what I'm
23 saying is, is that you're not a trained voice analyst?

24 You're not making a person -- you're not making a, a
25 professional, giving a professional analytical opinion of a

A. Blake- Cross-Examination by Mr. Brooker

227

1 voice analyst that these two voices were the same?

2 A. No, sir, I'm not.

3 Q. Okay. This is your lay opinion?

4 A. That's correct.

5 Q. Okay. And I think you testified that, that on the day
6 of that, on the day of that call, I think you testified
7 that you have never talked with Marc McKeiver before, is
8 that correct?

9 A. I had not. Your Honor.

10 Q. And you have never heard his voice before, is that
11 correct?

12 A. Yes, sir. Not before that day.

13 Q. Okay. And I believe -- okay, so and I just wanted to
14 make sure for purposes of the jury.

15 A. Sure.

16 Q. That when you testified on direct examination, that
17 your testimony is, is, is that the sole basis of that
18 analysis was hearing that voice for the first time when you
19 were riding with the CI to the control buy, and then of
20 course, listening to another voice on the, on the buy video
21 that you later watched later on, is that correct?

22 A. So very simply, I heard the voice on the other side of
23 the phone ---

24 Q. Mmm, hmm.

25 A. --- that did not have a face associated with it. I

1 then later that day, or the following day, I believe,
2 watched a video that had Mr. McKeiver on the video speaking
3 and that voice matched the voice from the phone. Yes.

4 Q. Okay. Okay. And, and your testimony, your testimony
5 is, is that you are one hundred percent accurate and that
6 you are incapable and capable of a fallacy, not a fallacy,
7 you're capable of, of a mistake in this situation?

8 A. We're all human. Of course, I'm capable of mistakes.

9 Q. I know. And that's why I asked you that because you
10 said absolutely no doubt. And when you said absolutely no
11 doubt on direct examination to the jury, would you agree
12 with me that that leaves room for no error, is that
13 correct?

14 A. My belief is that the voices are the same. Yes, sir.

15 Q. That's your believe ---

16 THE COURT: Move on.

17 MR. BROOKER: Okay. Now, now, give me just a second
18 now, did you, did you see an actual hand-to-hand exchange
19 between Mr. McKeiver and the CI?

20 A. No, sir.

21 Q. And when you said, and I want to make sure that I
22 understand that correctly, and I'll ask it, I'll bifurcate
23 this, you didn't personally see an actual hand-to-hand
24 exchange, is that correct?

25 A. That's correct.

A. Blake- Cross-Examination by Mr. Brooker

229

1 Q. And when you watched a video, did you see an actual
2 hand-to- hand exchange in the video?

3 A. I did not see an actual hand-to-hand.

4 Q. Oh, you've got the screen up there, do you not?

5 A. Yes, sir.

6 Q. Okay. And of course, because I'm not controlling this
7 so I'll just, I'll just point at -- do you see what appears
8 to be a white object in the hands of this individual?

9 A. Yeah. It looks like a plastic bag to me.

10 Q. It's like a plastic bag, can you see inside of that
11 plastic bag?

12 A. No, sir.

13 Q. Is it translucent?

14 A. It looks like it's a clear plastic bag, but I can't
15 see what's inside of it from that picture.

16 Q. Okay. And the reason why I'm asking you that is, is
17 that

18 MR. BROOKER: Could you put up State's Exhibit Number
19 6?

20 MR. DANIEL: Yeah.

21 MR. BROOKER: Thank you. I appreciate it.

22 MR. DANIEL: That one?

23 MR. BROOKER: Yes. Thank you.

24 Q. And the reason why I'm asking you that is. is that you
25 just, you just looked at the photograph of that clear

1 plastic bag or however, you want to describe it, that
2 appears to be in the hands of this individual. Can you
3 identify these two bags as being that object?

4 A. No sir.

5 Q. And I promise I'm almost finished, Agent Blake. I
6 think you were also asked about State's Exhibit -- You were
7 asked about State's Exhibit Number 12, I think that is the
8 physical bag and I think you indicated that, that when you,
9 when you got these drugs, I think from the confidential
10 informant that you find it curious because they were, I
11 guess, in these multiple shapes, is that correct?

12 A. I remember the shapes, yes, sir.

13 Q. Okay. I think some of them, I think, you said like a
14 bat shape and some of them are Snapchat logo shape? I
15 don't ---

16 A. Right. It's like a -- it's right there. If you look
17 at the little ghosts looking tablets.

18 Q. Okay.

19 A. It looks like a ghost.

20 Q. Okay. Okay. Now, and the reason why I'm asking you
21 that is, is that again on, on what was identified as
22 State's Exhibit, State's Exhibit Number 3 that, that bag
23 that is contained, that is contained within the hands of
24 this individual. Can you see the shapes of any objects on
25 the inside of that bag?

A. Blake- Cross-Examination by Mr. Brooker

231

1 A. No, sir.

2 Q. Okay. So you can't tell the jury that there are
3 substances that's on the inside of that bag in the form of
4 Batman pills that are contained within State's Exhibit
5 Number 12 or are these ghost shapes Snapchat, I guess,
6 logos, is that correct?

7 A. From that still shot, the screen shot, no, I cannot
8 say that, those are inside the bag.

9 Q. Okay.

10 MR. BROOKER: If you can indulge me for just a
11 second, Your Honor.

12 THE COURT: Sure.

13 MR. BROOKER: I want to make sure that I don't have
14 any further questions before I end my questions.

15 THE COURT: Yes, sir.

16 Q. Just a couple more questions.

17 A. Okay.

18 Q. And you may not even have the answer to this, but I
19 want to make sure. That mobile home, I think, that's
20 depicted in the video.

21 A. Yes sir.

22 Q. Do you -- did y'all collect diagrams of the interior
23 of that mobile home?

24 A. I did not personally collect a diagram.

25 Q. I know it. And you may not. I'm just asking because I

1 don't know.

2 A. I believe at some point in the investigation. The
3 interior of that mobile home was discovered.

4 Q. Okay.

5 A. The floor plan. Yes sir.

6 Q. Okay.

7 MR. BROOKER: All right. Judge, I don't believe that
8 I have any further questions for this witness. Thank you.

9 A. Yes, sir.

10 MR. DANIEL: Nope. No redirect.

11 THE COURT: Thank you, sir.

12 MR. DANIEL: Your Honor, I would ask that the FBI
13 agent be excused to catch his flight, that we've already
14 made him late for, but we booked him another.

15 MR. BROOKER: I don't have any objection, Your Honor.

16 THE COURT: The witnesses excused. Safe flying.

17 MR. DANIEL: State calls Maribeth McCormack.

18 THE COURT: Come around and be sworn please.

19 THE CLERK: Place your left hand on the Bible and
20 raise your right. Do you solemnly swear or affirm that the
21 evidence and testimony you're about to give the court and
22 the jury on this case is the truth, the whole truth, and
23 nothing but the truth so help you God?

24 MS. McCORMACK: Yes.

25 THE CLERK: Be seated. State your full name for the

M. McCormack- Direct Examination by Mr. Daniel

233

1 court and spell your last.

2 MS. McCORMACK: My name is name is Maribeth McCormack,
3 M-c-C-o-r-m-a-c-k.

4 MARIBETH McCORMACK, first being
5 duly sworn, testified as follows:

6 **Direct Examination by Mr. Daniel:**

7 Q. Agent McCormack, by whom are you employed?

8 A. By sled which is the State Law Enforcement Division.

9 Q. And how long have you been so employed?

10 A. Almost 14 years?

11 Q. Where do you work with sled?

12 A. I work in the Drug Analysis Department in Columbia.

13 Q. So what do you do?

14 A. I'm a forensic chemists in the Drug Analysis
15 Department. I analyze evidence for the presence of
16 controlled substances.

17 Q. And what kind of education and training have you had
18 that allows you to do that?

19 A. I have a Bachelor of Science and Chemistry and a
20 Master in teaching chemistry and physics both from the
21 University of South Carolina and have been trained at sled
22 in the Drug Analysis Department.

23 Q. And so for your entire career at sled you've been
24 analyzing drugs?

25 A. Yes.

1 Q. Okay. Have you testified in court before about what
2 you do with drugs?

3 A. Yes.

4 Q. About how many times, do you know?

5 A. Approximately 42 times.

6 Q. And have you been -- have you been declared an expert
7 in drug analysis in criminal courts in South Carolina
8 before?

9 A. Yes.

10 MR. DANIEL: Your Honor. This time I would move
11 Agent Maribeth McCormack to be considered an expert in drug
12 testing and analysis.

13 MR. BROOKER: Without objection, Your Honor.

14 THE COURT: So qualified without objection.

15 MR. DANIEL: Thank you, judge.

16 Q. Okay. Agent McCormack, is a Special Agent McCormack or
17 Agent McCormack?

18 A. Agent.

19 Q. Are y'all all special or you just a regular agent.

20 A. Mmm, hmm.

21 Q. I'm sure your plenty special. I did not mean to insult
22 you.

23 Let's talk a little bit about this case. You know, while
24 we're all here in September 9, 2019 some drugs were
25 collected on an investigation here in Dillon County.

M. McCormack- Direct Examination by Mr. Daniel

235

1 Somehow they got to you to Columbia. How does that work?

2 A. The agent will bring the evidence to sled and either
3 put it in a locker or hand deliver it to evidence control.

4 Q. And did that happen in this case?

5 A. Yes.

6 Q. Okay. At some point, did you end up taking possession
7 of these drugs to do your analysis?

8 A. Yes.

9 Q. Okay. Were you given or did you get from the evidence
10 locker what's been marked State's Exhibit 12?

11 A. Yes. And May I reproached my notes, please.

12 Q. Sure.

13 A. Yes. I received this on December 17, 2021. It was hand
14 delivered to me by Captain Windy Bell.

15 Q. Okay. And before Captain Wendy Bell had it, do you
16 know who had it?

17 A. It was in our evidence vault in our department. It was
18 in the custody of another analyst, Ashley Lyles.

19 Q. Okay. Was this case originally assigned to Ashley
20 Lyles for her to do the analysis?

21 A. Yes.

22 Q. And why didn't she -- why did she not do the analysis?

23 A. She's on maternity leave.

24 Q. Okay. So last month, you were given this to analyze
25 knowing trial was coming up?

1 A. Yes. I was on call.

2 Q. Okay. And you were given those exact drugs, right, all
3 the ones in that bag?

4 A. Yes.

5 Q. Okay. So there's been a bunch testimony and you can
6 see that those drugs or those pills all have different
7 shapes?

8 A. Yes.

9 Q. How do you go about testing pills like that? First of
10 all, have you done it before? Have you ever -- have you
11 ever had a case where you've got to analyze some drugs and
12 it's a whole bunch of different pills in the bag?

13 A. Yes.

14 Q. Is that a common thing?

15 A. Yes.

16 Q. Okay. How do you -- do you test every single one of
17 them to see what they are?

18 A. No, I do not.

19 Q. Okay. How do you do it?

20 A. Well, first of all I open the evidence, make sure it
21 was sealed. In this case, it was sealed. And there were two
22 plastic bags so I opened the first plastic bag, and we sort
23 them according to their logo and or shape. And that's what
24 I did. And after they're sorted, I take a weight. And then
25 a sample for a preliminary test, which is a chemical spot

M. McCormack- Direct Examination by Mr. Daniel

237

1 test and then a sample for a confirmatory test which is gas
2 chromatography mass spectrometry.

3 Q. What in the world is that?

4 A. It's an instrumental analysis that separates and
5 identifies compounds in a sample.

6 Q. So in layman's terms, you tested the pill to see what
7 they were?

8 A. Yes.

9 Q. And you did it in a couple different ways?

10 A. Yes.

11 Q. Okay. But first thing you did was you separate them by
12 shapes. So like all the bat shape pills went together, all
13 the Snapchat logo pictures, ah, pills went together, that's
14 how that works?

15 A. Yes.

16 Q. Are they, in fact, still separate like you did it?

17 A. They are. I repackaged them in ziplock bags .

18 Q. And they're separated the same ---

19 A. Yes.

20 Q. --- right?

21 A. Yes.

22 Q. And you tested what, you tested like one of each time
23 with one bat, one Snapchat logo, that kind of thing?

24 A. Yes.

25 Q. Okay. And then you weighed them all, right?

1 A. Weigh each group separately.

2 Q. Right.

3 A. Yes.

4 Q. Okay. And all of that, you did in this case?

5 A. Yes.

6 Q. Did you prepare a report with your findings?

7 A. I did.

8 Q. I'm gonna show you what's been pre-marked State's 9,
9 do you recognize that?

10 A. Yes.

11 Q. What is that?

12 A. This is my report with my results associated with
13 evidence.

14 Q. Okay.

15 MR. DANIEL: Your Honor, at this time, I would ask
16 this report be admitted into evidence as State's 9.

17 MR. BROOKER: Your Honor, just subject to previous
18 pre-trial objections. And then of course, I think also
19 chain of custody objection that we made previously. Thank
20 you.

21 THE COURT: In. Subject to the objections.

22 (Whereupon, the Sled Report by Ms. McCormack has been
23 marked and entered into evidence as State's Exhibit No. 9)

24 Q. All right. Let's go over your report. I'm gonna put it
25 up on the screen with Your Honor's permission to publish?

M. McCormack- Direct Examination by Mr. Daniel

239

1 THE COURT: Yes, sir.

2 Q. Okay. All right. Is this your report that you're
3 seeing on your screen down there?

4 A. Yes.

5 Q. Okay. So just to see what we're talking about, here at
6 the top, that's your lab number, right, which is the number
7 assigned to any case that comes in, this is this cases
8 number for your lab, right?

9 A. Right.

10 Q. L-19-10852. The incident date is September 9, 2019.
11 Now, we go down to the items of evidence. Can you explain
12 what we're looking at here?

13 A. Yes. Item: 3, was the main outer packaging that it was
14 received in and each of those bags have a unique number
15 which is listed on Item 3.

16 Q. Okay. And then we get to some of your results in here.
17 So Item 3.1., what does that mean?

18 A. That was the first group of tablets I tested 45
19 multicolor tablets shaped like a skull and methamphetamine
20 was found 18.22 grams.

21 Q. So the all the skull -- now, this is from back from
22 one of the two, right?

23 A. Bag one, yes.

24 Q. Bag one. In bag one you're saying they were 45 tablets
25 that were shaped like skulls?

1 A. Yes.

2 Q. And the weight of the, of just those is what?

3 A. 18.22 grams.

4 Q. Okay. Can we go to the next kind of pill?

5 A. Yes. Ten multicolor tablets mushroom shape,

6 methamphetamine found 4.74 grams. And I ---

7 Q. All right. Go ahead. I'm sorry. While we're here, just
8 what does this thing mean when it says confidence level for
9 the weight is 99.7, what does that mean?

10 A. That means if I were to weigh that substance a
11 thousand times, then 997 of those times it would fall
12 within that confidence range of the weight, plus or minus,
13 0.01 grams.

14 Q. Okay. So we're still in pills from bag one. Moving to
15 page two of your work, 3.1. 3, what's that?

16 A. Eight-three multicolor tablets and partial tablets bat
17 shaped, methamphetamine found 22.24 grams.

18 Q. Okay, 3.1.4?

19 A. Eight-nine multicolor tablets. I described this as mud
20 flap girl. It's a woman silhouette you oftentimes see on
21 mud flaps and that as methamphetamine found, 20.03 grams.
22 Twenty-eight multicolor tablets Snapchat, methamphetamine
23 found, 4.83 grams.

24 Q. Okay. And then we move on to plastic bag number two,
25 right?

M. McCormack- Direct Examination by Mr. Daniel

241

1 A. Yes.

2 Q. Let's go over that quickly.

3 A. Okay.

4 Q. Um, 3.2.1?

5 A. Eight-nine multicolor tablets and partial tablets,
6 bat, methamphetamine found, 23.21 grams. Thirty-eight
7 multicolor tablets, skull, methamphetamine found, 15.42
8 grams.

9 Q. Okay. And then what's 3.2.3?

10 A. 3.2.3 are the remaining tablets from the bag. I did
11 not sort those. Our policy is when we're dealing with
12 substances with weight thresholds, in this case
13 methamphetamine, we test up to the highest threshold. So
14 I'd already met 100 grams and taking a weight of the rest
15 28.93 grams that would not push it to the next threshold.
16 Therefore, I only performed a preliminary test on those.

17 Q. Okay. So if we want to know how many grams of pills
18 there were in bag one, how do we figure that out, based on
19 your report?

20 A. Okay. You would add ---

21 Q. So we go back up to Item number 1, that's the first
22 bag right?

23 A. Yes.

24 Q. And what you're saying is we're gonna add 18.22?

25 A. Mmm, hmm.

1 Q. That's the skull tablets; 4.74, that's the mushroom
2 tablets; and then we keep going 22.24, that's the bat
3 tablets; 20.03, the mud flap girl tablets; 4.83 the
4 Snapchat tablets, you add all that up, right?

5 A. Yes.

6 Q. For bag one and do the same thing for bag two. What is
7 the total weight that you measured of these, all these
8 pills put together?

9 A. The total weight of the items that I've fully tested,
10 preliminary and confirmatory was 108.69 grams and that
11 would be plus or minus 0.03 grams.

12 Q. Plus or minus 0.03 grams?

13 A. Yes.

14 Q. If you minus 0.03 grams from 108, are you still over
15 100 grams?

16 A. Yes.

17 Q. Okay. Now, that is what you tested, this confirmatory
18 testing, but there was more than that, right?

19 A. Yes.

20 Q. How much more?

21 A. They're more 28, yes, 28.93 grams.

22 Q. Because that's the stuff that once you get over, I
23 believe your testimony is, that once you get over 100 grams
24 when you measure all this stuff, you stop unless you're
25 going to get over the next threshold, legal threshold,

M. McCormack- Cross-Examination by Mr. Brooker

243

1 which is 200, right?

2 A. Yes.

3 Q. So you stop at 100 and then you just weighed the rest
4 of it together?

5 A. Right.

6 Q. And that's what you did and the weight of the rest of
7 them, that you hadn't already weighed, was 28.93?

8 A. Yes.

9 Q. Okay. Also, methamphetamine?

10 A. They are indicative. They had the -- okay. I'll back
11 up. To the spot test, the preliminary test I was speaking
12 of, that would produce a color, in this case it was orange.
13 And so I did perform that preliminary test on those. The
14 3.2.3, I chose one at random. It did give an orange color.
15 So it's indicative of meth, but I cannot report that it is
16 meth.

17 Q. Okay. So what we have, then, I believe your testimony
18 is, 108.69 grams of confirmed methamphetamine?

19 A. Yes.

20 Q. And you tested one of these other pills in the other
21 group and you stopped at 100 once you got 100, but one of
22 these other pills, at least, one of them, was also a meth
23 and that's 28.93 grams?

24 A. Is indicated to the meth, yes.

25 Q. Right. Okay. So the total number or the total weight

1 would be 108.69 plus 28.93?

2 A. Yes.

3 Q. Okay. And it's all meth, right?

4 A. Well, until I would perform a confirmatory test on the
5 last group, I cannot say that that is certainly meth, but
6 the other is, yes.

7 Q. The 108 grams?

8 A. Yes.

9 Q. Which is more than 100 grams is meth?

10 A. Correct.

11 Q. All of it ---

12 A. Yes.

13 Q. --- right? Okay.

14 MR. DANIEL: I have no further questions. Please
15 answer any questions the defense may have.

16 **Cross-Examination by Mr. Brooker:**

17 Q. How are you, Ms. McCormack?

18 A. Well, thank you.

19 Q. I just got a couple of questions and I'm going to ask
20 you in reference to this drug report to make sure that I
21 understand it and more importantly that the jury
22 understands the drug report. And I'm going to look at the
23 first item is 3.1.1. and if you can see, of course the jury
24 will see it, and it says here that there are there are 45
25 multicolor tab, of course is that, you have in parenthesis

M. McCormack- Cross-Examination by Mr. Brooker

245

1 (skull), is that correct?

2 A. Yes.

3 Q. All right. And of course is, is that you have
4 methamphetamines found in the sample tested. And then you
5 have one tested, what does the one tested mean?

6 A. That means of that population, I tested one tablet.

7 Q. So what that means is, is that of these 45 skull
8 shaped tablets, you only tested one of the 45?

9 A. Yes.

10 Q. And the other 44, you did not tested it?

11 A. Correct.

12 Q. Okay. Now, for the one tablet that you did test it,
13 you can confirm with scientific certainty that that is that
14 contains methamphetamines, is that correct?

15 A. Yes.

16 Q. Now, the 44 tablets, skull shaped tablets, that you
17 did not test is that, you cannot confirm with scientific
18 certainty that those other 44 tablets are meth, are
19 methamphetamines ---

20 A. Well, it's ---

21 Q. --- can you not?

22 A. Excuse me.

23 Q. Go ahead.

24 A. Okay. It is our policy when they look the same they're
25 treated as one population. There -- I pick one at random to

1 test.

2 Q. And I understand what your policy is. That's perfectly
3 fine. But of course is, is that my question is, is that for
4 those 44 tablets that you did not tested, can you tell this
5 jury that those other 44 tablets, were chemically
6 determined to be methamphetamines?

7 A. As I said they're treated as one population. Our
8 thinking is the likelihood of me randomly picking the one
9 tablet in each bag that contain meth is very unlikely. So
10 that's why it is treated as one population.

11 Q. And I understand that. I'm just, I'm just trying to
12 get a yes or no to my question. And then you can explain
13 those other 44 tablets, did they chemically test positive
14 as methamphetamines?

15 A. No. I only tested one.

16 Q. Okay. So only the one tablet chemically tested
17 positive as methamphetamines?

18 A. Yes.

19 Q. That one tablet that you tested, do you know what the
20 weight of that one tablet is?

21 A. No, sir. It was treated as one population.

22 Q. Okay. Now -- and that's your policy, I think you that
23 that's your policy, is that correct?

24 A. (Shaking of the head yes)

25 Q. And of course, the next one is, is 1 is, excuse me, is

M. McCormack- Cross-Examination by Mr. Brooker

247

1 3.1.2, and then of course is, was 10 multicolored mushroom
2 pills that you tested. And of course is, is that I'm
3 assuming this is the same. I want to make sure that the
4 jury understands this, of those 10 mushroom shaped tablets
5 that you tested, one, and that one tablet tested positive
6 as methamphetamines?

7 A. Yes.

8 Q. But you didn't chemically test the other 9, is that
9 correct? A. Correct.

10 Q. Okay. And so you can't tell the jury that that the
11 other 9 chemically tested positive as methamphetamines?

12 A. I did not fully test every tablet, that's not
13 practical. That's why we treat it as one population. We
14 divide them based on their appearance and treat as one
15 population.

16 Q. When you say it's not practical, you mean that it's
17 not efficient?

18 A. Well, that's one -- that's one reason why we have that
19 policy too.

20 Q. It takes a lot of time and money to do it?

21 A. Yes.

22 Q. Okay. So it's a, it's a time and money issue as to
23 why you do it? Why that policy exist?

24 A. And just using common sense with as I stated, the
25 likelihood of me reaching into the bag and just pulling out

1 the one tablet that contained methamphetamine is not
2 likely.

3 Q. And I'll ask you this question, I'm going to move on
4 because I'm not trying to insult you, is that you're
5 talking about possibilities and probabilities. You're
6 talking about mathematical probabilities. Okay. You're not
7 a mathematician, are you?

8 A. Correct.

9 Q. Okay. Do you know what the, what the mathematical
10 probability would be?

11 A. I do not.

12 Q. Okay. I want to go to the next page, and of course is,
13 is that -- well I'll just very simply on that one, is that,
14 on that one tablet that you tested, do you know what the
15 weight of that one tablet, one tablet test, of the weight
16 of that one tablet was for 3.1.2?

17 A. I do not.

18 Q. Okay. On the next page, we'll go to 3.1.3.

19 A. Okay.

20 Q. And this is from bag -- this is from the first bag you
21 tested, is that correct? And so in that first bag you
22 tested you also found 88 multiple, multicolored partial
23 tablets, I guess, in the form of bat shape?

24 A. Yes.

25 THE COURT: Eighty-three.

M. McCormack- Cross-Examination by Mr. Brooker

249

1 Q. I'm sorry, I apologize, 83, 83 is the number. And of
2 course is, is that again, you test out of those 83 tablets
3 you tested one, is that correct?

4 A. Yes.

5 Q. Okay. And of course is, is that in that one time that
6 tested positive for methamphetamines, is that correct?

7 A. Yes.

8 Q. The other 82 tablets, you did not test it?

9 A. Correct.

10 Q. Okay. So you can't tell the jury that the other 82
11 tablets chemically test positive as methamphetamines, is
12 that correct?

13 A. Yes, I only tested one.

14 Q. Okay. And that one tablet that you tested, did you
15 weight it?

16 A. No, sir.

17 Q. Okay. Ah, 1.3.1.4 89 tablets, mud flap girl, again, of
18 those 89 tablets you tested one, is that correct?

19 A. Yes.

20 Q. And that test positive for methamphetamines?

21 A. Yes.

22 Q. The other 88, but you did not test it, is that
23 correct?

24 A. Correct.

25 Q. And you can't tell the jury that that mud flap girl

1 shape, the remaining 88 tablets, you can't tell the jury
2 that that chemically, those 88 tablets are chemically
3 tested as methamphetamines?

4 A. Correct.

5 Q. Okay. And did you weigh the one tablet that you
6 tested?

7 A. No, I weighed them as a whole.

8 Q. Okay. So you weighed the untested and the tested
9 together and that's how you get the 20.03, is that correct?

10 A. Yes.

11 Q. Okay. And I'm all of them it's the same, I think all
12 the previous ones that we just talked about that you
13 weighed the one tested pill with all of the other untested
14 pills, is that correct, and that's how you got the weight?

15 A. Yes.

16 Q. Okay. Ah, 3.1.5, 28 Snapchat shape, tested one, is
17 that correct?

18 A. Yes.

19 Q. Tested positive for methamphetamines, is that correct?

20 A. Yes.

21 Q. The other 27, you did not test it, is that correct?

22 A. Correct.

23 Q. And you can't tell the jury that the other 27 tablets
24 are chemically positive as methamphetamines, is that
25 correct?

M. McCormack- Cross-Examination by Mr. Brooker

251

1 A. Correct. I only tested one.

2 Q. Okay. And I know this is redundant, but I'll go a
3 little bit quicker, um, so we can get this over with. And
4 of course we're going to go to bag two and I think this is
5 3.2, is that correct? Item 3.2?

6 A. Yes.

7 Q. This when you're getting to the second bag, and then
8 of course, 3.2.1, 89 multicolored tablets in the shape of a
9 bat, in the shape of a bat, is that correct?

10 A. Yes.

11 Q. And of the 89 you test one, is correct?

12 A. Yes.

13 Q. And that one did test positive for methamphetamines?

14 A. Yes.

15 Q. The other 88, you did not test it, is that correct?

16 A. Correct.

17 Q. And you can't chemically tell the jury that the other
18 88 are methamphetamines?

19 A. No.

20 Q. Okay. Did you weigh -- and you didn't weigh the one
21 that you did test? The same ---

22 A. Not separately, no, sir.

23 Q. Okay. Thank you. For 3.2.1, and we're almost finished,
24 and that's the skull shape tablets and there were 38 of
25 them in bag two, is that correct?

1 A. Yes.

2 Q. And you did the same thing, you tested one of those,
3 one of those 38 tablets and it tested positive for
4 methamphetamines?

5 A. Yes.

6 Q. The other 37, you did not test them?

7 A. Correct.

8 Q. And you can't tell the jury that those other 37
9 tablets are chemically positive as methamphetamines?

10 A. Correct.

11 Q. Okay. And of course, I know that 3.2.3, I know that
12 you said that that, that, that remaining is a various of
13 what were, various multiple tablets, and you said that you
14 did not do a full test, a confirmatory test on them?

15 A. Correct.

16 Q. And so, I think, your testimony was, is that you can't
17 tell the jury that's methamphetamines because you didn't
18 did a confirmatory test on it, because you had met what you
19 believe to be the threshold weight for the charge, is that
20 correct?

21 A. Yes.

22 Q. Okay. And so, so 3.2.3, as far as the jury, we don't
23 know what those tablets are? Or we can't, you can't say
24 that those tablets are methamphetamines?

25 A. I cannot.

M. McCormack- Cross-Examination by Mr. Brooker

253

1 Q. Okay. All right. Now -- and I'll just ask you another
2 question for purposes of the jury is, is that of those,
3 those tablets, all of these tablets that you test, that you
4 tested, and I don't know is, is that is there any way to
5 determine whether or not that, whether or not these tablets
6 or methamphetamines other than by chemical analysis?

7 A. I'm not sure I understand your question.

8 Q. I'm sorry. I guess, I asked it poorly. Um, let me
9 rephrase it. If I were to take one of -- and I think you
10 have State's Exhibit Number 12 up there with you.

11 A. Mmm, hmm.

12 Q. If you were to take one of those pills out, any one of
13 them, could you identify, could you identify whether or not
14 that pill was methamphetamine without first conducting a
15 chemical analysis?

16 A. No.

17 Q. Okay. And that's my point is, is that, is there any
18 other way of determining whether or not something is
19 methamphetamines other than by chemical analysis? Can you
20 look ---

21 A. In our lab ---

22 Q. I'm sorry. Go ahead. I didn't mean to interrupt you.

23 A. Okay. The instrumentation in our lab is what we have
24 available to us to test for meth.

25 Q. Sure. And I'm not trying to trick you. I guess my

1 question is, is that let me ask it this way, and made
2 simpler, can you tell whether or not a tablet is
3 methamphetamine simply by looking at it?

4 A. No.

5 Q. Okay. Can you tell whether or not a tablet is
6 methamphetamines by touching it or feeling it?

7 A. No.

8 Q. Can you tell whether or not a tablet is, is
9 methamphetamines by tasting it? If I were to take it and
10 lick it ---

11 A. Not ---

12 Q. --- would I be able to ---

13 A. Not, to my knowledge.

14 Q. Okay. I don't know. And I just want to make sure that
15 the only way that you are aware of to determine whether or
16 not the a pill is methamphetamines is through the chemical
17 analysis that you performed on the few pills that you did
18 chemically analyze, is that correct?

19 Q. Yes.

20 A. And I'm almost finished Ms. McCormack. Let me just ask
21 a couple more questions and I'll sit down and be out of
22 your hair. And I want to make sure because I think you've
23 already testified to this, but, but these tested substances
24 or these tested pills, the pills that you did tested, when
25 they came out the evidence locker and came to you, I'm

M. McCormack- Redirect Examination by Mr. Daniel

255

1 assuming that you did all of the work that involves the
2 testing process yourself?

3 A. Yes.

4 Q. Okay. No one else did it for you, you did it?

5 A. Yes.

6 Q. That's correct.

7 MR. BROOKER: If you can indulge me for just a
8 second, Your Honor. I may be completed with my question.

9 MR. BROOKER: No further questions, Your Honor.

10 **Redirect Examination by Mr. Daniel:**

11 Q. Agent McCormack, when you and your department, when
12 you're given a bag of marijuana, let's say of one pound bag
13 of weeds that may or may not be marijuana to test, do you
14 test every blade of grass?

15 A. No. We take a representative sample.

16 Q. Okay. When you're given a big block of powder cocaine
17 that might weigh five pounds, do you test every tiny grain
18 of that to confirm that it's cocaine?

19 A. No, we do not.

20 Q. The procedures that you followed here, are those the
21 standard procedures for sled?

22 A. Yes.

23 Q. Are those the standard best practices procedures for
24 the every lab in the country?

25 A. Yes. It is accepted nationwide.

1 MR. DANIEL: No further question.

2 MR. BROOKER: I'll be very quick, Your Honor.

3 **Re-cross Examination by Mr. Booker:**

4 Q. I think when Mr. McDaniel (ph), ask you that when you
5 test, let's say powder cocaine, do you test every single
6 grain of powder cocaine. Can you, can you separate powder
7 cocaine by individual grain?

8 A. Ah ---

9 Q. Do y'all have an instrument to do that where you can,
10 I know they'll small, I don't know how small, can you
11 separate powder cocaine grain by grain?

12 A. That's not something we do on our lab. No, sir.

13 Q. Can you -- is it -- and I know you said it's not
14 something that you do in your lab. I'm saying is, is that,
15 can you? Do have the equipment to do that in your lab to
16 set separate grain by grain?

17 A. No.

18 Q. Okay. Do you know of any instrument that allows you to
19 be able to separate grain by grain?

20 A. I'm not aware. No, sir.

21 Q. Okay. So, so it's impractical to, to separate crack
22 cocaine grain by grain, is that correct?

23 A. Yes.

24 Q. And as far as your knowledge, impossible?

25 A. Not saying impossible. I just -- it's not something

M. McCormack- Re-cross Examination by Mr. Brooker

257

1 that we practice.

2 Q. Yeah. I'm talking about to your knowledge?

3 A. Not to my knowledge.

4 Q. Okay. Okay. And then of course is, and I think Mr.
5 Daniel also asked you about weed, that when weed comes in
6 and weed comes into individual blades, individual blades,
7 that you test -- do y'all separate the, or if you get a
8 bag, can you separate it blade by blade?

9 A. We take a representative sample, but with cocaine it
10 may be a little scoop, I mean, but we do not test the
11 entire bag of evidence or whatever ---

12 Q. Yeah.

13 A. --- of whatever we receive so....

14 Q. I'm saying, can you separate it blade by blade is what
15 I'm asking? A bag, if I were to bring you a bag of weed,
16 can you separate it? Do y'all have the equipment to
17 separate it blade by blade?

18 A. No, we don't.

19 Q. Okay. So it wouldn't -- that's not practicable for
20 purposes of testing, is that correct?

21 A. Correct.

22 Q. And that's the reason why you don't do it, is that
23 correct?

24 A. It's our policy to take a representative sample.

25 Q. Okay. But methamphetamine pills can be separated pill

1 by pill, is that correct?

2 A. Yes.

3 Q. And you actually did that, you separated them pill by
4 pill, is that correct?

5 A. Yes.

6 Q. And of course, they can be tested pill by pill, is
7 that correct?

8 A. Yes.

9 Q. Okay.

10 MR. BROOKER: Thank you.

11 MR. DANIEL: No redirect. No redirect. I would ask
12 that the witness be excused and be allowed to return to
13 Columbia.

14 MR. BROOKER: I don't have any objection, Your Honor.

15 THE COURT: Thank you. You are excused.

16 MR. DANIEL: I beg the court's indulgence. Your
17 Honor, may we approach about scheduling?

18 THE COURT: Sure.

19 (Whereupon, a bench conference is held off the record)

20 THE COURT: All right. That completes the testimony
21 for today. We gonna stop. I know it's be a long day for
22 you. Remember my instructions. Don't allow anybody to even
23 attempt to contact you and discuss this case. Communicate
24 with you in any form or fashion. I hope y'all have a good
25 evening. We will allow y'all to leave. Just remember those

1 instructions about those contact. Y'all have a good night.
2 We'll see it at 9, I'm sorry, 10 o'clock in the morning.
3 Some of us our commuting so 10 o'clock.

4 (Whereupon, the jury exits the courtroom at 3:41 p.m.)

5 MR. DANIEL: Judge, we have a, we have a couple
6 extra minutes, if you want to save some time you want me to
7 go ahead and read, I mean, go over his Fifth Amendment
8 rights so that's out the way. I know I haven't rested yet,
9 but he won't have to make the decision until after I rest.
10 But I think I'm gonna -- I think I'm done. I just want the
11 night to make sure.

12 THE COURT: Okay. I'll be glad to.

13 MR. DANIEL: It might save some time.

14 THE COURT: First of all, I'll address the issue of
15 the Fifth Amendment Right discussion with the defendant by
16 asking Mr. Brooker, have you spoken with him about his
17 Fifth Amendment Rights to whether to testify or not to
18 testifying?

19 MR. BROOKER: We have briefly discussed, Your Honor,
20 but we haven't went into great detail. And so I don't think
21 that he has made that determination yet.

22 THE COURT: Okay. Do you, do you want me to go
23 ahead and do that or would you like to talk with him and
24 then we do it first thing in the morning.

25 MR. BROOKER: I don't mind, Your Honor, because I'll

1 go over it with him in great, in greater detail than what I
2 have. I don't mind waiting until morning because it will be
3 quick to go over that.

4 THE COURT: It won't take -- yeah, it won't take
5 but a minute or two.

6 MR. BROOKER: Yeah. And what I'll ---

7 THE COURT: If you want to go ahead and discuss
8 everything with him and then I can confirm it with him.

9 THE COURT: Yes, sir. And what I'll do is that will
10 give enough time to go through it in greater detail.
11 That's fine.

12 THE COURT: All right.

13 MR. BROOKER: Thank you, Your Honor.

14 THE COURT: He's gonna speak with you about your
15 Fifth Amendment Rights and then I'll speak with you in the
16 morning.

17 MR. McKEIVER: Okay.

18 THE COURT: All right. What else?

19 MR. DANIEL: I don't have anything else, judge.

20 THE COURT: All right. See you in the morning.

21 MR. BROOKER: Thank you, Your Honor.

22 MR. DANIEL: Thank you.

23 (Court is adjourned on Tuesday, January 11, 2022 at 3:45
24 p.m.)

25

1 **Wednesday, January 12, 2022**

2 _____ (WHEREAS, this matter was scheduled for a trial, the
3 defendant appeared along with his attorney of record. The
4 proceedings began at 10:00 a.m.)

5 THE COURT: Good morning. Yes, sir?

6 MR. DANIEL: Good morning. Thank you, judge. If it
7 pleases, the Court? The defense has indicated that it's
8 gonna call one witness. And just about ninety seconds ago
9 gave me information to run her rap sheet. We're doing that
10 right now. That should be ready in just a minute. The State
11 is prepared to close. All the evidence is in. I believe we
12 confirmed that through Agent Martin yesterday at the end of
13 his testimony. Otherwise, we're good to go.

14 THE COURT: All right. So you're rested?

15 MR. DANIEL: Yes, sir.

16 THE COURT: All right. Well, then we can go ahead
17 and take care of any motions at this point. And also we
18 can take of the Fifth Amendment ---

19 MR. BROOKER: Okay.

20 THE COURT: --- advisement. Mr. Brooker?

21 **Directed Verdict Motion:**

22 MR. BROOKER: Okay, Your Honor. Your Honor, I guess,
23 we're gonna a make motion -- we make a motion, Your Honor
24 for a directed verdict on the indictment charge of
25 trafficking in methamphetamines, 100 grams or greater. And

1 of course that's what the indictment specifically says. And
2 of course, this is a violation of 44, statute 44-53---
3 (Whereupon, there was an interruption by his computer)

4 MR. BROOKER: I'm sorry, Your Honor. I need to set my
5 thing down. I'm sorry, Your Honor.

6 THE COURT: That's all right.

7 MR. BROOKER: I need to set my computer down. At
8 least the volume on it. Okay. Like I said, that's a
9 violation of statute 44-53-375 C 30, excuse me, C 3. And of
10 course, that statute, and I'll be brief, Your Honor. I know
11 you probably don't want me to read the entire statute. That
12 statute is, basically, indicates that a person who is
13 charged to trafficking in methamphetamines, and of course,
14 subsection, I think, 3 says, "s that if it is, it is, if
15 it's more than amount that is greater than 100 grams, but
16 less than 200 grams, then of course is, is that the
17 individual is subject to, subject to a mandatory minimum of
18 25 years, none of which can be suspended. And of course,
19 that's what he's indicted for. Specifically for that
20 specifically, specific section of traffic, of the
21 trafficking statute in methamphetamines, 100 to 200 grams.
22 And of course -- and what that means is, is that the
23 prosecutor or the government has to present evidence on
24 each and every element of that offense, including they have
25 to present evidence in which a jury could reasonable find

1 the existence of the weight will satisfying, 100 grams, ah,
2 between 100 to 200 grams of methamphetamines. And of
3 course, Your Honor, was, obviously, in the courtroom
4 yesterday when the, when the sled chemists, Ms. McCormack
5 testified. And of course, obviously, the sled drug report
6 is the evidence as well. And of course, the chemists
7 testified that she received two bags of pills. And of
8 course, the first bag is identified by, I think, Item 3.1
9 in the drug report. And of course, that first bag was
10 divided, 45 tablets in skull shape, in which the chemists
11 testified that of the 45 tablets that was in skull shape
12 and that first bag that she tested 1 tablet out of the 45
13 and the other 44 tablets were not tested.

14 Item 3.1.2, that's the mushrooms. There was 10 pills,
15 mushroom shaped pills in that first bag that she said she
16 tested 1 pill and the other 9 that was not tested. Same
17 with, with 1.3, 3.1.3, 83 tablets in the form of a bat
18 shape and she tested 1 out of the 83. Eighty-nine, I think,
19 in the form of mud flat girl, she tested 1 out of the 89.
20 And all the other tablets was not tested. So in that first
21 bag, Your Honor, she tested 5, I think, tablets and this is
22 the 5 tablets of I think a number probably totally,
23 probably totally and I'm looking at my math, Your Honor, to
24 give you a good faith estimate, probably totaling well over
25 200, well over 200 pills in that first bag, somewhere close

1 to 250 pills in that first bag. And she says she tested
2 five of those pills. And of course, the other, you know,
3 the other 200 plus, 248, 247 whatever that number is was
4 untested. And of course is, and I asked her is that whether
5 or not you can determine whether or not that remaining
6 pills in that bag was methamphetamines or any other illegal
7 substance without chemical testing. And she testified that
8 there was no other way to determine the illegality of the
9 remainder of those pills other than chemical testing and
10 she did not do that. I also asked her of those 5 pills, and
11 we're talking about the first bag, is whether or not she
12 weighed those 5 pills to determine what those 5 pills that
13 she tested that she can scientifically, scientifically
14 confirm were methamphetamines? And she said she did not
15 weigh those 5 pills. And so the question then becomes, is,
16 is that -- and of course the same thing with respect to the
17 second bag and I won't go through them. The second bag had
18 89 bat colored pills. She tested 1. And the remaining 82
19 she didn't test. And of course, it had 38 small pills. She
20 tested 1 out of the 38 and didn't test the rest. So,
21 roughly, well over 130, ah, 120 pills and she tested two of
22 them out of 120 pills, I think, in the second bag, 20 plus
23 pills in a second bag. And of course same question, said
24 whether or not the remainder of those pills, remainder of
25 hundred and twenty something pills that she did not tested,

1 could she tell the jury that those were methamphetamines
2 and she said she could not. I think her testimony was is,
3 is that it's the policy of sled on that, it's, it's time
4 consuming and not economical to test all the pills so they
5 just select one out of the bunch. And then they just assume
6 that all the other pills are the same, of the same
7 substance where you can't make that assumption is that, the
8 identity of drugs can only be in court, can only be
9 identified chemically, through the analysis. I asked her,
10 "can you determine them based upon sight/ vision?" "No."
11 "Can you determine what the pills are based upon test or
12 feel?" "No." "Can you determine what the other pills are
13 based upon taste?" "No". So it a total of 7 pills that had
14 tested out of merely 500 or close to 500. Between 450 to
15 500, she tested 7 pills. And what she's asking the jury or
16 what the government is asking the jury to do, is assuming
17 the remaining 450 plus pills are methamphetamines when they
18 were not tested. The 7 pills that she did, that she did
19 test, total of 7 pills, she said she didn't weight them. So
20 we don't know what the weight is on the 7 that we know that
21 we're methamphetamines. That's the only evidence that has
22 been presented on weight of methamphetamines, 7 pills with
23 the unknown weight. All the other remaining pills including
24 them, because the pills that's contained in 3.2.3, I think
25 she said that they were other multicolor pills, and she did

1 not test those at all. And she said she couldn't confirm
2 whether or not those were, were methamphetamines because
3 those pills were not tested. So out of nearly 500 pills, 7
4 were tested and it's assumed, it's assumed the rest were
5 methamphetamines. Well, the court can't make that
6 assumption and you can't ask the jury to make that
7 assumption. The jury has to base its decision on the
8 presentation of evidence. And of course, the only evidence
9 has been presented is that 7 of those pills, this is what
10 we know, 7 of those pills were methamphetamines. The
11 remainder, she said she has no idea because she didn't test
12 them. And the weight of those 7 pills that she did test
13 positively came back with methamphetamines, she said she
14 didn't weigh them.

15 Now, sled's judicial economy, and of course is, is
16 that sled's time, you know, that may be a policy that they
17 generate for themselves, but in a court of law, they can't
18 bring their policy in and says, hey, we want the court to
19 assume this just because it's convenient for us. So on that
20 element, judge, alone, they failed to satisfy that statute.
21 That element alone they failed to satisfy that statute.

22 In addition, Your Honor, and of course is, is you may
23 disagree with me, but just for the record and I'll be very
24 quickly on this, is, is that the element of possession, I
25 think, the only evidence they have is the video and they

1 played that video. And of course, in that video I asked
2 both officers, did you see a hand-to-hand exchange? Did you
3 see Mr. McKeiver in possession of that 500 grams, or 500
4 pills that you purport to be methamphetamines, did you see
5 it? They said they saw an object in his hand, but they
6 cannot determine that object were the two bags of pills
7 that was later given to them by the confidential informant.
8 I said the vague object that you saw in the, on the
9 individual that you thought to be Mr. McKeiver, could you
10 identify what was in that object? They said. "No". It's
11 completely unidentifiable. So what we know is, is that the
12 confidential informant came into the house and the
13 confidential informant came out of the house with two bags
14 of, of, pills.

15 THE COURT: And that's enough. That's enough. He
16 went in and he came out. That's enough to send it to the
17 jury. I'll be glad to hear from State.

18 MR. DANIEL: Thank you, Your Honor. If it pleases,
19 the Court. I'll take that one first. So Mr. Brooker made
20 two arguments for a directed verdict. One that the court
21 just addressed about actual possession. The court will
22 charge actual or constructive possession pursuant to the
23 statute that we have to prove. And just like the court
24 said, there is evidence in the records to support a
25 rational logical finding by the jury that Mr. McKeiver was,

1 in fact, in actual or constructive possession of jury, I
2 mean, of the drugs. Just for the record, go through the law
3 on directed verdict standard, "when presented with a motion
4 for directed verdict, challenging the sufficiency of the
5 evidence presented the question for the trial judge is
6 simply whether any rational juror could find the essential
7 elements of the crime beyond reasonable doubt from the
8 evidence viewed in the light most favorable to the State."
9 that State v. Bennett, 415 S.C. 232, 2016 case. "In
10 resolving that question, the trial judge must be concerned
11 solely with the existence or non-existence of evidence and
12 is not permitted to personally weigh the evidence, decide
13 credibility issues or resolve conflicts in the testimony or
14 evidence presented." That's Harvey v. Strickland 350, S.C.
15 303, 2002 case. "If there is any direct or substantial
16 circumstantial evidence reasonably tending to prove the
17 guilt of the accused from which the jury may infer fairly
18 or logically guilt, then the trial judge should deny a
19 directed verdict motion and submit this case to a jury." As
20 it relates to possession, actual or constructive, there's
21 plenty of evidence in the record here to support or that a
22 jury may infer logically and rationally, according to the
23 case law, that Mr. McKeiver did in fact, at least possess,
24 if not sell - either which, either way I satisfy the
25 statute, at least possess actually or constructively the

1 drugs in question.

2 Now, as to the testing of the pills. As we know, we
3 have here in the record, evidence from expert, our expert
4 witness Mr. McCormack, establishing that the pills which
5 collectively weighed more than 100 grams were separated
6 into groups based on their shape. One pill was randomly
7 selected from each group, analyzed, and determined to
8 contain meth. That supports a logical and rational
9 conclusion that both the tested and similar looking
10 untested pills were the same substance, methamphetamine.
11 State v. Perry is a brand new case, 2000, I'm sorry, 358
12 S.C. 633, Court of Appeals, sorry it's not brand new, 2004
13 so it's old law. This case holds, for the proposition and
14 this case has been overruled on other grounds, dealing with
15 insufficiency of an indictment and subject matter
16 jurisdiction, which has nothing to do with this. But
17 Subsection (A) argues or the decides, I should say, since
18 this is our authority, that Representative testing, which
19 is what this is, testing one of the big group of or a large
20 group of pills, representative testing is allowed and it is
21 enough evidence to send this case to a jury. This is to
22 send any case to a jury, and that's exactly what we have
23 here. And this court goes on to say, our decision, the
24 decision that representative sampling is allowed to be, is
25 allowed to go to a jury, is supported by the holdings of

1 several state and federal courts. And then there is a
2 litany of cases that this court cites in its opinion to
3 include State v. Henson 915, S.W. 2d, 186. That's a Texas
4 case from 1996. That holds it is rational for jurors to
5 conclude that pills with the same markings, color, or size
6 are the same substance. Sate v. Caldera, 832 P.2nd 139 from
7 Washington, Court of Appeals, 1992, hold to the scientific
8 resting of a random port, testing of a random portion of a
9 substance that is consistent in appearance and packaging is
10 reliable and supports a finding that the entire quantity is
11 consistent with the test results of the randomly selected
12 portion. United States v. Fitzgerald, a 1996 5th Circuit
13 opinion, 89 F.3d, 218 holds that "random sampling is
14 generally accepted as a method of identifying the entire
15 substance whose quantity has been measured." Mullins v.
16 State, an Arkansas case for 1982, holds that the trial
17 judge could find from representative sampling and testing
18 of 10 tablets that the other 90 were identical. That's 639
19 S.W. 2nd 514. The testimony we have here in the record is
20 that the pills were separated by shape. One random pill was
21 selected from each grouping. And all of the randomly
22 selected pills were determined to contain methamphetamine.
23 That is sufficient for the jury to logically and rationally
24 conclude that the large quantity of pills in this case
25 constitutes over 100 grams of meth which is also the weight

1 in the report and what's testified to. Every single one of
2 the pills that McCormack tested, tested positive for meth.

3 Given these facts that are in the record, there is an
4 evidentiary foundation upon which a jury control a draw
5 logical and rational conclusion as the identity of both
6 tested and untested pills. The defense's contention here
7 seems contrary, or to the contrary seems to be incorrectly
8 premised on the idea that no inference can be rationally or
9 reasonably deduced. Unless that issue has been established
10 to an absolute certainty. State v. Gerald, 261 S.C. 392,
11 held that when the evidence is susceptible of more than one
12 reasonable inference questions of fact must be submitted to
13 the jury. Then State v. Brown, 205 S.C. 514, holds that the
14 jury has the right to select between contrary inferences
15 which may be drawn from the evidence and those two cases
16 are from 1973 and 1945. So this is well established law.
17 Mr. Brooker is free to argue to the jury that some of those
18 other pills may not have been meth, but it is certainly a
19 question for the jury.

20 THE COURT: All right. There's testimony from an
21 expert witness from State Law Enforcement Division, there
22 was 108. So I'm familiar with some of these cases. I've
23 been trying cases now going on many years. The
24 representative sampling through a random sampling, the
25 standard protocol up here so the motions for a directed

1 verdict are denied.

2 MR. DANIEL: Thank you, judge.

3 **Defendant's Rights:**

4 THE COURT: All right, we're ready to talk about
5 the Fifth Amendment, Mr. Brooker. You, you said you were
6 gonna speak to your client about that.

7 MR. BROOKER: I did spoke with him about his
8 constitutional rights to ether testify or not to testify in
9 connection with this case, Your Honor. And of course,
10 advised him that right belongs to him. It hasn't belongs to
11 me or either no one else. And of course he has to exercise
12 their right freely and voluntarily without un, without no
13 undue influence, no pressure, threat, or coercion. And he
14 advises me that he understands his rights to testify or not
15 to testify. It was my understanding, Your Honor, is, is
16 that he has made the determination not to testify. And of
17 course, he's available for further questioning by you, Your
18 Honor.

19 THE COURT: Thank you, Mr. Brooker. Mr. McKeiver,
20 you heard statement of counsel, do you have any questions
21 about his advice that you would like to pose to the court?

22 MR. MCKEIVER: About my lawyer's advice, no, sir.

23 THE COURT: All right. Under the Fifth Amendment of
24 the Constitution of the United States, you have a right not
25 to testify in this case. If you elect not to testify cannot

1 be used against you in any form or fashion. I would
2 instruct the jury that that is a constitutional right. They
3 can't mitigate against you in any way for your election not
4 to testify. Now, you do have a right to testify. But you
5 got a constitutional right to elect not to testify. If you
6 were to decide to testify, you'd be treated just like any
7 other witness. You can be examined and cross examined. In
8 other words, direct examination and cross examination just
9 like any other witness, and you could be impeached and
10 cross examined by the State just like any other witness.
11 Any decision that you make here has to be your decision. It
12 has to be freely, voluntarily, and intelligently decided by
13 you as to your desire to testify or not testify. Do you
14 have any questions concerning your constitutional rights
15 under the Fifth Amendment of the United States
16 Constitution?

17 MR. McKEIVER: No, sir.

18 THE COURT: Do you understand what your attorney
19 has gone over with you?

20 MR. McKEIVER: Yes, sir.

21 THE COURT: Do you understand what I just went over
22 with you?

23 MR. McKEIVER: Yes, sir.

24 THE COURT: What is your decision as to testifying
25 or not testifying?

1 MR. McKEIVER: No. Not testifying.

2 THE COURT: Thank you, sir. You may be seated.
3 Anything before the jury is brought back?

4 MR. DANIEL: Nothing from the State, judge. We'll
5 just rest on the record when they come out.

6 THE COURT: All right. Ready?

7 MR. DANIEL: Yes, sir.

8 (Whereupon, the jury enters the courtroom at 10:41 a.m.)

9 THE COURT: All right. Good morning, everybody.
10 (Whereupon, the jury response)

11 THE COURT: I hope everybody rested well last night
12 and thank you for reporting this morning. Thanks for your
13 patience. As I told you at the beginning of the trial,
14 different phases come along, there's matters of law to be
15 handled.

16 General poll question once again, this is the each and
17 every one, has any juror had any attempt made with them to
18 communicate with them about any aspect of this trial from
19 any party whatsoever? If so, please raise your right hand.
20 (Whereupon, there's no response from the jury)

21 THE COURT: All right. Solicitor?

22 MR. DANIEL: Thank you, Your Honor. If it pleases,
23 the Court? At this time, the State respectfully rest its
24 case.

25 THE COURT: Mr. Brooker, I think we've already

A. Page- Direct Examination by Mr. Brooker

275

1 agreed that we covered the matter of law so the floor is
2 yours.

3 MR. BROOKER: Thank you, Your Honor. Your Honor, we'd
4 call as a witness, Asia Page.

5 THE COURT: Come around be sworn, please.

6 THE CLERK: Place your left hand on the Bible and
7 raise your right hand. Do you solemnly swear or affirm the
8 evidence and testimony you're about to give the court and
9 jury on this case is the truth, the whole truth, and
10 nothing but the truth so help you God?

11 MS. PAGE: I do.

12 THE COURT: Be seated and state your full name for
13 the court. Spell your last for us.

14 (Whereupon, there is conversation concerning the mask with
15 the witness in court reporter)

16 ASIA PAGE, first being
17 duly sworn, testified as follows:

18 **Direct Examination by Mr. Brooker:**

19 Q. Ms. Page, first of all, what relationship are you Marc
20 McKeiver?

21 A. That's my brother.

22 Q. And do you live in, in Dillon County, South Carolina.

23 A. I stay in Hamer.

24 Q. In Hamer ---

25 A. South Carolina.

1 Q. Hamer, South Carolina.

2 A. Mmm, hmm.

3 Q. Which is in Dillon County ---

4 A. Yes.

5 Q. Is that correct?

6 A. Yes.

7 Q. And of course, is that -- and what address do you stay
8 at?

9 A. Right now I stay at [REDACTED].

10 COURT REPORTER: I'm sorry what was that?

11 A. [REDACTED].

12 COURT REPORTER: Vicks Berry?

13 A. Vicksburg.

14 COURT REPORTER: Thank you.

15 Q. Back on -- back in September 9, 2019, where were you
16 staying at?

17 A. [REDACTED], Hamer, South Carolina.

18 Q. Okay. And is that the address -- is that that mobile
19 home that was showed, I think, in the, in the video which I
20 think it's State's Exhibit Number 1, is that the mobile --
21 were you in the courtroom when that video was played?

22 A. Yes.

23 Q. Okay. Did you see that mobile home in that video?

24 A. Yes.

25 Q. Is that that mobile home? Is that the address of that

A. Page- Direct Examination by Mr. Brooker

277

1 mobile home?

2 A. Yes.

3 Q. Is that where you were staying?

4 A. Yes.

5 Q. Okay. Now, -- then also, I think you were in the
6 courtroom when we've been talking about, you said you
7 watched that video, is that correct?

8 A. I watched a clip of the video.

9 Q. Yeah. I'm talking about the video that was played in
10 here today played during the trial.

11 A. Yes.

12 Q. Did you see that video?

13 A. Yes.

14 Q. Okay. Of course, was there a female in that video?

15 A. Yes.

16 Q. Okay. And who was the female in that video, what's her
17 name?

18 A. Her name is Winter Bennett.

19 Q. Okay. And then of course is, is that the CI in that
20 video, do you know who the CI is in that video?

21 A. Yes.

22 Q. Who was the CI in that video?

23 A. Her brother.

24 Q. Winter Bennett's, brother,

25 A. Winter Bennett's brother, my family.

1 Q. Okay. Okay. So that's who the CI was. The CI was
2 actually the brother of the female that was in that video?

3 A. Yes.

4 Q. Okay. And I'm not going to get into the background of
5 the, of the CI very much, but how long have you known the
6 CI?

7 A. For a long time. Now, I don't really have like a time
8 frame for a long time. That was my family.

9 Q. Months or years?

10 A. Years.

11 Q. Okay. How long have you known her sister who was in
12 that video which is Winter Bennett?

13 A. For along time. She's my family.

14 Q. Okay.

15 A. I don't have -- years.

16 Q. Okay.

17 A. Years.

18 Q. Okay. And the question and my next question is going
19 to ask you is, is that you said that that was your
20 residence?

21 A. Yes.

22 Q. Did that CI I've ever stayed at that residence?

23 A. Yes.

24 Q. Okay. And under what circumstances would he stay at
25 that residence?

A. Page- Cross-Examination by Mr. Daniel

279

1 A. Whenever, whenever he wanted, whenever you wanted.
2 That was my family. My doors is always open to my family.

3 Q. Did that CI -- did the CI have property up at
4 residence?

5 A. Yes.

6 Q. Clothes and that sort of things?

7 A. Yes.

8 MR. BROOKER: If you can indulge me for just a
9 second, Your Honor. Let me make sure I don't have any
10 further questions for her.

11 Q. Just one more question I'll ask you. On September, I
12 think it was September 9, 2019, I think when the, when the,
13 when the CI came to that residence, were you there when the
14 CI came to that residence in that video? Were you at home
15 that day when that happened?

16 A. I don't believe so.

17 Q. Okay.

18 MR. BROOKER: No further questions of this witness,
19 Your Honor.

20 THE COURT: All right.

21 **Cross-Examination by Mr. Daniel:**

22 Q. Ms. Page?

23 A. Yes.

24 Q. You weren't there on September 9th.

25 A. I don't believe so.

1 Q. So you have no idea what happened on that day in that
2 room?

3 A. I seen the video.

4 Q. Right. But outside of seeing the video, you have no
5 idea what happened?

6 A. No.

7 Q. And I believe you testified that you saw or, I'm
8 sorry, that the CI sometimes stayed at the residence?

9 A. Yes.

10 Q. Did you see on the video that he -- okay, I'm sorry.
11 Did he stay there a lot around that time, around September,
12 2019?

13 A. Well, it's not really a time frame of -- whenever I'm
14 not there, my family is there so I really don't know. My
15 door is always open to my family. Like I wasn't there in
16 the video so I don't know.

17 Q. So you weren't home a lot so you don't know, right?

18 A. Right.

19 Q. So a much stuff could have been going on at your own
20 house without your knowledge?

21 A. Right.

22 Q. Okay. And would you agree with me that if a place is
23 kind of your own place, you can walk on in the door
24 whenever you show up to your house?

25 A. Me, yes.

A. Page- Cross-Examination by Mr. Daniel

281

1 Q. Do you not -- Yes?

2 A. Whenever, whenever I walk up to my residence.

3 Q. Right.

4 A. When my name is on the lease.

5 Q. Right.

6 A. I have the option of knocking on the door.

7 Q. Right.

8 A. Or turning the key.

9 Q. But you guys are trying to make this point right now
10 that this, essentially, was a second home for this CI. But
11 did you notice when you watched the video, you said you saw
12 it, did you notice that the CI knocked on the door and
13 waited for someone, waited several seconds for someone to
14 answer the door?

15 A. I'm sorry, you said that we're trying to do what ---

16 Q. Did you ---

17 A. --- prove a point ---

18 Q. Did you notice in the video that you said you saw that
19 the CI knocked on the door and waited several seconds for
20 someone to answer it?

21 A. On the other side, yes.

22 Q. Right. Typically, it's not something you'd do in a
23 house that might be your own. And one more time ---

24 A. I never say that it was -- I never said it was his
25 house.

1 Q. Okay.

2 A. I told you it was my house.

3 Q. Okay. This is, this is your brother on trial today?

4 A. Yes.

5 Q. And you love him, don't you?

6 A. Yes.

7 Q. You do anything you could to help him, wouldn't you?

8 A. Yes, for my family.

9 MR. DANIEL: No further questions.

10 MR. BROOKER: I just have one question. Maybe not
11 say one questions, Your Honor, I don't know how long, but
12 it's gonna be a very quick series of questions.

13 **Redirect Examination by Mr. Brooker:**

14 Q. Ms. Page?

15 A. Yes.

16 Q. I think you were asked a question, do you love your
17 brother?

18 A. Yes.

19 Q. Okay. Are you lying for your brother?

20 A. No.

21 Q. Okay

22 A. Everything that I said was, basically, the truth. It's
23 not about the case. It's about the truth.

24 Q. Are you lying about the identity of this ---

25 MR. DANIEL: Judge, this is improper questioning.

A. Page- Redirect Examination by Mr. Brooker

283

1 This is bolstering a witness. The jury is entitled to
2 determine whether she's lying or not. Ee can't get into her
3 bolstering.

4 MR. BROOKER: Bolstering would be as if I'm using
5 anybody else, this is her own testimony. Bolstering would
6 be as that if I'm using somebody else to validate what
7 she's testifying to and I'm not doing that. This is ---

8 THE COURT: Overruled. Go ahead.

9 Q. Okay. Okay. Are you lying about who, who the female in
10 that video is?

11 A. No, sir.

12 Q. Are you lying ---

13 A. Her name is Winter Bennett.

14 Q. Are you lying about, about who the identity of the CI
15 is?

16 A. No.

17 Q. Okay. Are you lying about how long you've known that
18 CI?

19 A. No. It's my family.

20 Q. Now, just, I think one more question, even though you
21 love Marc McKeiver, would you lie on the stand here to
22 protect him?

23 A. No. I ---

24 MR. BROOKER: No further questions.

25 A. I have children of my own.

A. Page- Re-cross Examination by Mr. Daniel

284

1 MR. BROOKER: No further questions, Your Honor.

2 **Re-cross Examination by Mr. Daniel:**

3 Q. Last one.

4 A. Sure.

5 Q. You testified that you were not at that house on
6 September 9, 2019, when this happened, right?

7 A. Yes.

8 Q. That's correct? Is that what you're saying?

9 A. Yes. I believe I was not there.

10 A. So you can't add any information to what went down at
11 a house when you weren't there, right?

12 Q. True.

13 MR. DANIEL: I'm done. No further questions.

14 MR. BROOKER: No further questions, Your Honor.

15 THE COURT: Thank you. You may step down.

16 MR. BROOKER: Your Honor, we don't need to call, we
17 don't need to call any further witnesses. So the defense
18 will then, I guess, rest.

19 THE COURT: Solicitor, anything in rebuttal or
20 reply?

21 MR. DANIEL: I beg the court's indulgence. Nothing
22 further from State.

23 THE COURT: All right. Ladies and gentlemen of the
24 jury, I'm gonna ask you to step out and relax. I think they
25 have another place arranged where you can spread out a

1 little more. I've got to take the matter of law. It
2 shouldn't be too long. We'll come back and do closing
3 arguments.

4 (Whereupon, the jury exits the courtroom at 10:55 a.m.)

5 THE COURT: Okay. Let's close this portion of the
6 record out, Mr. Brooker.

7 MR. BROOKER: I'm sorry, Your Honor. I apologize.

8 THE COURT: I believe -- all right, we need to
9 protect the record. Do you want to get -- just state your
10 renewal of your motion?

11 MR. BROOKER: Absolutely, Your Honor, is, is that we
12 just renew the motion for directed verdict, of course,
13 all the previous motions that we've made up until this
14 point.

15 THE COURT: Noted and I will deny any directed
16 verdict motions at this time. About how long of a recess
17 y'all need to get ready to argue?

18 MR. DANIEL: I need set this stuff up. Get exhibits
19 laid out. I don't know, 10 minutes.

20 THE COURT: Okay. Do you have proposed charges you
21 want to look at?

22 MR. DANIEL: I have some case law. Well, just two
23 cases to give you about that. We can talk about, we can
24 talk about that. I had two cases involving the possession
25 issues which I know it's been recently litigated. There's a

1 2001 case, State v., 2021 case just heard in May, State v.
2 Stewart. This just goes into how the court should tell the
3 jury the definitions of actual constructive and possession.
4 And then I also have an older case, State v. Cheeks from
5 2013. I don't think this is really relevant. It just also
6 deals a little bit with that issue. But really the
7 controlling case right now on jury charges for actual
8 constructive is State v. Stewart.

9 In addition, of course, to the actual versus
10 constructive possession charges, I would submit, of course,
11 that the court will, I'm sure, cover the normal things
12 presumption of innocence, burden, my burden of proof,
13 expert testimony, reasonable doubt standard, elements of
14 trafficking, and then, mere presence is not sufficient to
15 establish possession. I think that's important for the
16 defendant. I can't think of any other charge that's
17 necessary.

18 THE COURT: Have you got anything all the elements
19 of tracking, of trafficking?

20 MR. DANIEL: I'm talking about the statute. I'm just
21 talking about the statute. Just what the indictment says.
22 You talking about case law, do I have case law on that?

23 THE COURT: Yeah. You got anything specific on
24 trafficking, elements of trafficking?

25 MR. DANIEL: These cases touch on, one of these

1 cases touches on trafficking. State v. Cheeks touches on
2 it. But I don't have anything specific on trafficking
3 because I don't think there is anything specific.

4 THE COURT: You need to come up here and highlight
5 whatever you want me to take a look at rather than me have
6 to read this whole ---

7 MR. DANIEL: Yeah, it's, um, it's. it's Subsection
8 (2).... oh, I highlighted on the other one. There's the
9 trafficking in meth

10 (Whereupon, the lawyers take time to go over law)

11 MR. DANIEL: Thurman, in Stewart it's Page 3, is
12 that 3?

13 Page 3 of 5 that fifth paragraph on the right column.

14 THE COURT: All right. Y'all take a little bit and
15 get tuned up and then we'll step back and come back in
16 about 10.

17 (Whereupon, the judge takes a short break)

18 THE COURT: All right. Gentlemen, anything y'all want to
19 put on the record about charges or request of charge or you
20 got all that ironed out? Just tell me what you gonna - on
21 the record what we're going to request?

22 MR. DANIEL: Your Honor, if it pleases, the court?
23 I believe the or know the defense has asked for a charge of
24 possession because its argument is that the only tested,
25 that only the tested pills should be considered, and that,

1 the amount of that would rise to just possession. I agree,
2 with the defense that that, as a matter of law should be an
3 option for the jury. We had some conversations about
4 whether, therefore, the other lesser included trafficking
5 should be part of the jury charged, I'm not asking for
6 those to be part of jury charge. Therefore, the jury will
7 be given the option of 100 to 200 grams of trafficking,
8 guilty or not guilty on that. Or guilty or not guilty on
9 simple possessions of methamphetamines. I think the parties
10 agree on that.

11 THE COURT: Mr. Brooker?

12 MR. BROOKER: That's correct, Your Honor.

13 THE COURT: All right. So are y'all ready?

14 MR. DANIEL: I just want to add, we, we are
15 substituting this jump drive for the CD. Mr. Brooker has
16 seen the contents of this. The reason is the CD that has
17 the video on it, has some other stuff, like some other
18 photos and some things that are not in evidence.

19 MR. BROOKER: Yeah.

20 MR. DANIEL: But we, we have both looked at this
21 jump drive. The video is on it so we would like to
22 substitute this for Exhibit 1.

23 THE COURT: By agreement of the parties so be it.

24 MR. DANIEL: And the State intends to open first
25 since I get the last argument.

1 (Whereupon, the jury enters the courtroom at 11:45 p.m.)

2 **Closing Arguments- Mr. Daniel:**

3 THE COURT: Solicitor?

4 MR. DANIEL: Thank you, Your Honor. If it pleases,
5 the Court?

6 THE COURT: Yes, sir.

7 MR. DANIEL: Mr. Brooker? Ladies and gentlemen,
8 first, let me start by thanking you for your jury service.
9 This case is important. It's important to the defendant.
10 It's important to the people of Dillon County and we could
11 not handle this matter without your involvement. I know
12 jury service can be an inconvenience so thank you very
13 much for your service.

14 When I first addressed you yesterday morning, I said
15 this case is about as straightforward as it gets. I believe
16 that the facts have proven that to be true. This is about
17 as straightforward as it gets.

18 The burden of proof rests with the State and in this
19 case, that's me. I've got to prove to you that the
20 defendant is guilty beyond a reasonable doubt. He is
21 innocent right now, because I hadn't proven everything yet
22 because we're not done. You've heard all the evidence. But
23 this is the last phase, right, closing arguments. I'm going
24 to talk to you for just a minute. Mr. Brooker is going to
25 talk to you for a while. And then I get to come back and

1 talk to you at the end. That's how this works. Judge
2 Burch is going to tell you, after we finish talking, what
3 the law is, what the burden is. Beyond a reasonable doubt
4 means not beyond all doubt, but beyond a doubt that makes a
5 reasonable person hesitate to act.

6 Now, what do I have to prove to you? I've got the
7 prove that in Dillon counting on or about September 9, 2019
8 Marc McKeiver knowingly did sell, deliver or possess 100
9 grams to 200 grams of methamphetamine. This is it. I've
10 gotten to prove each of these elements to you beyond a
11 reasonable doubt in order for you to find it the defendant
12 guilty.

13 And now, as you listen to Mr. Brooker's arguments, I
14 would ask you, respectfully, to keep a couple things in
15 mind. Number one, use your common sense. This ain't rocket
16 science. You're allowed to take your common sense into your
17 jury room when you deliberate. Number two, don't make this
18 more complicated than it is. It's the defense's job, to try
19 to muddy the waters to try to take your eye off the ball to
20 try to make you focus on things that don't really matter.
21 Mr. Booker is a fine lawyer. I respect him and he's my
22 friend. It's his job, though, to try to muddy the waters.
23 Don't let that happen. Use your common sense. What matters
24 here, this right here. Now, when I get back a few minutes,
25 we're gonna go through each of these points. And I'm going

1 to tell you exactly the pieces of evidence that we
2 introduced that prove each of these points beyond a
3 reasonable doubt. I look forward to talking to you again in
4 just a few minutes.

5 Thanks.

6 **Closing Arguments- Mr. Brooker:**

7 MR. BROOKER: Good morning, ladies and gentlemen.
8 Now, some things I'm going to go over with you. And of
9 course, these are some of the things that the judge went
10 over with you at the beginning of this trial. And the
11 reason why I'm going to go over these, these things, and I
12 said things, but of course, I should say principles. I'm
13 going to go over these principles with you and some rules
14 because they were extremely important.

15 This is a criminal trial, like we discussed, I think
16 at the beginning of this case when I was up before you. And
17 I talked about the difference between a civil trial and a
18 criminal trial. And of course, this is a criminal. And in
19 criminal trials, I would argue is that the most important
20 and the most critical thing that that the judiciary, the
21 judicial system do is handle criminal cases. And why are
22 criminal cases the most important thing that the judiciary
23 does? Because it's only in criminal cases that we're
24 dealing with human life and we're dealing with freedom. So
25 it's the most important case that we have. It's the most

1 important types of cases that we have in our judicial
2 system. We're not like some of the other countries that you
3 sometimes see on television. And, and where people are
4 charged with criminal offenses, that the evidence is
5 shoddy. We're not a kangaroo court or we're not one of
6 these third world countries, you know, where people are
7 convicted unjustly. We have laws and we have strong laws.
8 And these laws were created by our government. And these
9 laws come from the Constitution. They come from the, the,
10 the founders who founded this country and also the
11 Constitution. And we have a South Carolina Constitution
12 that has the similar principles written into them. And we
13 also have state laws where we have legislators, you know,
14 who write laws and develop these laws and principles. And
15 all of these things are done to make sure that we are not,
16 we are not like some of these countries that you see on
17 television. That we don't treat life and freedom carelessly
18 and frivolously. And that we do not arbitrarily take
19 someone's life of freedom away.

20 So let's talk about some of these high principles that
21 we have. And of course is, is that the first one, I think,
22 Mr. Daniel mentioned to you and that is, is that innocence
23 still, at the beginning of the trial I told that Marc
24 McKeiver as he sits there is innocent and he still has that
25 presumption of innocence. And of course, at any point in

1 time during the course of this trial is, is that you
2 thought that he was not innocent, then of course this is,
3 is that our system has failed. Our system of government is
4 failing. The judiciary processes failing. You have to
5 accept him as innocent. You have to. Every last citizen in
6 this country have a cloak of innocence. We all walk around
7 with it, and of course, you know, the government whenever
8 it charges us with a crime, then the responsibility is on
9 them to remove that cloak of innocence. And how did they
10 remove that cloak of innocence? How do they remove it from
11 him or from any citizen?

12 That is by proving someone's guilt and in a court like this
13 beyond a reasonable doubt.

14 That goes to our second principle, beyond reasonable
15 doubt. That is the standard that the, that the government
16 has to just, has to satisfy. They have to prove his guilt
17 beyond a reasonable doubt. Not beyond a speculation. Not
18 beyond a serious probability. Not beyond a belief that he
19 did it. Beyond a reasonable doubt. And of course, the judge
20 is going to instruct you with what that means. But at the
21 beginning of the trial, I think Mr. Daniel said this and I
22 also mentioned it, it's the type of doubt that causes a
23 reasonable person to hesitant. It's a type of doubt causes
24 a reasonable person to hesitant. So during this trial, when
25 you're presented, when you're presented with the elements

1 of these criminal offenses, and of course, when the
2 government is presenting evidence, and that's going to be
3 through Mr. Daniel, like he said, when he's presenting the
4 evidence to him, is that you have to ask yourself is, is,
5 is that, is as he's presenting proof, or are there times in
6 which he's presenting speculation? Or what's the difference
7 between proof and speculation? What's the difference
8 between proof and speculation? Well, speculation is a
9 theory or conjecture, without firm evidence. Maybe based
10 upon a strong belief but not strong, firm evidence. And of
11 course, I submit to you at points in time during this
12 trial, or when the evidence wasn't there. The jury is going
13 to ask you to draw conclusions. Of course, when they're
14 talking about conclusions, I want you to draw this
15 conclusion. I want you to make this leap because we can't
16 fill in the entire picture. They're asking you to
17 speculate. They're asking you to speculate about certain
18 evidence. And some of the evidence is critical. And that,
19 ladies and gentlemen, is what you can't do.

20 Of course, the third principle important principle in
21 our promote your judicial system. And that is, is, is that
22 the burden of proof, that proof of beyond reasonable doubt
23 that we just discuss, it is always on the government.
24 Burden of proof is never on the citizen. A citizen doesn't
25 have to prove his innocence. Marc McKeiver don't have to

1 prove to you that he's innocent. Marc McKeiver didn't even
2 have to show up at this trial. Marc McKeiver theoretically
3 could have slept. I could have theoretically slept. I could
4 have not say anything whatsoever. Defendants don't have to
5 prove anything. Citizens don't have to prove anything. The
6 burden is always with the government, that any point in
7 time during this, during your deliberation in that jury
8 room, if there is an unanswered question, if there is a, if
9 there is a missing link, then that missing link has to be
10 provided by the government. And if the government didn't
11 provide that missing link, that you have to hold the
12 government responsible. You have to say the government, it
13 was their job to prove every element of these offense, of
14 this offense beyond a reasonable doubt, you know, through
15 the presentation of evidence. And if this link is missing,
16 then you have to hold the government responsible for that.
17 You have to assess that against it. Because the burden of
18 proof is never on the system. Never. So please remember
19 that fact at any point in time if you says, well, what
20 about this? We wasn't told you this. This wasn't explained
21 to us. This fact wasn't presented. This link is missing.
22 Then you have to say that's the responsibility of the
23 government. And you have to recess that against them. Now,
24 those are three important principles.

25 Now, let's talk about the evidence in this case. Mr.

1 McKeiver has been indicted for trafficking in
2 methamphetamines. And, Mr. McDaniel (ph), Mr. Daniel has
3 explained to you, you know, at least the key elements they
4 have to prove. One element they have to prove is, is that
5 they have to prove that he possessed or distributed these
6 drugs. That he possessed or distributed these drugs.
7 Because you remember what the theory is, in this case, the
8 government's theory is that the government has a
9 confidential informant and that confidential informant is
10 wired with video and audio or video. That confidential
11 informant is driven to home and that confidential informant
12 says, go in there and buy drugs. And of course is, is that
13 you heard that the agents, I think it was agent, agent
14 Martin and Agent Blakely (ph) testify. Agent Martin
15 testified that they met the confidential informant, they
16 met the CI. And that they absolutely, they searched him.
17 They searched his body to make sure that he didn't have any
18 drugs or guns or whatever. And what's, what's one of the
19 reasons why he told you that I asked him on cross
20 examination, if you remember, what are one of the most
21 important reasons that I asked him, why did you search to
22 CI? Why do you make sure that CI doesn't have any drugs on
23 him? And one of the reasons why they searched the CI is, is
24 that they're trying to make sure that any drugs that they
25 received from the CI, but that, those drugs come from the

1 target as opposed to any other source. But trying to make
2 sure that the drugs that you bring back to us, that you got
3 those drugs from the target, that you got those drugs from
4 Marc McKeiver. So they want to make sure that he didn't
5 already have drugs on and he gives them drugs that he
6 already has. Then they want to make sure that when he gets
7 in the car, and he rides away from them and he got drugs in
8 his car, and then later on he brings them back drugs that
9 he already had in this vehicle. They're trying to control
10 the buy and that's what's called a control buy. They're
11 trying to control the buy as much as possible. So they can
12 eliminate these possibilities. You know, that they get
13 defrauded or that someone get framed. And that's another
14 reason why that they wear the camera so that they can
15 follow the activity. Now, we know that he did, he didn't
16 have drugs on him when he left the buy location because
17 they searched him. They can control that. He was in their
18 control at that time. He then gets into the car and you saw
19 the video, he then drives to the buy location. And we know
20 that he didn't have drugs in the car because he was driven
21 by Agent Blakely. (ph) So they could control that. And you
22 heard me ask him, ask an Agent Blakely (ph) well, what
23 about when he walks into the house the alleged buy
24 location? That's when they have the least control of the
25 confidential informant. That's the purpose, one of the

1 purposes of having that camera. To try and see what he
2 does. To try and make sure the actual makes a hand-to-hand
3 exchange with the target and that the drugs that he brings
4 out comes from the target and no other location. And their
5 only way to verify that is the video. You saw that video.
6 That's the purpose of it. That video is supposed to help
7 verify that because that's the point in which they don't
8 control the confidential informant. Because they can't. Law
9 enforcement can't go with him. So a large part of what
10 they're relying on is what took place in that house and
11 they're relying on the video. And as you heard the State
12 and the government admits this is not a perfect video. This
13 video doesn't show what needs it to show. The perfect video
14 would be as is that were the confidential informant walks
15 in, that the confidential informant says here's the money
16 and the video captures him extending the money. And of
17 course, the video then captures the target saying thank you
18 for the money. Here's your drugs. And the video captures
19 that exchange. Because then we know that there was an
20 actual exchange of drugs for money between the target and
21 the confidential informant. We don't have to speculate
22 about it. We don't have to assume that the confidential
23 informant got the drugs from another source. And most of
24 the times I would submit to you is that usually the buy
25 location is a location where the confidential informant,

1 where the confidential informant doesn't live. It's usually
2 a location where the confidential informant, you know, may
3 not reside or spend time at. And the purpose of that is, is
4 that's when these control buys get treacherous. Because the
5 confidential informant could actually be collecting drugs
6 that he has at that house that he stays at and is familiar
7 with and bring it back to, you know, the agents. That's why
8 they can't control that part. That's why that video was
9 critical. That's why it's extremely critical. And if you
10 remember that video, remember that video, and let me, let
11 me show you, at least -- I know you saw the video and of
12 course I'm not going to take you through the entire video.
13 But what I want to do is to, is to show you the important
14 parts of that video that the government took screenshots
15 of. The first screen shot that they took of that video,
16 they took this picture. That's the first shot they took.
17 This is the guy that they said, well, this is Marc
18 McKeiver. They said we believe this is Marc McKeiver. And
19 this is a guy that opens the door and let's the CI in. The
20 CI comes and knocks on the door and this is the guy that
21 lets him in.

22 The second screenshot that they took of that video and
23 the reason why usually you do screenshots of videos is, is
24 that you're dealing with an imperfect video. This is the
25 second shot that they took. And of course is, is that and

1 the reason why they took this shot is, is that this is the
2 best image that they get from that video. This is the best
3 image that they get from that video. And of course is, is
4 that what they're asking you to do is and you'll have
5 these, you'll have all of these pictures with your back in
6 the, in the jury room, this is a picture of the drugs that
7 law enforcement says that the CI brought back from the buy
8 location. This is a picture of drugs that the CI says, it's
9 two bags of drugs that the CI brought from the buy
10 location.

11 So the government has to prove, and you could see from
12 this bag and this video from this and I think these, these
13 were the actual bags in which, in which the CI brought
14 drugs back to the, to the drug until, to the law
15 enforcement officers. The is the actual bag. So what they
16 have to prove to you that these two bags are actually this.
17 That's what they're, that's what they're saying. They want
18 you to say that these two clear bags is actually this murky
19 one. And if you heard me when I asked the, ask both
20 investigators I asked Special Agent Martin, can you tell
21 what that is? And he is, he is an agent of the government,
22 he wants Mare McKeiver to be convicted and even he admits
23 that he don't know what that this. I ask Agent Blakely
24 (ph), can you tell this jury that these two bags that the
25 confidential informant brought back to you and says here's

1 the drugs that I brought, can you tell the jury that these
2 two bags is actually this murk, kind of murky, unclear
3 object that's in this picture. And to his credit, I'm
4 pretty sure to his dismay, he reluctantly admitted, "No, I
5 can't tell you that." I can't determine what it is. I can't
6 determine what it is. But the government is asking you to
7 say that this murky item, whatever it may be, and of course
8 if you can look, look at this photograph of this bag and
9 you'll have this, take a good look at this and take a look
10 at, you'll have this photograph too, this photograph it's
11 here. It's not just going to be on the big screen. This
12 photograph is here. And I asked the agent, both agents, can
13 you identify any pills, any of these bright colored, bright
14 colored funny shaped unique pills, can you identify them in
15 that bag? And to their credit, their answer was "No, we
16 can't." Well, the logical question is if they can't do it,
17 while are they asking you to make an assumption that they
18 can't find themselves? Why would they say, hey, we don't
19 know what that is. But, hey, jury, we want you to say that
20 it's drugs. We want you to say that this object is these
21 two bag of drugs. Think about that. They told you that they
22 can't tell what it is. But they're asking you to make an
23 assumption that they're not willing to make. They're asking
24 you to draw a conclusion that they can't draw. But they
25 can't prove beyond a reasonable doubt. That's the standard.

1 Everything that you look at, you have to measure that by
2 proof beyond a reasonable doubt. This is the best that it
3 gets. And does that look like two bags of brightly covered
4 drugs? Whatever this is, it is murky. It doesn't even look
5 translucent. These bags are clear and translucent. They are
6 clear and translucent. And if this bags, with these two
7 bags that the CI brought back to them is actually this
8 bag, well, why can't you see through it? Why isn't it clear
9 and translucent as these bags are? Why isn't-- why can't
10 you see the bright vibrant multicolored pinks and yellows
11 and blues and purples, why can't you see it through this
12 bag if this is the same bag? If these are the same bags?
13 Is it logic to conclude that they're not the same? Why is
14 this murky? Why is it not translucent? And this bag is
15 clear and translucent. You can see right through it. You
16 can readily identify what's in it. But they ask you to draw
17 that conclusion when they can't draw it themselves. The
18 government says, jury, you draw a conclusion that we can't
19 draw ourself.

20 Now, is it possible that that CI, that that CI could
21 deliver them drugs that he didn't get? It is possible that
22 that CI could have deliver drugs that he didn't get from
23 this guy. Remember I asked the, I asked the confidential, I
24 ask the agents, could you see a hand-to-hand exchange in
25 your video? And to their credit both of them said, "We

1 didn't see a hand-to-hand exchange between these two guys."
2 And there's any -- is there any opportunity that that he
3 could have picked up something that he had there at that
4 house? You're probably asking, why did I put up the one
5 witness because the defense doesn't have to put up any
6 evidence. Why did I put up Asia Page? I put up Asia Page
7 is, is that because the government didn't put up Asia Page.
8 The government didn't tell you that this confidential
9 informant was actually familiar with this house that
10 actually stayed at this house. The government didn't tell
11 you that that female that you saw in the video was actually
12 the confidential informant's sister. And I'll take you,
13 this is the video that's already in evidence. This female
14 is actually the confidential informants sister. This
15 confidential informant was familiar with this house. This
16 confidential informant had been in this house many times.
17 You heard Asia Page saying that this confidential, that
18 they were like family, this confidential informant had
19 actually lived in that house at times. And she said he had
20 clothes and personal items there. Why didn't the government
21 tell you that? Because it didn't fit their theory. Because
22 it created reasonable doubt. They have to prove beyond a
23 reasonable doubt. Why didn't they tell you that? The video
24 was clearly not perfect. Like this point during the video,
25 and I don't know how long it runs, but there's slight murky

1 spots in the video. The video doesn't capture everything.
2 And this a guy, this is a guy who actually had stayed at
3 his house. That's the part that they can't control.
4 Remember I told you the CI says that they try to control,
5 this as a control buy. Well, you can't control every part
6 of it because you don't trust the CI. I think agent, I
7 think it was Martin that, you know, they wanted to make
8 sure that the CI doesn't try to frame somebody or either
9 try to put something over there eye. That's why they try to
10 control everything, but you can't control once the CI gets
11 out of your, of your sight. You're relying exclusively on
12 that video. And what if you got an imperfect? Or what if
13 you got an imperfect video? And you've got a guy who's
14 going into a house that he stayed at? You've got a CI that
15 going to a house where he has property at? You've got a CI
16 that going into house of where, where he is familiar. The
17 CI is going to the house of family. And I think that's
18 what Asia Page described it as. They're like family.

19 But this is their, this is their burden of proof. This
20 is their burden of proof. And you ask them about that.
21 Another thing that they have to prove, I think they're
22 alleging that they have to prove, that he received
23 methamphetamines. He received a controlled substance. And
24 they have to prove that, that controlled substance is
25 between 100 and 200 grams. And if you can remember they

1 call Ms. McCormack, who was the drug analyst, and of course
2 is Ms. McCormack testified that she received these two
3 bags, those two bags, the picture I just hold up to you,
4 she said she received those two bags, it was her job was to
5 analyze them. And if you can remember I ask Ms. McCormack,
6 I said Ms. McCormack, is there any other means of
7 identifying, identifying methamphetamines other than by
8 chemical analysis? She said, no. I asked her, could you
9 identify it by touch, by sight, by smell, by taste? No. It
10 has to be chemically identify. Has to be chemically
11 identify. So she said that on the first bag, she took them
12 and she divided them into shapes. She divided them into,
13 you know, into, I guess, they have multiple shapes. And of
14 course is, is that she puts them in piles based upon the
15 shape. And of course the first pile was 45, 45 multicolor
16 pills and they were skull. In a shape of a skull. If you
17 remember I asked her of that 45, 45 pills she testified,
18 how many did you test? She said, she took 1 pill out of the
19 45 and she tested 1 pill. And she said the 1 pill that she
20 have test, she tested was methamphetamines. And I asked her
21 what about the other 44 pills? We didn't test those. Well,
22 why didn't you test those? Well, we assumed that if the 1
23 that we tested was methamphetamines that the other 44,
24 were. So why did you do that? Is there a law that says you
25 can do that? She said that's our policy. Time and economy.

1 Why we do it? Because it takes too much time. It takes to
2 much money. So we just assumed. Now, remember what
3 speculation is. Speculation is a theory that is not
4 supported by evidence as opposed to proof beyond a
5 reasonable doubt. Those 40 -- those 44 pills, none of them
6 could have been methamphetamines. The remaining 44 could
7 have been something else. But she said they look the same
8 and I ask her -- remember I asked her, can you tell a pill,
9 a methamphetamine pill by, by sight? She said, no. Well,
10 simply because they look the same doesn't mean that
11 chemically they are the same. Methamphetamines is actually,
12 you know this, this is a chemical, these are chemical
13 drugs. And they can all be identified, you know, through a
14 chemical analysis process. So the government is asking you
15 to, to assume the remaining 44 was methamphetamines when
16 they didn't test them. And that the only way that you can
17 determine what it is, by chemical testing. They said just
18 assume it. And she says, well, you know, what's the
19 probability? What's the probability, you know, that the
20 other 44, and remember I asked her, are you a mathematician
21 and can you tell us what that probability is? She said, no.
22 They can't tell you what the probability is. We're simply
23 asking you to assume and that's what you can't do in a
24 criminal trial. You can't assume. Proof beyond a reasonable
25 doubt based upon evidence. You can't assume. The only thing

1 that we know here is we got one methamphetamine pill. We
2 don't know about the other 44. And when you're dealing with
3 someone's life and when you dealing with someone's freedom,
4 well, this, this takes too much time and a little too much
5 money to do it. That's not what the government promised us.
6 The government didn't say well, we'll prove before we take
7 your freedom, we'll prove it beyond a reasonable doubt,
8 unless it's inconvenient for us. Then if it's inconvenient
9 for us, we'll just assume it. That's not a law. And maybe
10 if it takes you two hours to do your testing, and it'll
11 take three days to test them all. Test them all. That's
12 what our law requires. You know, all of the pills, it's the
13 same. Out of every bunch, it's the same. The next one
14 bunch, mushroom 10, one tested. The next 83, 83 pills and
15 one tested. The next group 89 pills and one tested. Out of
16 89 one tested. The next group 28 tested and one, 28 pills
17 and one tested. Bag two, the next group, 89 tested, 89
18 pills and one tested. The other 88 just assume it's
19 methamphetamines. Thirty- eight pills and one tested.
20 Assume that the other 37 are methamphetamines. I think, and
21 I'm not gonna take out a calculator, but, roughly, there's
22 roughly 400, over 400 pills, I think if you add those
23 numbers up there's somewhere around 400 pills, more pills.
24 And she said out of four hundred and something pills that
25 she tested, out of four hundred and something pills,

1 whatever the number is, she tested 7. Four hundred plus
2 pills you tested 7. That's what government tells us. We
3 don't have the time to do anything more than that. And
4 assume the other 400 is methamphetamines. Out of the 7 who
5 tested. They have not proved 100 to 200 grams beyond a
6 reasonable doubt because they have not tested all of the
7 pills, all of these pills that they weighted, they didn't
8 test them all. They tested one out of each bunch and assume
9 the rest. And maybe the lab can do that, but in our
10 judicial system, in our judicial system where the standard
11 is proof beyond a reasonable doubt you, the jury, can't.
12 Your burden is a lot higher as a juror, but I guess the
13 laboratory makes their own rules. And you can't find that
14 all of those other pills, of those four hundred and
15 something pills are methamphetamines out of just
16 convenience, to save time. Every single element that they
17 have to prove has to be done beyond a reasonable doubt.

18 So that's the transactions. I'm getting close to
19 finishing. Before I finish, I do have to address some other
20 things. Remember law enforcement, there was testimony from
21 Agent Martin that says that they went on Snapchat, and
22 these are identified, you're gonna be able to see them in
23 Exhibits 5 and 10. But they went to Snapchat, they went to
24 a Snapchat account that they believe to be Marc McKeiver's.
25 And they said and we went to that Snapchat account, we saw

1 this pitch.

2 Now, these are not actual pills that they have. But
3 they say we pull up that picture off the Snapchat account.
4 And they said, well, we want to assume, we want to tell you
5 that we didn't analyze this, but they look similar. It's
6 the same rationale that the chemical analysis says. But
7 they look similar to the pills that we have. So we want you
8 to make a determination. We want you to draw a conclusion
9 that these are illegal drugs based upon look and vision in
10 which the chemists told you that you can't. Are we a
11 kangaroo court here? The chemists told you, you can't
12 identify drugs through look. But they said, ah-ha, we want
13 you to draw a conclusion. Remember what speculation is?
14 Speculation is a theory unsupported by firm evidence. What
15 firm evidence do they have that these are illegal drugs?
16 Ask the government. Ask them to explain that. Ask Mr.
17 Daniel to explain that. What evidence do they have that
18 these are illegal drugs? Other than they said it looks like
19 them. Again, speculation. And then of course, the account,
20 they said well, we believe the account, the Snapchat
21 account that we took this from, belongs to Marc McKiever.
22 And of course, they send us, subpoenaed Snapchat and says,
23 Snapchat sent us these stuff. And, then of course is, is
24 that on Exhibit Number 10, this is their proof that this
25 account belongs to Marc McKeiver and you have this to look

1 at. And of course it says, Snapchat for count information.
2 It says I.D. Duke underscore TTG and they say, hey, that's
3 Marc McKeiver. So what evidence do you have it's Marc
4 McKeiver's name? Well, that's what we were told. Ask him do
5 you have any direct evidence that Marc McKeiver is Duke?
6 They don't have direct evidence. Have any personal
7 evidence yourself? We don't need that. We were told.

8 Now, that sort of evidence would be good enough in
9 Iraq, and Iran, it ain't good enough in a court in the
10 United States and a court in South Carolina under our
11 criminal justice law. Marc McKeiver's name is not on there.
12 But they said, well, guess what there's a number on here,
13 [REDACTED], we believe that is Marc McKeiver's number,
14 phone number. What evidence do you have of that? Did you
15 contact and if you remember I asked both of the agents
16 this, did you contact the cell phone provider and send a
17 subpoena to that cell phone provider that says tell me who
18 the account holder of this number is? We didn't do that. We
19 just think it's Marc McKeiver's number. And then, of
20 course, Agent Blakely (ph) says, well, we didn't do it
21 because you know sometimes, you know, people put cell phone
22 numbers in other people's name and that's the reason why we
23 didn't do it. But do you have any proof of that? It's
24 called the court of proof. Nah, we just want to attributed
25 this number to Marc McKeiver. You may think it -- you may -

1 - and they have that right. That's the wonderful thing
2 about investigation. Investigators have that right. They
3 have the right where they can think and assume things. You,
4 the jury, don't. They can think and assume anything that
5 they want. Jurors can't. When they're out there
6 investigating cases they're not guided by proof beyond a
7 reasonable doubt. They're not guided by guilt until
8 innocent. They're not guided by these standards,
9 investigators aren't. So they can think and assuming
10 things. But you can't. You have to tell them, you have to
11 demand to them, you've got to give us proof beyond a
12 reasonable doubt. Can't give a speculation. You can't say I
13 think this is. I'm feeling very, very confident this is.
14 It's got a rise to proof beyond a reasonable doubt. And if
15 it doesn't rise to that level, then they've failed the
16 burden. And of course, the judge is going to instruct you
17 with what all of this stuff is. I'm not going to go into
18 that. But when you're back in there and you're in that
19 deliberation, and you're in your jury room and you're
20 deliberating, the judge is going to give you a verdict
21 form. And that verdict form is gonna say guilty or not
22 guilty. And this is where I'm about to wind up with the
23 verdict form, guilt or not guilty. What does guilty mean?
24 Guilty means that the government has proved every element
25 of the offense beyond a reasonable doubt. They've proved to

1 you possession. They've proved to you beyond a reasonable
2 doubt what the substance was. And they've proved to you
3 beyond a reasonable doubt what the weight was. Have they
4 proved all, all those elements? And, and some of the other
5 ones they have to prove, but those are the main ones. Have
6 they proved all of them? They test 7 pills and I'll just
7 add this the pills, I mentioned earlier, remember those 7
8 pills that they tested out four hundred and something, and
9 I asked her, did you weigh those 7 pills? We know that
10 those 7 pills a methamphetamines, did you weigh them? She
11 said, no, we don't know what the weight is. We didn't
12 weigh them. So we don't know what the weight of those 7
13 are. Could those 7 pills add up to 100 grams? Probably
14 not. It impossible. Mathematically, if you take a look at
15 it, but when you see 28 pills and 28 pills has a weight --
16 when she weighed 28 pills and 28 pills as a weight of, you
17 know, you know, about 20 grams, you know, 7, you know,
18 pills cannot add up even close to 100 grams. We don't know
19 what the weight is. And that's the thing. We have no idea
20 of the of the drugs that were tested, of the 7 pills that
21 were tested, we have no idea what the weight is. No idea,
22 whatsoever. And anybody who tells you that they know what
23 the weight of those 7 pills are, you know, are not being
24 honest to you. And the other 400, to the chemist credit she
25 admitted, I didn't test them and I have no idea. I can't

1 say to you, beyond a reasonable doubt what those four
2 hundred and something pills were because I didn't test
3 them. And testing is the only way that you can determine
4 that they are methamphetamines. If they proved all of that,
5 you choose guilty, beyond a reasonable doubt. If they
6 haven't choose all of that. That's what the non-guilty is.
7 When you see guilt or non-guilty, non-guilty means that the
8 State hadn't meet its burden. It hadn't proved every
9 element beyond a reasonable doubt. Regardless, of what you
10 think personally, regardless of what you think personal,
11 and I think that's what the government is hoping that you
12 would do, you hear a lot of talk about common sense. Yeah,
13 use your common sense. But of course is, you also have to
14 also follow the law. You're professional jurors today. You
15 can't deliberate things like you deliberate them in your
16 house. Yeah, you see a tray of cookies from the cookie jar,
17 and you said, you know, I bet you little Timmy ate them.
18 You have no proof. You didn't see a little Timmy take them
19 out of a jar. You know, but in your house that's good
20 enough evidence. You know, to go and punished Timmy. It's
21 not in the court of law. It got to -- it's proof beyond a
22 reasonable doubt. And we don't exercise those in our
23 everyday lives. I know I don't. When I make decisions, a
24 lot of times with family and friends and casually, you
25 know, I don't say anything. Proof beyond a reasonable doubt

1 in your everyday life. But in the courtroom that's what
2 you've got to go on.

3 And if everything hadn't been proved beyond reasonable
4 doubt that's what not guilty means. It means the
5 government hadn't met its burden on all of the elements.
6 Even on one of the elements, if the elements -- if there
7 are four elements and they satisfies three and they lacking
8 on one, they've failed to meet their burden. And our system
9 says, you can't convict. And that what Mr. McKeiver is
10 asking you to do today, and I think what our system is
11 asking you to do today, is hold the government accountable
12 to what promises us. The Government make promises to us,
13 hold them accountable to the it. The Constitution means
14 something. Don't give us a constitution and when it's
15 inconvenient to say, you know, we said all those pretty
16 words on paper, but we didn't really mean them. You know,
17 because it's not convenient right now at this moment. When
18 they write all of these principles of law and all of these
19 statutes talks about the rights that it gives its citizen,
20 they said that we're not going to lock you up until we can
21 prove you're guilt beyond a reasonable doubt. And then they
22 get a courtroom and say, yeah, we ain't quite got there
23 yet. You know, just overlook it at this at this moment.
24 Hold the government accountable to what it promises us.

25 That's what this case is about. It's about our

1 judicial system. If they've done everything that they're
2 supposed to do beyond a reasonable doubt, the system will
3 work. If they haven't, but you have to do, you have to do
4 what the law commands. You've got to set your personal
5 feelings aside. I don't know how you feel, nobody does. But
6 they have no place in the jury room. This is who we are as
7 a country.

8 Thank you very much for listening to me. And I won't
9 get a chance to get up and Mr. Daniel will get up and talk
10 with you last. And of course, his job is gonna be to try to
11 pull you the other way. And I think he'll do a pretty good
12 job at trying to do that, you know, because he's a good
13 attorney. He is. He's a good attorney. He'll get up there
14 and try to make the arguments for the government. But hold
15 the government accountable. And everything that he asked
16 you to believe that he hadn't proved and every, in every
17 leap of logic that he asked you to make and that leap of
18 logic, logic is not supported by solid evidence of proof
19 beyond a reasonable doubt, hold him accountable. Not him
20 personally, but the government. He represents the
21 government. Hold the government accountable. I want to
22 thank you very much. I think everybody will tell you here
23 is absent to military service is the most important service
24 that we have is jury service. It's the most important civil
25 service that we have. That's the reason why, you know,

1 we're not like other countries, where we have to disputes
2 and disagreements. We can collect 12 citizens and we can
3 sit them now and present the case to them, and of course,
4 have them to apply according to the law. We don't have to
5 go out and, you know, do terrible things like sometimes
6 they do in other countries and that's all possible because
7 of you. It's all possible because of you so I thank you. I
8 know Mr. Daniel thanks you and I know that everybody else
9 does. It's an important service.

10 Thank you very much.

11 THE COURT: Solicitor?

12 MR. DANIEL: Anybody need a break real quick?

13 THE COURT: Does any member of the jury need a
14 quick break?

15 (Whereupon, the jury exits the courtroom at 12:47 p.m.)

16 (Whereupon, the jury enters the courtroom at 12:57 p.m.)

17 THE COURT: Solicitor?

18 **Closing arguments- Ms. Daniel:**

19 THE COURT: Thank you, Your Honor, if it pleases,
20 the Court? Mr. Brooker? Ladies and gentlemen, I promise you
21 there are several things Mr Brooker said that I would like
22 to address and I will, at the appropriate time. But we're
23 gonna go through this in a very methodical order, and I
24 won't be very long, I promise.

25 As we've talked about, what do I have to prove beyond

1 a reasonable doubt that in Dillon County on or about
2 September 9, 2019 Marc McKeiver knowingly sold, delivered
3 or possessed 100 grams to 200 grams of methamphetamine.
4 Let's take each one of those. First, in Dillon County, how
5 do we know he happened in Dillon County? J. T. Martin of
6 sled said it. Alex Blake of sled said it. They both
7 testified that this occurred in Dillon County. You've even
8 heard other people say according, even the witness this
9 morning, that that house was in Hamer, Dillon County. So
10 let's check that off in Dillon County. Done. Beyond a
11 reasonable doubt.

12 Next on or about September 9, 2019, how did we prove
13 that? Sled told you that it was September 9, 2019. Even,
14 had a date stamped on that photograph from sled, both of
15 those photographs. The one that McKeiver posted it himself
16 and the Snapchat records that indicate that the picture of
17 those pills all posted September 9, 2019. So check, beyond
18 a reasonable doubt on or about September 9, 2019.

19 Next was it Marc McKeiver who sold, delivered or
20 possessed methamphetamine? How do we prove that? Well, the
21 reason we printed this still shot wasn't because the video
22 is some awful video, it's because that makes it pretty
23 clear who that is who answered the door, Marc McKeiver. How
24 else do we know that it's Marc McKeiver? Remember that's
25 the picture that he posted. When did he post that?

1 September 9, 2019 to his own Snapchat account.
2 How else do we know that it's Marc McKeiver? Agent Martin
3 with sled said there were 2804 images returned on that
4 search one from Snapchat. I picked out eight or nine of
5 them to show you that McKeiver posted all these selfies,
6 all, sorry, all around the date of September 9, 2019. These
7 were September 14, 2019, September 11th, September 5th,
8 September 4th. These are just the ones I selected. Nobody
9 posts pictures of someone else on their Snapchat account
10 not this many times. This is his Snapchat account. This is
11 Marc McKeiver, ain't no doubt about that, reasonable or
12 otherwise. He also goes by Duke as been justified to. James
13 Blake, of sled, a phone number that was called
14 [REDACTED], the same number that snap says is associated
15 with the account, which also has been named Duke. Is all
16 that just a coincidence? That's what the defense would have
17 you to believe. It's all just a big coincidence. The phone
18 call that was placed by the CI on the way to the house to
19 buy the drugs was on speakerphone. Agent Blake said I heard
20 the voice. Agent Blake said, later that day or the next
21 day, he watched the video. We couldn't hear the audio for
22 legal reasons, but because the CI is dead. But he
23 identified that voice that he had heard the day before on
24 the speakerphone as being Marc McKeiver. The law doesn't
25 require me to bring in some voice analyst professional to

1 prove that to you. If my mother calls my phone and leaves
2 me a voicemail, but she calls from some number that I don't
3 know, she calls myself and leaves me a voicemail, shouldn't
4 have to tell me who it is when I listen to voicemail
5 because I know her voice. I don't have to be an expert in
6 voice identification to be able to point that out. But
7 granted, I'm more familiar with a mama's voice than Mr.
8 Blake would have been of Marc McKeiver's voice. But he
9 heard the same voice the same day. Then, Blake identified
10 McKeiver when McKeiver accompany the CI out of the door
11 after the buy. Asia Page testified this morning, it's his
12 sister. I hope my sister would do what she could to help me
13 to if I were facing Mr. McKeiver is facing. But she brought
14 nothing to the table about what happened on September 9,
15 2019 because she wasn't there. She has no idea what
16 happened. She adds nothing to this case. Was it Mark
17 McKeiver? Yes, beyond a reasonable doubt.

18 Next knowingly. The defendant is the law, must have
19 knowledge of the drugs and the intent to control their
20 disposition or use. He knowingly, we believe and we'll get
21 into this in a minute. held it in his hand. He knowingly
22 possessed it enough to post a picture of several bags of it
23 on September 9, 2019. We believe that that's what that was
24 in that photograph. He knowingly possessed and/or sold it.
25 None of this is by accident or without Mr. McKeiver's

1 knowledge, not one part of it.

2 Ladies and gentlemen, use your common sense. That's
3 what we've been talking about, right, since yesterday
4 morning. Don't make this more complicated than it is. Check
5 knowingly, beyond a reasonable doubt.

6 Now, did he sell, deliver or possess? Pay real close
7 attention to this 'or' right here. The judge is going to
8 read you the law right when I finished in just a few
9 minutes. I don't have to prove both. I have to prove to you
10 that he either sold it, delivered it or just possessed it
11 in order for him to be found guilty beyond a reasonable
12 doubt. So first, because you can choose either one of them.

13 Let's talk about selling and delivering. This
14 photograph posted September 9, 2019 on Mr. McKeiver Snap
15 account, is it just coincidence that the same day he posts
16 these pills, which have really unique designs and shapes,
17 are the same pills that the CI bought from him, brought out
18 to the sled car? Is that just a magical coincidence? The CI
19 didn't post that picture to the CI's Snapchat. McKeiver
20 did. Common sense.

21 Continuing with selling or delivering. The CI was
22 searched before the operation to make sure he didn't have
23 everything on. Standard procedure. There was a phone call
24 placed to the phone number that we all know to be
25 McKeiver's on the way there. McKeiver answers the door.

1 Now, pay attention to this, the defense wants you to
2 believe based on this morning's witness that the CI lived
3 there or how spent a whole bunch of time there or
4 something. If that's true, why is he not knocking on the
5 door waiting several seconds for somebody to come answer
6 and let him in? If that's his own place, essentially,
7 that's what they're telling you. And then what happens when
8 McKeiver opens the door? Does McKeiver look surprised to
9 see him? No. McKeiver turns around takes the CI immediately
10 back to a bedroom. The CI was in that house for one minute
11 and thirty-seven seconds. You'll have this video if you
12 want to watch it again. Count it for yourself. The CI was
13 in the home, because maybe it's his home or something now,
14 for one minute and thirty-seven seconds. McKeiver lets him
15 in. Escorts him all the way to the back bedroom. Something
16 happens back there, maybe with something to somebody hand,
17 and then he immediately leaves. And what does he show back
18 up with in the sled car, a minute and thirty-seven seconds
19 later? A bag of drug, two bags of drugs.

20 Common sense. I know I keep hitting that over and over
21 again, but that's what, that's what this is about right
22 now.

23 The video. The defense wants this perfect video before
24 you can convict. That's what they say we have to have. No.
25 we don't. You have testimony from the sled agent whose

1 worked, both of them, have worked hundreds and hundreds of
2 drug cases, where a CI wears a camera and there's a video
3 and they say very few of them are perfect. Very few of them
4 show the actual drug exchange. The law does not require me
5 to show you the drug exchange. Would that be better for me,
6 for my case? Of course, it would. But he's wearing some
7 camera here. He's moving around. It's on a shirt. He's
8 moving around. It's just not, rarely are they perfect. I've
9 been doing this for 13 years. Rarely are they perfect. But
10 they don't have to be, because you're allowed to use your
11 common sense here. The law, again, does not require the
12 exchange be on video. The law does not, also, require me to
13 prove that that bag in his hand, which you're gonna get to
14 see in a minute, were actual drugs. You are allowed to
15 infer that. You're allowed to believe, yeah, those, those
16 were the drugs in his hand. Common sense.

17 Now, let's talk about possession. Because if you, if
18 you don't believe for a minute that he sold it, that
19 McKeiver sold these drugs to the CI. Do you believe that
20 he, McKeiver, just possess them? He posted a picture of
21 them on his Snapchat on the same day. That's that picture.
22 No one can say for certain that what's in his hand there is
23 a bag of this. But there's enough evidence that you've been
24 presented that you can rationally, reasonably, logically,
25 infer that is the case. The judge is going to define

1 possession for you. Most of the defense's argument like I
2 said was about selling. You take your pick. Is he guilty of
3 selling? Is he guilty of possessing? Is he guilty of both?
4 I contend he's guilty of both. But it doesn't matter. Just
5 pick one.

6 The judge is gonna tell you there are two types of
7 possession. There's actual possession. That means physical
8 custody. So as an example, I have actual possession right
9 now if this pin because I'm holding it. When I put it down,
10 I'm standing over it, I have constructive possession of it
11 now because I exercise power over it. I can control it.
12 Okay. The judge will tell you that. Either type of
13 possession satisfies the statute. Actual possession is
14 physical custody. Do you believe McKeiver is holding, do
15 you believe beyond a reasonable doubt those are pills in
16 his hand based on all of the other evidence that we see, do
17 you believe those are pills in his hand? If you do, done.
18 Additionally, the Snapchat photograph that he had in his
19 possession on 9/9/19, is that all just one massive
20 coincidence?

21 Constructive possession, like I just said, it's the
22 right to exercise, control, and dominion over something.
23 Either kind of possession satisfies the statute. That's
24 possession. Check, beyond reasonable doubt. Not beyond all
25 doubt, you're gonna have a tiny bit of doubt. Reasonable

1 doubt is my standard.

2 Next, 100 grams to 200 grams. Maribeth McCormack from
3 sled who's been doing this for 13 years. She weighed --
4 first of all, she separated all these drugs out based on
5 bag one, based on their shape. Bag two based on their
6 shape. These are the measurements. One of the shapes that
7 doesn't matter which one, you'll have the report back
8 there, 18.22 grams. Another shape was 4.74, and so on. The
9 total weight of everything that she measured was 108.69
10 grams. That's more than 100, right? Which is what I got to
11 prove. Now, this 28.93 that's in parentheses, because
12 remember, that's the part she said that their policy is,
13 once they get to 100 they stop doing the two tests. The two
14 test that they did, that she did on each of these, right,
15 they stopped doing the two. They only one test on this
16 28.93, because they presume once you're over 100 they can
17 stop, right? That doesn't mean you can't add that 28.93, if
18 you do, you get to 137.62. But it doesn't matter because
19 we're already over 100 at the 108. Under 200 is all I've
20 prove.

21 Now, on the verdict form that the judge gives you to
22 take back, you're gonna have three options. You're gonna
23 have not guilty, because the defendant is not guilty of
24 anything. You're gonna have these guilty of trafficking,
25 which is what I'm telling you he's guilty and I think I've

1 proven that. And then you're gonna have another option,
2 he's guilty of just possession, not trafficking.

3 Now, the defense made a big deal about this and I'm
4 gonna get into it in just a minute. But I'm going to submit
5 to you right now that we have met our burden beyond a
6 reasonable doubt of 100 grams to 200 grams.

7 Now, let's talk about the last one, of
8 methamphetamine. The law simply does not require that every
9 pill be tested and confirmed to be met. That's not what the
10 law says. Agent McCormack testified to you that their
11 policy of testing one pill per kind, per shape is the same
12 policy that's used all across this country. Is it not
13 ironic, would it not be a major coincidence that the only
14 meth in those bags were the random one she picked? The one
15 bat shape? The one seashells shaped? The one Snapchat
16 shape? She just randomly picked up one of each shape that
17 was meth. She said, "that's not practical to test every
18 single drug." She said using common sense, we know, she
19 said the likelihood of reaching into the bag and pulling
20 out the one pill that is meth is not great. She said it's a
21 standard operating procedure all across the country. Every
22 single pill she picked out was meth.

23 Your verdict form, again, will have the option to find
24 this defendant guilty of trafficking or possession. This is
25 not just a possession case. Trafficking, possession, or not

1 guilty, those are your three options. This is a trafficking
2 case. Sled, in their lab, did everything that they're
3 supposed to do correctly. And it's how every lab in the
4 country does it. There is no law that requires me to prove
5 to you that every pill that she had to test was meth. You
6 are allowed to infer, you're allowed to use your common
7 sense. Also I want to note very briefly, because law
8 enforcement comes under, comes under a lot of fire these
9 days for a lot of different things. Some of it is deserved.
10 In this case, law enforcement handled these drugs exactly
11 how they were supposed to. They were locked in the
12 appropriate boxes when they were supposed to be. They were
13 sealed like they were supposed to be. We've established a
14 full chain of custody. So we can tell everybody who touched
15 or had possession of these drugs once they seized. Law
16 enforcement did a good job. That was not an issue in this
17 case. I've proven beyond reasonable doubt that it was meth.
18 I've proven to you, based on the law and what it requires
19 of me, that it's over 100 grams.

20 A few final points. The defense tried to distract you.
21 I told you they would. Thinking about all this other stuff.
22 That's their job. This whole idea of cell phone ownership.
23 Many things here point to this defendant. The fact that it
24 was his voice on the call when they were all the way to.
25 The fact that he answered the door. The fact that he

1 immediately took the CI to a back room. The fact that he
2 posted all these pictures of himself on a Snapchat that's
3 called Duke, which is we know to be his nickname, which is
4 associated with a cell phone number that they called and
5 heard Dukes voice. Same thing with Snapchat account
6 ownership. Multiple selfies of him. Is it all just one big
7 coincidence? Pictures of these pills posted to Snap on the
8 exact same day that somebody goes and gets two bags of
9 pills who look just like him. Don't be distracted. Don't
10 make this more complicated than it is.

11 All our element elements have been met beyond a reasonable
12 doubt. There is not a single reasonable doubt here.

13 I submit to you that each of those things I've got to
14 prove allows you to find Marc McKeiver guilty beyond any
15 reasonable doubt, not of possession of trafficking. Because
16 according to every single thing we've heard about the
17 standards used everywhere including sled, it's more than
18 100 grams. It's 108 and that's if you don't add the extra.

19 I told you from the beginning, ladies and gentlemen,
20 this case was straightforward, but it's important. It's
21 important to this defendant who deserves his day in court.
22 This is it. It's important to the people of this county.
23 It's important to people in this county who have a vested
24 interest and there not being crime in this county.

25 MR. BROOKER: Objection, Your Honor.

1 MR. DANIEL: So ladies and ---

2 MR. BROOKER: We made need to approach very quickly.

3 (Whereupon, a bench conference is held off the record)

4 MR. DANIEL: As I was saying, Marc McKeiever is
5 guilty. The State has met its burden. We've presented more
6 than enough evidence to you to prove beyond a reasonable
7 doubt each of the elements that I'm required to prove to
8 you.

9 Thank you for your jury service.

10 THE COURT: Thank you, gentlemen. All right. Mr.
11 Foreman, and ladies and gentlemen of the jury, our timing
12 as got in a little bit of pickle here about lunch.
13 Normally, we go straight into the judge's charged of the
14 law, but as you can see from the coffee it is 1:30 or right
15 at it, 1:25. We got arrangements at B&C for lunch. Unless,
16 Mr. Foreman and the jury, instructs me differently, we
17 will break for lunch. However, before we make that final
18 decision, I'll let you poll the jury to see if you would
19 rather work through lunch and me go ahead and charge and
20 work through or do we go ahead and break and come back and
21 I'll charge when we come back. Now, if we go with Plan A
22 and go out to B&C, we were try to hold, get out there, it
23 is a buffet. We won't have to wait to be served. We can
24 probably hold it to no more than an hour and come back and
25 let me do the charge. However, if we go out to B&C I need

1 everybody to go. I don't need you scattering out and going
2 other places. That's why I need to give some direction from
3 Mr. Foreman, if there's a problem. Now, normally I'll have
4 the county arrange for transportation out there and that
5 means several of you would be in the same vehicle. So I
6 discussed this with Madam, Clerk, if we go out to the B&C,
7 we need to allow you to go in your own vehicles. If you
8 don't have your own vehicle and you need to get out there,
9 we will get one of the county cars to get you out there and
10 back. So we've got several different options here and it is
11 way into the lunch hour. They are prepared for us. So if
12 y'all quickly just step out to where you've been meeting,
13 and get a consensus as to what you want to do? We'll try to
14 oblige with them. Don't discuss the case, though, please.

15 (Whereupon, the jury exits the courtroom at 1:24 p.m.)

16 (Whereupon, the jury enters the courtroom at 1:26 p.m.)

17 **Judge's Charge:**

18 THE COURT: Have we got everybody. All right.
19 Ladies and gentlemen of the jury, it now becomes by duty to
20 charge you the law of the case and I have listened to the
21 attorneys and I appreciate their presentations to you. I
22 thank all the court's staff for their patience with us. I
23 have noticed that you followed and listened very tentative
24 to the presentation of evidence in this case and I thank
25 y'all for doing just that.

1 It now becomes a duty of the court under our
2 constitution in South Carolina to charge and instruct you
3 the law applicable to the case and with that said, let me
4 once, again, mentioned to you what the attorneys say the
5 law is that conflicts of what I tell you the law is, then
6 you follow what I say the law is.

7 And once again, the attorneys may mentioned the
8 evidence and take reference to, but what an attorney says
9 is not the evidence of the case. The evidences is the
10 testimony and the exhibits that have been presented to you.

11 It's your duty is to accept and apply the law of the
12 case that I state to you. As jurors it's your exclusive
13 duty to decide all issues of fact in this case and for that
14 purpose to determine the effect the value and the weight of
15 the evidence. Both the State and the defendant have a right
16 to expected that you'll conscientiously consider and
17 evaluate the evidence and apply the law of case thereto, to
18 the end of both the State of South Carolina and the
19 defendant will receive and obtain a fair and impartial
20 trial in this case.

21 When I use the word defendant I refer to Mr. Marc
22 McKeiver. The State of South Carolina by the bill of
23 indictment in this case, charges the Defendant, Mare
24 McKeiver with the offense known as law, as trafficking in
25 methamphetamines, 100 grams or more, but less than 200

1 grams. To the charge into the indictment the defendant has
2 entered a plea of not guilty. This plea of not guilty by
3 defendant places the burden of proof on the State to prove
4 by evidence the guilt of the defendant beyond a reasonable
5 doubt before the jury can find the defendant guilty. A
6 defendant is presumed in law innocent of the charges
7 contained in an indictment. It is a cardinal and
8 fundamental rule of the law of evidence that a defendant
9 irrespective of the enormity of the charge against him,
10 will always be presumed innocent of the crime for which is
11 indicted, unless and until the guilt of the defendant has
12 been proved by evidence that satisfies you, the jury, of
13 his guilt beyond a reasonable doubt. The presumption of
14 innocence is not a mere legal theory and it's not just a
15 legal phrase. The presumption of innocence is a substantial
16 right which every accusers entitled. The Supreme Court has
17 declared the presumption of innocence is like a robe of
18 righteousness placed about the shoulders of the defendant
19 and it remains with him and assigned him to that class, the
20 innocent, until that presumptive robe of righteousness has
21 been stripped from his person by evidence satisfying you,
22 the jury, of the guilt of the defendant beyond a reasonable
23 doubt. The presumption of innocence accompanies a defendant
24 from the time of his arraignment and appearance in the
25 court and continues with the defendant to every stage of a

1 trial. It continues with the defendant after you retire to
2 the jury room to deliberate your verdict. The presumption
3 of innocence continues in existence to the benefit of the
4 defendant until you, the jury, reached a conclusion that
5 the State has proved the guilt of the defendant beyond a
6 reasonable doubt.

7 The State is not required to prove the guilt of a
8 defendant beyond all doubt or beyond every doubt, but
9 beyond a reasonable doubt.

10 Proof beyond a reasonable doubt is proof that leave
11 she firmly convinced of the defendants guilt. There are
12 very few things in this world that we know with absolute
13 certainty and in criminal cases, the law does not require
14 proof that overcomes every possible doubt. If based on your
15 consideration of the evidence, you are firmly convinced
16 that the defendant is guilty of the crime charged, you must
17 find him guilty. If on the other hand, you think there is a
18 possibility that he is not guilty. You must give him the
19 benefit of the doubt and find him not guilty.

20 I charge you that a defendant is entitled to every
21 reasonable doubt arriving in the case, if any, upon any
22 issue of fact essential to conviction and the verdict
23 guilty. You have a reasonable doubt is to how that issue
24 should be resolved, it would be your duty to resolved the
25 reasonable doubt in favor of the defendant.

1 A defendant is not required to prove his innocence but
2 the State is required in law to prove every essential
3 element of the offense charged against a defendant by
4 evidence which satisfies you, the jury, of the guilt of the
5 defendant beyond a reasonable doubt before you can convict
6 the defendant and find him guilty. If then, upon the
7 whole case, you have a reasonable doubt as to that guilt or
8 the innocence of the defendant he's entitled that
9 reasonable that doubt. He would be entitled to an acquittal
10 and a verdict of not guilty. But on the other hand, if upon
11 the whole case, you find that the state has proven by the
12 evidence which satisfies you, the jury, of the guilt of the
13 defendant beyond a reasonable doubt, then in such
14 circumstance it would equally be your duty to convict the
15 defendant and find him guilty.

16 Now, if you find the defendant guilty, but you have a
17 reasonable doubt as to whether the defendant be guilty of
18 the greater crime charged or of a lesser crime charged,
19 then you would resolve that reasonable doubt in favorite of
20 the defendant and write a verdict of guilty only as to the
21 lesser charge. But, of course, you could not write a
22 verdict of guilty to any charge unless it's do that charge,
23 you find all the elements of the charge had been proven by
24 the State beyond a reasonable doubt.

25 Now, you know in our laws some offenses have lesser

1 included offenses which may be considered by a jury and
2 that's why I have charged you that last provision about
3 lesser charges.

4 Now, this is the indictment. You will have it later on
5 back in the jury room because the verdict forms on the back
6 of it. I charge that it is not evidence and it's not to be
7 considered by the jury as evidence. The indictment is
8 simply the formal written instrument which contains the
9 charge against the defendant and it serves as a formal
10 document by which a case is processed into the court.

11 Now, during the trial each of us, you and I, have
12 certain duties to perform. As the trial judge it's my
13 responsibility to preside over the trial of this case and
14 also have the duty to rule upon or pass upon the
15 admissibility of evidence offered during the process of the
16 trial. You are to consider only to competent evidence
17 before you and you are disregard and disabuse of your mind
18 any testimony that was ordered stricken from the record
19 during the process of this trial, if there be any. And you
20 are to consider only the testimony which has been presented
21 from the witness stand, together with any exhibits admitted
22 into the record of the case and any stipulations of counsel
23 made into the record, if there being any.

24 I have the additional duty to charge you the
25 applicable law of the case and as the presiding judge and

1 I'm the sole judge of the law of the case and it's your
2 duty to except and apply the law as I state it to you.

3 Now. if you have a preconceived idea as to what the
4 law is or what the law ought to be in the case, and it
5 should not agree with what I tell you law is, you're
6 obligated under your oath to abandon this preconception on
7 your part because you are sworn to accept the law precisely
8 as I state it to you. In every case tried in this court
9 before a jury, the jury becomes the sole and exclusive
10 judge of the facts of a case. You, the jury, are the judge
11 of the fact in this case. The court is the judge of the law
12 in this case. The constitution of this state is declared
13 that the trial judge shall not intimate, state, comment
14 upon, or make any statement to a trial jury about the facts
15 in a case.

16 Since you, the jury, are the sole judge of the facts,
17 you're not to infer from anything that I've said during the
18 progress of the trial or ruling upon admissibility of
19 evidence or otherwise, or anything that I'm now say to you
20 during the course of this charge to you that I have an
21 opinion about the facts in the case.

22 The law in South Carolina does not permit me to have
23 an opinion about the facts in the case. The facts are a
24 matter solely for you, the jury, to determine. As jurors,
25 then, it is your duty to determine is I state it to you the

1 effect, the value and the weight of the evidence presented
2 during the course of the trial.

3 Necessarily, then you must assess the credibility of
4 the witnesses who have testified in the case. Credibility
5 is simply a legalistic term which means believability. I
6 charge you that in term the question of credibility or
7 believability of witnesses, you may believe one witnesses
8 as against several witnesses, or several witnesses as
9 against one witness. You may believe a part of the
10 testimony of a witness and reject the remaining part of the
11 testimony of that same witness. You may believe the
12 testimony of a witness and its entirety or reject the
13 testimony of the witness and its entirety. You may consider
14 whether any witness has exhibited any interest, any bias,
15 or any prejudice in the case. You may consider the demeanor
16 of a witness, the appearance of a witness from the witness
17 stand and you may consider the opportunity for knowledge
18 concerning those things about which a witness testify.

19 Now, let me speak with you about expert witnesses.
20 Considering the opinion of expert witness that may have
21 been committed or have admitted in the case, you should
22 consider the factual evidence first. An expert may base his
23 or her opinion upon the factual evidence presented at
24 trial. Alternatively, the expert may base the opinion upon
25 facts that are not in evidence. You may consider the expert

1 opinion. If you find that the testimony based upon facts
2 that are reasonably relied upon by experts in their
3 particular field, you must consider expert testimony in the
4 same manner as you do other testimony and give it such
5 weight as you may believe it is entitled to when considered
6 with all the other evidence in the case. Such testimony is
7 given for the purpose of helping you understand the
8 evidence and not for the purpose of controlling your
9 judgment. The value of it does not depend upon the skill
10 and knowledge possessed or profess by an expert, but rather
11 upon the skill and knowledge he or she actually possesses.
12 It is for you to judge whether he or she possesses such
13 knowledge. In this regard, you may consider his or her
14 training, experience, ability to communicate their ideas,
15 the logic of their opinion the factual support for their
16 opinion and all other factors as you would judge in the way
17 the testimony of other witnesses. The value and effect of
18 expert, excuse me, expert testimony as a matter solely to
19 be estimated by you, the jury. No mere opinion of an expert
20 can't be exempted as in and of itself, proof or reliable
21 but must be weighed by you and convince your judgments
22 beyond a reasonable doubt that with the same force and
23 effect as any other fact proven the case before you can
24 rely upon it as a basis of conviction. You have heard the
25 testimony of a witness who has special knowledge, skill,

1 experience, training, or education in a particular field
2 and who has given her opinion as an expert as to the
3 matters in which she is skilled. In determining the weight
4 to be given such opinion you should consider the
5 qualifications and credibility of the expert and the
6 reasons given for her opinion. You are not bound by such
7 opinion. Give it the weight, if any, to which you deem it
8 entitled.

9 Now, concerning witnesses and testimony, you exercise
10 your mental processes. This law simply requires that you
11 exercise your good judgment, your common sense, your sense
12 of logic and reason, and your experiences in life. You then
13 apply these attributes of ability to the evidence and
14 determine the weight of the evidence into these state of
15 facts as you determine. You take and apply the law as I
16 state it to you and, thus, arrive a verdict in the case.

17 Now, I'm gonna speak with you about the specific law
18 of the offense that's charged. The defendant in indictment
19 is charged with trafficking in methamphetamine. The State
20 must prove beyond a reasonable doubt that the defendant
21 knowingly sold, manufacture, cultivated, deliver,
22 purchased, brought into this State, provided financial
23 assistance, or otherwise aided, abetted attempted, or
24 conspired to sale, manufacture, cultivate, deliver,
25 purchase or bring into this State was knowingly and

1 actually or constructive possession, knowingly attempted to
2 become an actual or constructive possession of
3 methamphetamine. The State must also prove beyond a
4 reasonable doubt that the amount of the methamphetamine or
5 any mixture containing methamphetamine was 100 grams or
6 more, but less than 200 grams under that indictment's
7 charge.

8 Now, you heard me mentioned lesser included offense.
9 The lesser included defense would be what we would call
10 possession of methamphetamine. A person possess less than
11 one gram of methamphetamine or cocaine base is defined in
12 Section 44-53-110, is guilty of possession of
13 methamphetamine. The law of possession of methamphetamine.

14 All right. Now, that's your two specific charges there
15 and I speak to you about some of the terms that I mentioned
16 in those particular statutes. To prove possession the State
17 must prove beyond a reasonable doubt the defendant had
18 knowledge, sorry, must prove beyond a reasonable doubt the
19 defendant had knowledge of, power over, and the intent to
20 control the disposition, disposition or use of the drugs
21 involved. The State must prove the defendant had the right
22 and power to control the disposition or use of the drugs.
23 For actual possession, the State may meet this burden by
24 proving the defendant had actual physical custody of the
25 drugs. For constructive possession, the State must prove by

1 other evidence the defendant had the right and power to
2 exercise control over the drugs. The State must prove the
3 defendant had knowledge of the drugs and the intent to
4 control the disposition or use of the drugs.

5 Give me just a second to get all the paperwork here
6 ready.

7 Now. I charged you concerning the election of defendant to
8 testify or not to testify. I instruct you now and emphasize
9 to you that the election of a defendant in the trial or
10 criminal case not to testify in his own behalf is not a
11 factor to be considered by you in any way, in your
12 deliberation and in your consideration on question of the
13 guilt or the innocence of the accused. It must not be
14 considered by you in any manner whatsoever against the
15 defendant or mitigate against him in any respect
16 whatsoever. A defendant has the constitutional right to
17 remain silent. And the assertion of such constitutional
18 right cannot and must not be considered by you in your
19 deliberations. Under your oath, you are to reach no
20 inference and draw no conclusion whatsoever from the fact
21 that a defendant in this case did not, himself, testify.
22 This should not even be discussed in the jury room.

23 I also charge you the principle that mere presence at
24 the scene of a crime is not a crime.

25 All right. Ladies and gentlemen, you're not to be

1 partisans or advocates for the State of South Carolina or
2 the defendant. You do not serve as jurors to reward friends
3 or punish enemies. Obviously, such a perverted system of
4 justice would be intolerable. You have been selected by
5 both the State and the defendant to be fair and impartial
6 jurors. It is your duty, then, by your joint deliberations
7 to determine the facts in this case, given to the defendant
8 the benefit of every reasonable doubt on each and every
9 issue. Then, to the facts which you determine, you then
10 take it and apply the law which has been given to you by
11 the court and thus, arrive at a verdict. And when you have
12 accomplished these responsibilities you will have satisfied
13 your oath as jurors and you will have discharged your duty
14 to the court.

15 I'm now gonna speak with you about the forms of the
16 verdict in the case. Of course, if the State has failed to
17 prove guilt of the defendant beyond a reasonable doubt,
18 your verdict would be two words, not guilty. If the State
19 has proved the guilt of the defendant beyond a reasonable
20 doubt, your verdict will be one word, guilty. There are
21 three possible verdict in this case. And on the back of the
22 indictment which I have now shuffled into my paper. The
23 three possible verdict are and Mr. Foreman and ladies and
24 gentlemen of the jury, don't give any weight to how they're
25 numerically listed. I just put them all here. Once you

1 reach a verdict Mr. Foreman and ladies and gentlemen, it
2 would be the Foreman's duties to check the appropriate
3 verdict, sign his name and put the date on here, okay.

4 The three possible forms of verdict, (1) guilty of
5 trafficking in methamphetamine, 100 grams or more but less
6 than 200 grams, (2) guilty of possession of
7 methamphetamine, and (3) not guilty. That's right on the
8 back of this indictment, okay.

9 The verdict that you render in this case must be the
10 verdict of each and every juror, it must be a unanimous
11 verdict. All 12 deliberating jurors must agree on the
12 verdict which you authorize the Foreman write for the jury.
13 I am, at this time, going to ask you to step back out to
14 where you have been assembled, I think, a wider room. And I
15 want to ask that the, I think, we're down to three
16 alternates. Mr. Bailiff, if you arrange a room for the
17 three alternates, okay. They will be separate at this time
18 from the other members of the jury.

19 Now, Mr. Foreman, should you get back there in a room
20 and before you begin your deliberation, should you have a
21 juror to look your right in the eye and say I'm not
22 deliberating this case. I'm not taking any part of this
23 case into consideration, don't begin your deliberation,
24 you immediately notify the bailiff of that fact and I will
25 deal with that accordingly, okay.

1 Now, don't begin your deliberations until we get all
2 these exhibits back to you and I got to meet with the
3 attorneys one last time. If someone needs a break or has to
4 go to the restroom, if anybody needs to go outside and
5 smoke, um, stop your deliberations when you do begin them.
6 Stop them until everybody is back, all 12 are back, okay.

7 Well, will put it this way, once you begin your
8 deliberations if you decide that you want to go to lunch,
9 we still have time. They are open out there for the rest of
10 the afternoon. We can do that. But I do need, you know,
11 everybody to stay intact. So I'll leave that up to you to
12 determine if you will break for lunch. Once again, stop
13 your deliberation if somebody needs to step out. Once
14 again, no independent investigations or research. You all
15 are decide this case on the evidence that's presented in
16 court, all right.

17 Now, if y'all will step out there while we get
18 everything together and I check the attorneys, if you are
19 more comfortable with a lot more space, Mr. Foreman, let me
20 know, we will clear this courtroom, secure the doors and
21 you may deliberate in here. Everybody will be out but the
22 12, okay. So that's what y'all desire, we will clear the
23 courtroom and you can meets in whatever corner you want to
24 and you can spread out. If you're comfortable wherever we
25 are then, you know, got it to yourselves and nobody else is

1 around to possibly to interrupt, that'd be fine too. But
2 I'm gonna leave that up to you to determine that.

3 All right. If y'all will step out. I need the
4 alternates to stay separate just for a few more minutes,
5 okay.

6 (Whereupon, the jury exits the courtroom at 1:52 p.m.)

7 THE COURT: All right. Anything for the record?

8 MR. DANIEL: Your Honor, I don't have any objections
9 to any of the charges. I think that you covered everything.
10 The only question I have is about the verdict form, just to
11 try to avoid an inconsistent verdict, if the jury were to
12 find Mr. McKeiver guilty of trafficking, then by
13 definition, he's guilty of possession. If they come back,
14 checking the trafficking box and not the possession box,
15 what does that mean for him because I don't know the answer
16 to this? I'm asking. What does that mean for an
17 inconsistent verdict? Is that okay?

18 THE COURT: I don't think there's any problem with
19 that.

20 MR. DANIEL: Okay. That was my only question.

21 THE COURT: You've got anything about that?

22 MR. BROOKER: No. No. I don't think there's a problem
23 because I think, obviously, there's a distinction between
24 the two, between the two offenses. One doesn't require any
25 weight at all. The other one would require to the jury to

1 find, 100 grams or more. So there's a distinction between
2 the two all of the lesser included. So -- and I think you
3 instructed the judge that if they have conflict where,
4 where they don't know whether or not the, the greater
5 offense has been satisfied, but they believe that there was
6 some sort of crime they have to give him the benefit of the
7 doubt I think select ---

8 MR. DANIEL: Okay. That's fine.

9 THE COURT: Solicitor, if you find something on
10 that, find that the court happens to be wrong, as long as
11 they're deliberating I can always bring them back in, you
12 know, and give them additional charge, but, now, I'm like
13 Mr. Brooker it's three separate ---

14 MR. DANIEL: That's fine. I'm just wanted to make
15 sure because I don't know the answer to the question.
16 That's why I'm asking.

17 THE COURT: All right. I need y'all to check off on
18 these exhibits.

19 MR. DANIEL: Yeah.

20 (Whereupon, the lawyers and the court reporter goes through
21 the exhibits)

22 MR. DANIEL: All right. Judge, that's it.

23 THE COURT: Madam, Clerk, they may begin their
24 deliberations. And if I want come back in this courtroom,
25 we're clear it.

1 THE CLERK: Okay.

2 (Whereupon, the jury begins they're deliberations at 1:58
3 p.m.)

4 (Whereupon, Mr. Foreman enters the courtroom at 3:01 p.m.)

5 THE COURT: Yes, sir?

6 MR. FOREMAN: Your Honor, we have an issue. At this
7 moment in time we do not have an unanimous verdict. And the
8 reason being that we do not have a unanimous verdict is we
9 have a juror who has now verbally admitted a bias to law
10 enforcement. In the evidence is not going to sway either
11 way. Eleven jurors have voted unanimously and we have
12 wondered who has verbally stated that due to opinions and
13 bias will not make any other decision.

14 THE COURT: Okay. You may return to the jury room.
15 I'll go with the Allen charge, okay.

16 MR. FOREMAN: I'm sorry?

17 THE COURT: I'll go with what we call a Allen
18 charge. If you go by with them, we'll bring you back in, in
19 just a minute.

20 MR. FOREMAN: Yes, sir.

21 (Whereupon, Mr. Foreman exits the courtroom at 3:03 p.m.)

22 (Whereupon, the jury enters the courtroom at 3:47 p.m.)

23 **Allen Charge:**

24 THE COURT: All right. Mr. Foreman and members of
25 the jury, I'm gonna give you an additional charge. It has

1 to do with the problem of tried to reach a verdict. And I
2 have some very brief comments that I would like to make by
3 way of further instruct on a matters of you being able to
4 reach a verdict.

5 As I've already told you, you are the sole judges of
6 the facts and the evidence in this case. As the judge, I
7 have already told you I'm not permitted to even give you a
8 hint as to how I might feel about any factual matter and
9 certainly could give you no hint about what verdict you
10 ought bring in this case. It is my duty to state the law of
11 the case and I've done that and it is your duty to bring in
12 the verdict.

13 Now, I can say this, that when a matter is in dispute,
14 it is not always easy for even two people to agree or two
15 persons, two men or two women, and when 12 must agree it
16 becomes, obviously, correspondingly more different. But it
17 is important that litigation, and in this is litigation, be
18 ended. If it may be ended without a single one of you doing
19 violence to your own conscious. No juror is expected to
20 give up on an opinion based on reasoning satisfactory to
21 himself or herself merely for the purpose of being in
22 agreement and I want you to understand that. Now, you are
23 not called upon often to try cases. There are 49 circuit
24 judges who work it is to try cases from day to day
25 throughout the year in this state. It is very unusual,

1 almost unheard of for a jury to go out and promptly return
2 with a verdict. This is what would happen if a jury
3 normally was in agreement to begin with. At the same time
4 we usually get a verdict. What that means is that it is
5 normal for jurors to disagree first, but the fact we
6 normally give a verdict also means that after reasonable
7 persons lay aside all extraneous matters and determined to
8 decide a case on the basis of the law and evidence, they do
9 come to a common understanding and write a verdict. It has
10 never been intended that the verdict of a jury should be
11 the verdict of any one person. On the other hand, the
12 verdict of the jury is a collective reasoning of all
13 persons put together and that is why we have a jury. So
14 that we may have the benefit of collective thought and
15 selective reasoning. It becomes your duty to tell the other
16 jurors how you feel about the case and why you think as you
17 do, and I'm sure that y'all been doing that. On the other
18 hand, it becomes the other jurors duty to exchange views
19 with you and you should listen to each other and give to
20 the others thought such meaning as you think it should
21 have. And so to some degree, it can be said that jury
22 service is a matter of give and take. If you do not agree
23 on a verdict, it doesn't mean that anybody wins it just
24 means that in some future term of court before some other
25 judge, perhaps, there's some other jury will sit where you

1 are seated. The same participants will come and the same
2 lawyers, probably, will come and they will ask basically
3 the same questions, then presumably and probably they will
4 get much the same answers. And we'll get through this whole
5 process again. I have no reason, now, to think that any
6 other 12 citizens of Dillon County will be more capable of
7 solving this controversy than you. So I'm going to ask you
8 at this time to deliberate further and see if you cannot
9 write a verdict in this case. And I want to close this part
10 of this added charged by reminding you, again, while it is
11 important to litigation be ended, it should be ended in the
12 form of a verdict, but no juror doing violence to his or
13 her own conscience. No juror is expected to give up an
14 opinion based on reasoning and satisfactory to himself or
15 herself merely for the purposes of being in agreement.

16 Now, with these further instructions and reminding you
17 of your oath, I'm going to ask you to go back, return to
18 the jury room in deliberate further.

19 (Whereupon, the jury exits the courtroom at 3:52 p.m.)

20 THE COURT: Okay. Anything?

21 MR. DANIEL: No objection from the State on the
22 Allen charge.

23 MR. BROOKER: The only thing -- I'm sorry, Madam,
24 Court Reporter. I'm sorry. The only objection, Your Honor,
25 I want to put on the record is, is that I think there was a

1 couple of phrases that was said I think during the Allen
2 charge we objected to. And of course is, and I know Your
3 Honor is reading the standard charge. But I think there's a
4 part that says, it's important, I think you said it a
5 couple of times, "it is important that litigation be
6 ended", which at least in my opinion suggested that it puts
7 pressure on the jury that says, that says to the jury that
8 you have to come to some sort of a conclusion one way or
9 the other. And of course is, is that -- it's my opinion is
10 that reasonable people, you know, can listen to the same
11 evidence, and then of course is, is that come to different
12 conclusions. And of course is, is I don't want a juror to
13 feel as if, you know, that, that trials require or have to
14 come to, to it end by them reaching a verdict. Sometimes
15 reasonable jurors can disagree and a verdict will never be
16 reached, at least a consensus verdict. And of course, I
17 think there's a part that says, we usually get a verdict.
18 Again, I think that puts pressures on the juror and to
19 suggest to the juror that, you know, most of the time other
20 jurors just sitting in your same situation, you know,
21 usually there able to come through and give a verdict. And
22 of course, if you don't, then of course is that, that makes
23 you unusual as a juror and I don't want them to feel the
24 added pressure, you know, that hey, you know, we're the
25 oddballs, you know, anybody else, most of the jurors

1 usually get a verdict, we're the oddballs. And of course
2 is, is that, you know, we have to be like the other jurors
3 and come to a verdict. And it may force a juror, you know,
4 to give up a deeply held belief on simply to try and, you
5 know, conform what the usual thing is and that's to come to
6 a verdict. And of course is, and I think there's a part in
7 there that basically says that, and I'm rephrasing, Your
8 Honor, that basically says that, hey, if you don't reach a
9 verdict then, we're going to have to assemble all these
10 people, judges, lawyers, and witnesses, and do this thing
11 all over again and go through this process all over again
12 if you don't do it. And I don't want the jury to feel as
13 if, hey, you know, that if you don't reach a verdict here,
14 you know, then of course, what you're going to be doing is,
15 is that, you know, you're going to because in the state
16 time and money and we're going to have to do this thing all
17 over again. I don't want the jurors to feel that sort of
18 pressure. I don't think they should feel that sort of
19 pressure based upon the judicial economy of having to redo
20 this thing all over again. That's all of my objection, Your
21 Honor.

22 Thank you.

23 THE COURT: So noted. You know the appellate courts
24 have reviewed these charges at nauseum over the last ten or
25 fifteen years and this particular one is the one that has

1 been adjusted somewhat since I've been on the bench and
2 it's the standard one as I understand we're given so I'm
3 stick to what I've done. And I also point out to you, at
4 least, twice in that charge, I made it clear that no one is
5 to violate their conscience in whatever decision they
6 reach.

7 MR. BROOKER: And I agree with you, judge, you
8 certainly did.

9 (Whereupon, the jury enters the courtroom at 4:39 p.m)

10 THE COURT: Madam, Clerk?

11 THE CLERK: Have you reached a verdict?

12 MR. FOREMAN: We have, Your Honor.

13 **Verdict:**

14 THE COURT: If you'll pass it up to Madam, Clerk.
15 All right. Signed and dated. Madam, Clerk, you may publish
16 the verdict. Hold up just minute. No matter what the
17 verdict is, now, I don't want any disruption in the court.
18 If can't handle your emotions, you need to step out now.
19 All right. Madam, Clerk?

20 THE CLERK: On Your Honor docket is 2019-GS-17-996,
21 the State of South Carolina, County of Dillon, Court of
22 General Sessions, November 2019, Marc Yasin McKeiver
23 indictment for drug trafficking and math or cocaine base,
24 100 G or more, but less than 200 G.

25 We, the jury, find guilty of trafficking in

1 methamphetamine signed by foreperson 1/12/2022.

2 THE COURT: Mr. Foreman and ladies and gentlemen of
3 the jury, is this your verdict so say you all, if you'll
4 raise your right hand?

5 (Whereupon, the jury all raised their right hands)

6 THE COURT: Okay. All right. Thank you very much.
7 Any anything further from the jury?

8 MR. DANIEL: Nothing from the State.

9 MR. BROOKER: Nothing, Your Honor, I'm just gonna ask
10 poll the jury, I guess, that's exactly what you just did.
11 Individually polling the jury.

12 THE COURT: All right. You got your list?

13 MR. DANIEL: I was just ask the record reflect that
14 every juror raised their hand.

15 THE CLERK: Ronald E. Alford? Latoria E. Bess ---

16 MR. DANIEL: Your Honor, may we approach please?

17 THE COURT: Yes.

18 (Whereupon, a bench conference is held off the record)

19 THE COURT: Madam, Clerk, we gonna individually
20 poll the jury and you know you just ask them if -- call
21 their name and asked them if it's their and still their
22 verdict.

23 THE CLERK: Yes, sir. Latoria Alls, would you stand
24 you stand please. Is this your verdict?

25 MS. ALLS: Yes.

1 THE CLERK: Still your verdict?
2 Ms. Alls? Yes.
3 THE CLERK: Thank you, ma'am. Tiffanie Beck, is
4 this your verdict?
5 MS. BECK: Yes.
6 THE CLERK: Still your verdict?
7 MS. BECK: Yes.
8 THE CLERK: Thank you. Michael Berry, is this your
9 verdict?
10 MR. BERRY: Yes.
11 THE CLERK: Still your verdict?
12 MR. BERRY: Yes.
13 THE COURT: Candice Bozeman, is this your verdict?
14 MS. BOZEMAN: Yes.
15 THE CLERK: Still your verdict?
16 MS. BOZEMAN: Yes.
17 THE CLERK: Thank you. Robert Bridges, is this your
18 verdict?
19 MR. BRIDGES: Yeah.
20 THE CLERK: Still your verdict?
21 MR. BRIDGES: Yep.
22 THE CLERK: Thank you, sir. Mr. Cooper, Jr., Dave
23 Cooper, Jr., is this your verdict?
24 MR. COOPER: Yes.
25 THE CLERK: Still your verdict?

1 MR. COOPER: Yes.

2 THE CLERK: Thank you, sir. Mary Jenkins, is this
3 your verdict?

4 MS. JENKINS: Yes.

5 THE CLERK: Still your verdict?

6 MS. JENKINS: Yes.

7 THE CLERK: Thank you. Walter Long, is this your
8 verdict?

9 MR. LONG: Yes.

10 THE CLERK: Still your verdict?

11 MR. LONG: Yeah.

12 THE CLERK: Thank you, sir. Rachel McInnis, is this
13 your verdict?

14 MS. McINNIS: Yeah.

15 THE CLERK: Is it still your verdict?

16 MS. McINNIS: Yeah.

17 THE CLERK: Traci Moody, is this your verdict?

18 MS. MOODY: Yes, ma'am.

19 THE CLERK: Still your verdict?

20 MS. MOODY: Yes, ma'am.

21 THE CLERK: Thank you. Chiquita Pernell, is this
22 your verdict?

23 MS. PERNELL: Yes.

24 THE CLERK: Still your verdict?

25 MS. PERNELL: Yes.

1 THE CLERK: Thank you, ma'am. Joseph Tart?

2 MR. TART: Yes, ma'am.

3 THE CLERK: is this your verdict?

4 MR. TART: Yes, ma'am.

5 THE CLERK: Still your verdict?

6 MR. TART: Yes.

7 THE CLERK: Thank you. That's it, Your Honor.

8 THE COURT: Polling is complete. Anything further
9 of the jury, Solicitor? Mr. Brooker?

10 MR. DANIEL: Nothing from the State other than the
11 jury for its services.

12 MR. BROOKER: Nothing from defense, Your Honor.

13 THE COURT: All right. Ladies and gentlemen of the
14 jury, I want to thank you for your service on this case. I
15 mean, today's Wednesday afternoon. It hasn't been a
16 tremendously long case, but I know it's been several days
17 here and you all are tired and you worked through lunch and
18 I appreciate y'all's help in resolving this case. If you
19 called to be a jury in future, I hope you will be willing
20 to come in and serve. You don't have to worry about serving
21 in circuit either this year or the next two years, unless,
22 you want to. In other words, you won't be called this year,
23 but should you be called in the next two years, you could
24 ask for an exemption, but I always encourage people to take
25 part in their civic duty, they'll do it.

1 This is the case for the jury. We're not going to pull
2 another jury this week. We've got numerous matters to
3 handle the rest of the evening and tomorrow. So we're gonna
4 release you at this time. Will, they're paid checks ---

5 THE CLERK: We have them ready, Your Honor.

6 THE COURT: Oh, you got them ready. Okay. Well, you
7 can step back to the room and please do not be upset with
8 me or Madam Clerk about the jury pay. We can't control it.
9 Personally, neither one of us are pleased about the jury
10 pay. We've tried to encouraged the county councils to
11 increase it, but they are the guardians of the taxpayers
12 money so they can be hard to convince sometime.

13 One other thing, you don't have to talk to anybody
14 about this jury service. And in closing, should anybody
15 approached you about discussing this jury service, you
16 don't have to talk to them, unless, you want to. If anybody
17 is approached in any intimidation attempt, please notify
18 the sheriff immediately of that. We're not gonna tolerate
19 anything like that and notify the solicitor's office,
20 they're always available. What we're gonna do I'm gonna
21 send you back to the room. We got to continue working here.
22 Madam, Clerk is going to distribute your checks to you and
23 then you can, you leave. I'm not let anybody leave this
24 courtroom until y'all have gotten the checks and you have
25 departed, okay. All right. If y'all follow Madam, Clerk

1 out.

2 (Whereupon, the jury exits the courtroom at 4:48 p.m.)

3 **Sentencing:**

4 THE COURT: All right. We ready for mitigation and
5 sentencing. As both of you know I don't have a whole lot of
6 wiggle room on this conviction.

7 MR. BROOKER: I think there a mandatory, there's a
8 mandatory minimum, Your Honor, of 25 years. So, yeah,
9 there's not a whole lot of wiggle room you at start at 25.
10 I'm sorry, maybe I ---

11 MR. DANIEL: It's a mandatory straight 25 because -
12 - it's not a minimum -- it can't be higher than that
13 either, so it's got to be 25 and it's got to be \$50,000
14 according to the statute.

15 THE COURT: All right. With that said, anybody want
16 to tell me anything, anything that the defendant would like
17 to say?

18 COURT REPORTER: If you can come up closer, I'd
19 appreciate it. If we can come up closer because I can't
20 understand what they're saying.

21 THE COURT: Sheriff, take the defendant. Handcuff
22 the defendant.

23 MR. DANIEL: I'll save my comments to last.

24 MR. BROOKER: Your Honor ---

25 COURT REPORTER: I need for her to come up closer.

1 I need for her to take off her mask if she's ---

2 THE COURT: She's fine right there.

3 MR. BROOKER: Your Honor, obviously, is that, that,
4 um, this is not the result in which we were hoping for,
5 but of course the jury has spoken. And of course is, is
6 that the system whatever the jury speaks, of course we have
7 to accept the verdict from the jury.

8 But with respect to Mr. McKeiver, Your Honor, Marc
9 was, Marc was born in [REDACTED]. He is extremely young.
10 With respect to his prior criminal record, Your Honor, I
11 don't think that he has, I don't believe, if my memory
12 serves me correctly, I don't have his sentencing -- let me
13 see if I got it here, his rap sheets. But he didn't have a
14 significant record at all ---

15 THE COURT: Hold up, Mr. Brooker! Have the
16 defendant face me!

17 MR. McKEIVER: Yes, sir, I was looking at my aunt.
18 I'm sorry.

19 THE COURT: Go ahead, Mr. Brooker.

20 MR. BROOKER: I think he's just concerned about his
21 aunt. I don't think ---

22 THE COURT: Well, that not who he is communicating
23 with. There's some individuals back there in the back.
24 Look at me, sir! Go ahead, Mr. Brooker.

25 MR. BROOKER: Okay. Like I said, Your Honor, is, is

1 that he does not has a significant criminal record, Your
2 Honor. Let me look and see if I've got the right one. I
3 think most of his offenses that's on his criminal records,
4 Your Honor - and here it is - and of course, is I'll go
5 through it very quickly. Most of his offenses, Your Honor,
6 I think on his criminal record are misdemeanor offenses.
7 And if I can take just a second, Your Honor, I think, um, I
8 think I see back in 2019, he has a conviction for driving
9 under the influence. I think back in 2019, driving under
10 suspension. I think, Your Honor, back in 2013, it appears
11 that he has a conviction for it says, county, a dog of
12 regulation violation, like a city ordinance conviction back
13 in 2015. He has a conviction for disorderly conduct that I
14 see. In 2015 another conviction, looks like, for driving
15 without a license. And of course a violation of city
16 ordinance. I think also he has a conviction, this is a
17 misdemeanor offense, I think of assault and battery,
18 second, back in 2018, it looks like. He has a conviction
19 for possession of marijuana, simple possession of
20 marijuana. And it looks like that he has a aggravated
21 breach of peace and that's look like in 2018. If I've
22 reviewed all of this right, Your Honor, that is the extent
23 of his prior criminal record. He doesn't have a significant
24 prior criminal record. I know that there's not a whole lot
25 of discretion from the court, but this conviction is

1 probably the most serious conviction that he's ever asked.
2 It's probably the time, you know, that, um, you know, that
3 he has served time or it will definitely will be the first
4 time that he's ever been to SCDC. And we're asking the
5 court to consider at least based upon his prior criminal
6 record, based upon his age, to consider the minimum
7 sentence as available under the statute, which is 25 years.
8 And the reason why, I think, that the minimum sentence is
9 appropriate, Your Honor, is, is that the legislator makes
10 these determinations to with what they believe is the
11 appropriate sentence for a particular offense. But 25 years
12 is, is no insignificant amount of time. I mean, it is a
13 huge amount of time. It represents a large portion of his
14 life. I think that 25 years, I think 25 years represents --
15 that represents a half of his life, half of his, or at
16 least -- that represent at least half of the time, at least
17 all of the time that he's been on earth. It's been on earth
18 only 25 years, and of course is, this will add another 25
19 years to his sentence -- it will put him in prison for 25
20 years which is equivalent to the amount of time that his
21 has been alive. And of course, this is the violent offense
22 which means is, is that he would be serving, at least right
23 now, eighty five percent of that at least. And so we're
24 asking the court that the minimum since 25 years is more
25 than sufficient enough to satisfy, or at least, satisfied,

1 I guess the State's, the State's interest and
2 rehabilitation. Twenty-five years is also sufficient enough
3 time to satisfy the State's interest and punishment as
4 well, too.

5 Your Honor, we have his sister who is standing right
6 here, of course, she knows him a lot than I can, she can
7 give you a little bit more information in reference to his
8 character and who he is, what type of brother and son that
9 he has been for these 25 years he's been on earth.

10 THE COURT: I need her name?

11 MS. PAGE: My name is Asia Page.

12 THE COURT: Pull your mask down.

13 MS. PAGE: I don't want to pull my mask down. Do I
14 have to?

15 THE COURT: Pardon?

16 MS. PAGE: I don't want to have to pull my mask
17 down ---

18 THE COURT: Well, I don't have to ---

19 MS. PAGE: --- do I have to ---

20 THE COURT: --- hear you. Go back there and sit
21 down.

22 MR. BROOKER: Just speak loud enough. If you're gonna
23 keep it up, you're gonna have to speak up ---

24 THE COURT: I don't have to hear her. This is a set
25 sentence.

1 MS. PAGE: I left my mask on, on the stand.

2 MR. McKEIVER: She's sick.

3 THE COURT: She's what?

4 MR. BROOKER: She's sick. So I think that's maybe the
5 reason ---

6 MS. PAGE: If I have to, I'll pull it down.

7 THE COURT: Well, speak real loud then.

8 MS. PAGE: That's all I'm asking. My name is Asia
9 Page. My brother name is Marc McKeiver. He's 25 years old.
10 And when he walked through the doors everyone in here
11 already had their mind made up. So no matter what we said
12 here today, we all already lost and no matter what we will
13 say later, we've been losing. We've been ---

14 MR. BROOKER: You've got to talk ---

15 MS. PAGE: --- in Dillon County because Dillon
16 County has not yet served justice to anyone that needed
17 justice ---

18 THE COURT: I've heard enough. This jury heard all
19 this evidence ---

20 MS. PAGE: --- no one else heard me.

21 THE COURT: The jury heard all evidence. They've
22 reached a verdict. Now, the reason I had to defendant face
23 me, we've already had in the last couple of years, some
24 violent incidents in this court. So I do not allow any
25 communication after the defendant has been adjudicated

1 guilty with anybody in this courtroom. We had a serious
2 incidence three years ago, I believe it was. I'm not going
3 to sit here and hear criticism of what this jury has
4 reached. I do not have any wiggle room. I do not have any
5 wiggle room here. The legislature has locked this sentence
6 in. There's nothing I can do to mitigate. But I'm not going
7 to sit here and let any individual criticize what the jury
8 has done.

9 MR. BROOKER: And I understand that, Your Honor. And
10 rightfully so. And I think, obviously, his sister is
11 emotional. And of course is, is that if you can let me
12 speak with my client just a second, Your Honor. He
13 indicated that he wants to say something, but of course is,
14 is I want to make sure that wherever he says that it's
15 appropriate for ---

16 THE COURT: Fully understood.

17 MR. BROOKER: Thank you, Your Honor. I think, Your
18 Honor, is that he just wants to tell you a little bit about
19 who he is. And of course, he understands that, that there
20 is no discretion as far as the 25 years.

21 THE COURT: I'll be glad to hear from him. I'll
22 leave that up to you and him. But, once again, it's not
23 locked in. Yes, sir?

24 MR. McKEIVER: I'm Marc McKeiver. I was born [REDACTED],
25 [REDACTED]. I was born in Little Rock, South Carolina in Dillon,

1 South Carolina. My mom passed, I was two years old. I moved
2 to Jersey with my grandmother and, then, she passed away. I
3 moved with my aunt. My auntie took me in.

4 THE COURT: Okay.

5 MR. McKEIVER: Yeah. And she said it was fast in
6 Jersey so she brought me to South Carolina because she said
7 it was slow here. And she took me and my sisters in and
8 taking care of us by herself. And I just been here in
9 Dillon County surviving on my own. And a lot of rumors and
10 stuff was going around in Dillon County, like a lot a
11 people in Jersey be like, and even police and stuff like
12 that I feel like stereotyping me because of rumors and the
13 stuff on the street be talking. I should always be trying
14 to protect myself from everybody that don't know me because
15 they got a way of looking at me so they don't know me. I
16 just wanted to say I'm a that good person and I take care
17 of my family and a lot of other people that's around me.
18 That's it.

19 THE COURT: All right. I understand what you're
20 saying. But, you know, now, no matter what you think the
21 local law enforcement whether it's either the sheriff's
22 department or the local police departments and all, this
23 matter was investigated by the State Law Enforcement
24 Division. On of those agents is now Federal Bureau of
25 Investigation. So the business ---

1 MR. McKEIVER: Can I ask ---

2 THE COURT: --- the business about the local law
3 enforcement I don't really understand that. All right.
4 Solicitor?

5 MR. BROOKER: I'm sorry, Your Honor. I've answered
6 his questions. You can go ahead.

7 THE COURT: All right.

8 MR. DANIEL: Your Honor, if it pleases, the Court?
9 This is not a day to celebrate. This is a young man who, I
10 don't know well at all, but I know him through being up
11 here a little bit, but, like, he doesn't having extensive
12 prior record. He's always been nothing but respectful to me
13 and that's all I can go on. It's all, talking about to me,
14 but I've got a job to do. And Mr. McKeiver, before today,
15 had nine pending charges with our county from about four
16 separate incidents. He had two weapons charges, four
17 trafficking charges, three controlled substance possession
18 charges, and his total exposure on all of those charges
19 combined is 135 years. He knew all this. That's -- we have
20 some of those cases that have stronger evidence than this
21 one. We've got cases where the videos are much better than
22 the one we showed this week. And they're aware of that
23 because I've got all it.

24 Mr. Brooker asked me to go into a room right behind
25 this courtroom in December, right around the time this

1 offered, my offer, was reaching it's deadline. My offer was
2 15 years. He was facing 135. My offer was 15 and that would
3 encompass all of his charges. Would take care of
4 everything. And I sat right back in that jury room, the
5 small jury room at Mr. Booker's request with Mr. Brooker
6 and Mr. McKeiver, and I said, Duke, I don't think you
7 deserve 25 years in prison. Even if you're guilty of all of
8 this because your age. I think you've done some illegal
9 activity. I don't think you deserve 25 years in prison. I
10 still don't think he deserves 25 years in prison. And
11 that's a prosecutor who just won a case, telling you that.
12 But I don't get to set what the penalties are. What I did
13 here is I evaluated this with consultation with law
14 enforcement. And I said look at all of these charges and
15 look at all this evidence and look at 135 years he's facing
16 and let's offer him 15. In fact, it started at 17 and Mr.
17 Brooker talked me down to 15. Now, I wasn't gonna go down -
18 - law enforcement was mad at me for going down to 15
19 because they worked really hard on several of these cases.
20 Twenty-five years is a long time. And I'm glad it's not me,
21 to be quite honest, having to go. But this is how our
22 system works. I have a job to do. I made an offer. It was
23 rejected. We had a trial and 12 people found that the State
24 met its burden beyond a reasonable doubt.

25 THE COURT: All right. I need a sentencing sheet. I

1 want everybody to understand, once again, the legislature
2 set these penalties and they have set it to where the
3 sentencing judge no wiggle room, is the best way to say it,
4 it's locked in is what the sentence will be. Now, I will
5 say the amount of those drugs and, then, what I saw on
6 those Snapchat pictures, I can certainly understand why the
7 jury found the verdict they did. Out of all the trials that
8 I've done and I'm sitting here thinking about the long
9 time, I believe that is the most drugs I have seen that
10 concern one day. One day. And of course, what are
11 questions, how the defendant got a hold of and controlled
12 that many methamphetamine pills. This is not a situation
13 where somebody used Coca-Cola bottles or whatever and
14 cooked up something. Just the mass of those pills just on
15 that one day. I can understand why the jury reached that
16 verdict.

17 All right. There's no point in belaboring it, because
18 like I said I don't have any mitigation. I'll read what the
19 statute says, I'll read it from part three: 100 grams or
20 more, but less than 200 grams a mandatory term of
21 imprisonment of 25 years, no part of which may be suspended
22 nor probation granted and a fine of \$50,000. Locked in.
23 Solid. So the sentence of the court is that Marc Yasin
24 McKeiver be confirmed to the State Department Corrections
25 for a period of 25 years and pay a fine of, whatever I

1 said, \$50,000.

2 Now, there's one thing I do need to know, jail time,
3 Mr. Brooker?

4 MR. BROOKER: I'm sorry, I didn't hear you?

5 THE COURT: Jail time? Jail day?

6 MR. BROOKER: It think it's my understanding, Your
7 Honor, is that when I talk with him I think it was 90 days.
8 Ninety days I believe when I talked with him that he spent
9 90 days before he bonded out when he was arrested for these
10 charges.

11 MR. DANIEL: I don't know. I don't know for sure,
12 but I have no objection to that. That's fine.

13 THE COURT: Credit for 90 days jail time. Counsel,
14 I want to thank y'all for getting this case prepared and
15 getting it to the jury. I appreciate y'all cooperation with
16 the court. When I've got excellent attorneys presenting
17 cases whose got the experience y'all have, it makes it a
18 lot easier on the court. So I thank y'all very much.

19 MR. BROOKER: Thank you, Your Honor.

20 MR. DANIEL: Thank you, judge.

21 THE COURT: Sheriff, the defendant is in your
22 custody. Oh, one other thing while I'm on the record, I'm
23 about to slip up. Mr. Brooker, will you please follow-up
24 with me about my instructions to him about appeal, an
25 appeal ---

1 MR. BROOKER: Yes, sir.

2 THE COURT: --- the appeals have to signed and
3 filed within 10 days.

4 MR. BROOKER: I will, Your Honor. That's why I'm
5 going to the back and talk with him about his right for an
6 appeal and the timeline and that sort of stuff. So I will
7 fully instruct him about that, Your Honor.

8 THE COURT: So we got that on record to protect you
9 and me.

10 MR. BROOKER: Yes. Yes. I'm going do that right
11 now. I'm on my way to do that right now, Your Honor.

12 THE COURT: Thank you.

13 MR. BROOKER: Thank you, Your Honor.

14 (Court is adjourned on January 12, 2022 and trial is
15 complete)

16

17

18

19

20

21

22

23

24

25

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

CERTIFICATE

I, the undersigned Lisa S. Carter, Official Court Reporter for the Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete excerpt of transcript of record of all the proceedings had and evidence introduced in the hearing of the captioned cause, relative to appeal, in the Fourth Circuit of the Circuit Court for Dillon County, South Carolina, on the 10th through the 12th day of January, 2022.

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

s/ Lisa S. Carter

Lisa S. Carter
Circuit Court Reporter

July 5, 2022

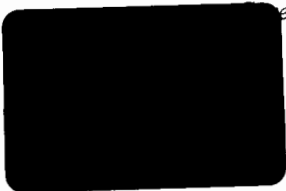
SOUTH CAROLINA LAW ENFORCEMENT DIVISION

FORENSIC SERVICES LABORATORY REPORT

HENRY D. MCMASTER
Governor



MARK A. KEEL
Chief



December 21, 2021

James Martin
South Carolina Law Enforcement Division
4400 Broad River Road
Columbia, SC 29210

DRUG ANALYSIS
SLED LAB: L19-10852
Your Case No: 78-19-0093
Incident Date: 9/9/2019
[S] Marc McKeiver

This is an official report of the South Carolina Law Enforcement Division Forensic Services Laboratory and is to be used in connection with an official criminal investigation. These examinations were conducted under your assurance that no previous examinations of person(s) or evidence submitted in this case have been or will be conducted by any other laboratory or agency.

Mark A. Keel, Chief
South Carolina Law Enforcement Division

ITEMS OF EVIDENCE:

Item: 3 BEST Kit B283724

Item: 3.1 Plastic bag containing...

Item: 3.1.1 Forty-five (45) multi-colored tablets (skull)

RESULTS:

Methamphetamine (C-II) found in the sample tested; 1 tested. Net weight: 18.22 +/- 0.01 grams (281.17 +/- 0.15 grains). Confidence level for the weight is 99.7%.

Item: 3.1.2 Ten (10) multi-colored tablets (mushroom)

RESULTS:

Methamphetamine (C-II) found in the sample tested; 1 tested. Net weight: 4.74 +/- 0.01 grams (73.14 +/- 0.15 grains). Confidence level for the weight is 99.7%.

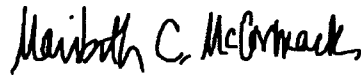


- Item: 3.1.3** Eighty-three (83) multi-colored tablets and partial tablets (bat)
RESULTS:
Methamphetamine (C-II) found in the sample tested; 1 tested. Net weight: 22.24 +/- 0.01 grams (343.20 +/- 0.15 grains). Confidence level for the weight is 99.7%.
- Item: 3.1.4** Eighty-nine (89) multi-colored tablets (mud flap girl)
RESULTS:
Methamphetamine (C-II) found in the sample tested; 1 tested. Net weight: 20.03 +/- 0.01 grams (309.10 +/- 0.15 grains). Confidence level for the weight is 99.7%.
- Item: 3.1.5** Twenty-eight (28) multi-colored tablets (Snapchat)
RESULTS:
Methamphetamine (C-II) found in the sample tested; 1 tested. Net weight: 4.83 +/- 0.01 grams (74.53 +/- 0.15 grains). Confidence level for the weight is 99.7%.
- Item: 3.2** Plastic bag containing...
- Item: 3.2.1** Eighty-nine (89) multi-colored tablets and partial tablets (bat)
RESULTS:
Methamphetamine (C-II) found in the sample tested; 1 tested. Net weight: 23.21 +/- 0.01 grams (358.17 +/- 0.15 grains). Confidence level for the weight is 99.7%.
- Item: 3.2.2** Thirty-eight (38) multi-colored tablets (skull)
RESULTS:
Methamphetamine (C-II) found in the sample tested; 1 tested. Net weight: 15.42 +/- 0.01 grams (237.96 +/- 0.15 grains). Confidence level for the weight is 99.7%.
- Item: 3.2.3** Various multi-colored tablets
RESULTS:
The maximum attainable statutory threshold has been met for this substance based on indicative testing results consistent with item 3.1.1. Item was not subjected to confirmatory testing.
- Net weight of the tested substance is 28.93 +/- 0.01 grams; 1 tested.



This report contains the conclusions, opinions and interpretations of the analyst whose signature appears below.

Technical records supporting the conclusions in this report are available upon request. Afford sufficient time for production.



Maribeth C. McCormack
Forensic Scientist



Supplement to Analysis for Controlled Substance

I, Maribeth C. McCormack, am a Forensic Scientist employed by the South Carolina State Law Enforcement Division (SLED), certified by SLED as a Forensic Scientist qualified to perform testing and analysis for controlled and/or dangerous substances prohibited by law in this State by Title 44, Chapter 53 of the Code of Laws and Rule 61-4 of the Department of Health and Environmental Control.

I have 13 years and 9 months experience as a Forensic Scientist. During that period, I have been qualified as an expert witness and testified in court no less than 42 times. I have received the following training as a Forensic Scientist.

BS Chemistry, University of South Carolina, Columbia, SC 2003
MT Secondary Science Education, University of South Carolina, Columbia, SC 2004
Marijuana Analyst Certification, South Carolina Law Enforcement Division, 2008
South Carolina Law and Legal Training, South Carolina Criminal Justice Academy, 2008
Training in Forensic Drug Analysis, South Carolina Law Enforcement Division, 2008
Drug Enforcement Administration, Forensic Chemist Seminar, 2009

I tested the above item(s) using the following legally reliable forensic laboratory procedures approved by SLED:

<input checked="" type="checkbox"/> Chemical Test	<input checked="" type="checkbox"/> Gas Chromatography
<input type="checkbox"/> Microscopic Exam	<input checked="" type="checkbox"/> Mass Spectroscopy
<input type="checkbox"/> Infrared Spectroscopy	<input type="checkbox"/> Physical Test
<input type="checkbox"/> Visual Examination	<input type="checkbox"/> Published Literature

Forensic Scientist

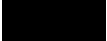

Maribeth C. McCormack

Date: December 21, 2021

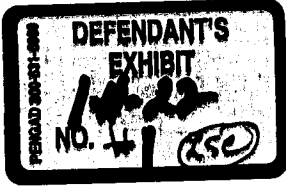


Snapchat Account Information

=====

id	email_address	created	creation_ip	phone_number
duke_ttg	bbaninetrey93@gmail.com	Sun Mar 30 18:21:32 UTC 2014	N/A	 4841





STATE OF SOUTH CAROLINA

County of Dillon

SEARCH WARRANT

Date: 11-19-2019

Officer: Special Agent James T. Martin

378
App. 382

STATE OF SOUTH CAROLINA)
)
COUNTY OF DILLON)
)

SEARCH WARRANT

Form Approved by
SC Attorney General
Section 19-13-160
March 15, 1978

TO ANY BONDED LAW ENFORCEMENT OFFICER OF THIS STATE OR COUNTY:

It appearing from the attached affidavit that there are reasonable grounds to believe that certain property subject to seizure under provisions of Section 17-13-140, 1976 Code of Laws of South Carolina, as amended, is located on the following premises:

DESCRIPTION OF PREMISES (PERSON OR THING)
TO BE SEARCHED

Any and all records pertaining to the accounts belonging to Snapchat User Account "duke_ttg"

Now, therefore, you are hereby authorized to search the subject premises for the property described below and to seize such property if found:

DESCRIPTION OF PROPERTY SOUGHT

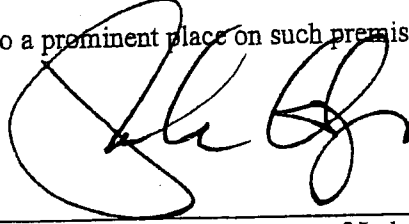
Any and all evidence including but not limited to:

Any and all records pertaining to the accounts belonging to Snapchat User Account "duke_ttg"; including, but not limited to, the user's data, including basic subscriber information, metadata (usage logs) and content (Chats, Snaps, Stories, and Memories) and any other records or information available.

This Search Warrant shall not be valid for more than ten days from the date of issuance.

A written inventory of all property seized pursuant to this Search Warrant shall be made to the issuing judge within ten days from the date of this warrant, such inventory to be signed by the officer executing this warrant, and a copy of such inventory shall be furnished to the person whose premises are searched if demand for such copy is made.

A copy of this Search Warrant shall be delivered to the person in charge of the premises searched at the time of such search if practicable, and, if not, to such person as soon thereafter as is practicable; in the event the identity of the person in charge is not known or if such person cannot be found after reasonable diligence in attempting to locate the person, a copy shall be attached to a prominent place on such premises.



Signature of Judge

Dillon County, South Carolina

Dated: 11/19/2019

STATE OF SOUTH CAROLINA)

COUNTY OF DILLON)

AFFIDAVIT

Personally appeared before me, one Special Agent James Martin, who first being duly sworn, says that there is probable cause to believe that certain property subject to seizure under provisions of S.C. Code Ann. § 17-13-140, as amended, is located on the following premises in this County:

**DESCRIPTION OF PREMISES (PERSON OR THING)
TO BE SEARCHED**

Any and all records pertaining to the accounts belonging to Snapchat User Account "duke_ttg"

DESCRIPTION OF PROPERTY SOUGHT

Any and all records pertaining to the accounts belonging to Snapchat User Account "duke_ttg"; including, but not limited to, the user's data, including basic subscriber information, metadata (usage logs) and content (Chats, Snaps, Stories, and Memories) and any other records or information available.

**REASON FOR AFFIANT'S BELIEF THAT THE
PROPERTY SOUGHT IS ON THE SUBJECT PREMISES**

I, James T. Martin, first being duly sworn, depose and say as follows:

- 1) I am a Special Agent with the South Carolina Law Enforcement Division (SLED). As such, I am a law enforcement officer of the State of South Carolina and am authorized to conduct investigations and enforce laws contained within the South Carolina Code of Laws 1976 as amended.
- 2) I have been employed by the South Carolina Law Enforcement Division as a Special Agent in the Narcotics Unit since July 2018 and have been a sworn law enforcement officer since August 2010. I have been working as a narcotics investigator since 2015, during which time I have worked complex narcotics investigations as a Special Agent, Police Detective, and Task Force Officer for the US Drug Enforcement Administration.
- 3) I earned a Bachelor of Science Degree in Criminal Justice from Columbia College and have received over 500 hours of formal narcotics and investigation related training to include advanced narcotics identification and recognition, basic and advanced narcotics investigation,

and narcotic interdiction. This training was hosted by the United States Drug Enforcement Administration, South Carolina Criminal Justice Academy, National Guard Regional Drug Training Academies, and others.

- 4) I make this affidavit based in part on personal knowledge derived from my participation in this investigation and based in part on information provided to me that I believe to be reliable. The sources of my knowledge of information are as follows and are further identified within this affidavit:
- a. My experience investigating illegal narcotics trafficking organizations;
 - b. Oral and written reports about this investigation that I have received from or through other agents and officers;
 - c. Physical surveillance conducted either by myself or by other agents and officers which has been reported to me;
 - d. Information from criminal informants deemed to be reliable because their information has been corroborated through surveillance, police reports, or other independent sources of information.

CASE BACKGROUND

- 1) On June 4, 2019 and September 9, 2019, Agents of the South Carolina Law Enforcement Division (SLED) and the US Drug Enforcement Administration (DEA) conducted successful controlled purchases of methamphetamine tablets and heroin from Marc Yasin "Duke" MCKEIVER utilizing a confidential informant (CI).
- 2) On September 18, 2019, Agents of SLED and DEA executed a search warrant at MCKEIVER's residence, located at [REDACTED], Hamer, SC.
- 3) MCKEIVER has pending charges for Distribution of Heroin, Possession of a Weapon During a Violent Crime, Possession of a Stolen Piston, Possession with Intent to Distribute Marijuana, and three charges of trafficking methamphetamine, all stemming from this investigation.
- 4) Agents have received screen recordings of from MCKEIVER's SnapChat profile showing firearms and illegal drugs, consistent with those involved in this investigation.
- 5) Agents have received information from a CI that MCKEIVER regularly posts photos and videos of himself with illegal narcotics and firearms.
- 6) Based on the facts set forth above, along with my training and experience, this affiant believes the following:

I received the attached Search Warrant on 11-19-2019, and have executed it as follows:

On 11-19-2019, at 5:40 o'clock p.m., I searched (the person) described in the warrant and (the premises)

I left a copy of the warrant with Snap Inc. Law Enforcement Operations, together with a receipt for the items seized.

The following is an inventory of property taken pursuant to the warrant:

The warrant was served on November 19, 2019 and results were received on April 2, 2020.

Subscriber Information

56 HTML documents containing images

2,520 JPG files

16 MP4 encrypted files

284 PNG files

2,749 video files

1 group chat message

6,970 chat messages

This inventory was made in the presence of Ryan Wood AND

Logan Caulder

I swear that the inventory is a true and detailed account of all the property taken by me on the warrant.

Sworn to and Subscribed before me
this 24 day of April, 2020

[Signature]
Signature of Judge

[Signature]
(Signature of Officer Executing Warrant)

STATE OF SOUTH CAROLINA
COUNTY OF DILLON

FILED
GWENT HYATT
COURT OF GENERAL SESSIONS
FOURTH JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA

2022 JAN 20 INDICTMENT NO: 2019-GS-17-0996

Vs.

CLERK OF COURT
DILLON COUNTY
NOTICE AND MOTION FOR
NEW TRIAL PURSUAN TO
RULE 29(A), SCRCimp.

MARC YASIN MCKEIVER

STATEMENT OF PERTINENT FACTS

On Monday January 10, 2022, the case of *State v. Marc Yasin McKeiver* was called for trial. During *voir dire* of the jury panel, the trial judge asked two questions relevant to Marc Yasin McKeiver's (hereinafter "Defendant") motion for a new trial: (1) whether any member of the jury panel know the Defendant or was related by blood or marriage to the Defendant; and (2) whether all members of the panel could be fair and impartial to the Defendant and the State of South Carolina. Juror 6, Latoria M Alls (hereinafter "Juror Alls"), and juror 53, Dave Cooper, Jr. (hereinafter, "Juror Cooper"), failed to respond to either inquiry. Juror Cooper was selected to the jury panel without challenge from either party. Juror Alls was selected as an alternate without challenge from either party. After jury selection, the jurors and alternates were released and asked to return Tuesday morning for the start of the trial.

Before start of trial on Tuesday morning, the court was notified that juror 187 became ill with COVID like symptoms and would not be able to serve. Juror Alls was randomly selected from the four (4) alternates to serve in replacement of juror 187.

On Wednesday January 12, 2022, the jury returned a verdict of guilty against Defendant. Within days following the verdict Defendant's counsel received letters and affidavits from multiple people indicated that Juror Alls and Juror Cooper know

Defendant and had reason to be bias against Defendant. (See, Affidavits of Treasury Smith, attached hereto as Exhibit A; Terrell McBride, attached hereto as Exhibit B; Tonshuwray Catlin, attached hereto as Exhibit C; Davonte Ladson, attached hereto as Exhibit D; Winter Bennett, attached hereto as Exhibit E; Demetris Johnson, attached hereto as Exhibit F; and Christopher Stackhouse, attached hereto as Exhibits G).

LAW

“Except for motions for new trials based on after-discovered evidence, post-trial motions shall be made within ten (10) days after the imposition of the sentence.” Rule 29(a), SCRCrimP. “All the circuit courts of this State shall have power to grant new trials in cases in which there has been a trial by jury for reasons for which new trials have usually been granted in the courts of law of the United States.” SC Code Ann. 17-23-110 (2021). “Traditionally, in South Carolina, circuit court judges have authority to grant a new trial upon the judge’s finding that justice has not prevailed.” *Youmans v. Dept. of Transp.*, 670 S.E.2d 1, 5, 380 S.C. 263 (S.C. App. 2008).

“All criminal defendants have the right to a trial by an impartial jury.” *State v. Woods*, 345 SC 583, 587, 550 S.E.2d 282 (2001). “To protect both parties’ right to a impartial jury, the trial judge must ask potential jurors whether they are aware of any bias or prejudice against a party.” *Id.* “When a juror conceals information inquired into during *voir dire*, a new trial is required only when the court finds [1] the juror intentionally concealed the information, and [2] the information concealed would have supported a challenge for cause or would have been a material factor in the use of the party’s preemptory challenges.” *Id.*

“[I]ntentional concealment occurs when the question presented to the jury on *voir dire* is reasonably comprehensible to the average juror and the subject of the inquiry is of such significance that the juror’s failure to respond is unreasonable. Unintentional concealment, on the other hand, occurs when the question posed is ambiguous or incomprehensible to the average juror, or where the subject of the inquiry is insignificant or so far removed in time that the juror’s failure to respond is reasonable under the circumstances.” *State v. Woods*, 345 at 588. Where a juror fails to disclose a relationship without justification, it may be inferred that the jury is not impartial. *Id.* at 587-588. “Whether a juror’s failure to respond is intentional is a fact intensive determination which must be made on a case by case basis.” *Id.* at 588

In the case before the court, Treasury Smith (hereinafter “Smith”) stated in his affidavit that he and Juror Alls have been in a long-term relationship, and that he and Juror Alls have discuss Defendant and is girlfriend, Winter Bennett (hereinafter “Bennett”) in the past. (Ex. A). Smith also shared a relationship with Bennett. Specifically, Smith states that Juror Alls told him that “the word is out” that Defendant gave Bennett a permanent sexually transmitted disease and that he should get himself tested. (Ex. A). Smith states that Alls also told him that Defendant had a lot of women with him at his trial and that the Defendant knew he was doing a lot of bad “shit” in Dillon and that she had already determine that she was going to vote him guilty. (Ex. A). Juror Alls also told Smith that her close friend is cousins to Kane, the CI in Defendant’s trial that performed the alleged control buy with Defendant) and that they wanted her to find the Defendant guilty because “the word was” that Defendant had some knowledge about the CI’s death. (Ex. A). Furthermore, it is alleged that the father of Juror Alls’ child

or children was involved in an altercation with Defendant and that Juror Alls know of these evens and had reason to be bias against Defendant. (See Exhibit G, Aff. of Christopher Stackhouse).

The affidavits of Christopher Stackhouse (hereinafter "Stackhouse"), Terrell McBride (hereinafter "McBride"), Tonshuway Catlin (hereinafter "Catlin"), Davonte Ladson (hereinafter, "Ladson"), Winter Bennett (hereinafter "Bennett), and Demetris Johnson (hereinafter "Johnson") all allege that they are familiar with Juror Cooper and that he knows Defendant, and at least two of the affidavits suggest that Juror Cooper had reason to be bias or had shown disdain for Defendant in the past. Specifically, Stackhouse stated in his affidavit that he was a former neighbor of Juror Cooper for several years and that Juror Cooper came to his home upset about a fight involving Defendant and either family or acquaintances of Juror Cooper. (Ex. G). Catlin also stated that she witnessed Juror Cooper appear to express disdain toward Defendant in past for playing music loud in public. (See, Ex. C, Aff. of Tonshuway Catlin).

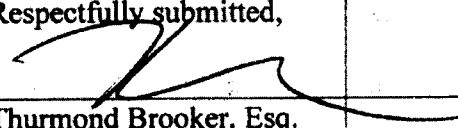
CONCLUSION

Base upon the forgoing facts and law, Defendant is the court to grant him a new trial based upon jury misconduct pursuant to jurisprudence established in *State v. Woods* and its progeny.

Respectfully submitted,

January 20, 2022

Florence, SC


Thurmond Brooker, Esq.
Brooker Law Firm
238 Warley Street
Florence, SC 29501
(843) 679-0056 – office
brookerlawfirm@aol.com – email

CERTIFICATE OF MAILING

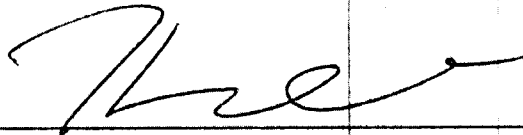
The undersigned hereby certify that he served a true copy to the attached
NOTICE AND MOTION FOR NEW TRIAL PURSUANT TO RULE 29(A), SCRCrimP
on the following persons by US Mail, with sufficient postage attached thereto, and by
email on this 20ht day of January 2022:

Judge Paul M. Burch
P O Box 276
Pageland, SC 29728-0276

Shipp Daniel, Assistant Solicitor
Dillon Solicitor's Office
P. O. Box 868
Dillon, SC 29536

Florence, SC

January 20, 2022



Thurmond Brooker,

To Whomsoever, this may concern I Treasury Smith,
 are writing this statement to bring an
 awareness that Latoria Pitts, who was a juror in
 Mark's case had due knowledge that she knew who
 Mark was but didn't tell the judge that she
 knew him. I and Latoria has been dealing for several
 or years I know over six years and Ullader and
 I used to have personal dealings for about three
 years, but one night me and Ullader was at my
 grandmother house and Latoria Pitts popped up
 unexpectedly and started asking me how long me and
 Ullader been dealing I told her she just my
 friend and Latoria Pitts said to me, that the word
 is out that Ullader boyfriend Dulse, gave her a STD
 that they can't get rid of and that I
 needed to go get checked. So on last week while
 I was on the road Latoria Pitts told me that
 she had jury duty but never mentioned who
 it was so I saw the news article that people
 was sharing on social media about him. That's
 when she told me that my Ex was
 dabbling it hard about her boyfriend saying he
 had a thing of women at his trial and that Mark
 knew he was doing all kinds of bad stuff in
 Dillon and she already knew she was going to let
 her verdict be guilty. Latoria said her close
 friends is Cousins of Ullader Brabancie and
 that they wanted her to sign Dulse guilty,
 because the word was out that he
 knew about Kane death.

for witness
 1-15-2022

Treasury Smith
 1-15-2022

Ex. A

Jan. 13, 2022

My name is Terrell L. McBride. To whom it may concern I am writing this statement on behalf of Marc McKeiver of the Dillon area. Marc McKeiver has been to my house plenty of times to record music, play games, and was even helping me build a barn to practice doing tattoos. My address is [REDACTED]. It was brought to my attention that one of the Jury Members Mr. Dave Cooper, which who is also my neighbor was on the Jury claiming to not know my friend Marc McKeiver. Mr. Dave is best friends with my step-dad and he has been over to my house also on numerous occasions. There has been times where they both been over and might have spoke and went by there separate ways. He is claiming to act as a true man on Marc's trial and didn't disclose the truth that he saw or spoke to Marc on several occasions, at my house or throughout the Newtown area. I have no reason to do nothing but tell the truth.

Terrell L. McBride

EX B

Justin Williams
1/13/22

to my primary concern

I am writing this letter in concern of the case of State Vs Marc McKeiver. On January 12, 2022 when the jury came to a verdict the jurors stood up and removed their mask when agreeing to their decision. When a individual who was by the name of Dave Cooper removed his mask and his face was fully visible I was aware to my best knowledge that he knew Marc McKeiver. Dave Cooper is known around the Newton area in Dillon, Sc. Dave Cooper is a neighbors with Terrel McBride. Terrel McBride makes music and Marc McKeiver has been over Terrel McBride home on multiple occasions in Gordonville Courts. Marc has been over Terrel McBride house to make music. Dave Cooper has spoke to Marc, Terrel and also me on occasion when being at the home of Terrel McBride. Also at Tiger Mart in Newton me and Marc have seen Mr. Cooper arrive in a older model white Honda Accord. When Mr. Cooper saw Marc at the store he would sometimes look at Marc with a face of disgust and roll his eyes. Marc would be at the store playing his music he just recorded loud at the Tiger Mart store. Mr. Cooper was well aware of Marc. Even last summer of 2021 I have observed seeing Mr. Cooper at the Chinese restaurant in Newton. I am from Charlotte, Nc and come to see Mr. McKeiver a couple times a month and often see Mr. Cooper. So I am writing this letter to raise awareness that Mr. Cooper was well aware of the defendant Marc McKeiver.

Sincerely,

Samir



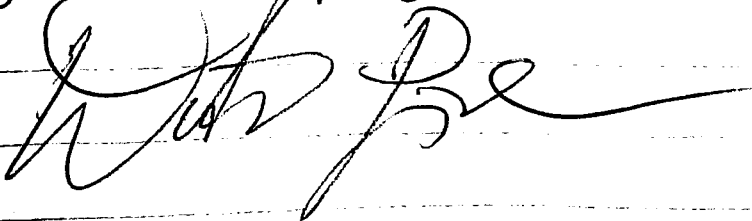
FILED
CLERK OF COURT
2022 JAN 26 A. 8:48
NEWTON, GEORGIA

Janie Williams
1/12/22

EVII

I am Davonte Ladson today is Jan 13, 2022 to whom it may concern I'm writing this affidavit and facts that I know Mark McKeiver from being from Dillon, SC I currently live in Charlotte, NC But everytime I travel home me and mark will meet each other at Terrell McBride's studio to make or record music also I know Mr Dave Cooper from going to Terrell's home because he is the neighbor of Terrell's home and he would greet me, mark & Terrell he also knew Mark from the Newtown Community from being friends with his step kids and would acknowledge Mark and he also have several friends on social media that Dave Cooper is family with Mark constantly making post on social media about his trial and I don't think it's right or fair that Dave Cooper didn't tell the court during jury selection how & that he knew Mark if I can be further assistance and fulfilling the truth and justice in always available

Davonte Ladson



FILED
CLERK OF COURT
JAN 26 A 8:49
2022

Jessie Williams
1/13/22

PREPARED BY: Winter Bennett	DATE 01/13/22
PROJECT TITLE: Statement about Journey on Marc McKeiver Case	

1 TO whom it may concern, I, Winter Bennett, would like to
 2 make the court aware that a juror has deceived them by saying
 3 he did not know Marc McKeiver. Soon after trial ended I
 4 saw Mr Dave Cooper with his mask off and realized ~~that~~^{that}
 5 I have seen him before and he has spoke to Marc and I
 6 numerous of times in newtown when we visited one
 7 of MARC'S friends that goes by fresh. We went to
 8 Fresh has numerous of times to record music and he
 9 (Dave Cooper) has spoke to McKeiver and I and
 10 even shook MARC'S hand. I would also like to say that
 11 there are several people that can support my statement
 12 that Dave Cooper neighbored a house we visited often,
 13 and we being Marc McKeiver and I.

14
15
16
17
18 *Winter Bennett*
19
20
21
22
23
24
25
26
27

28 EX-E

Jessie Williams
11/13/22

My name is Demetris Johnson I am 37 Years old, and I have lived in Dillon SC my entire life. Marc Mckeiver is someone I have known for a long time. I sat in court with him during this trial for the whole 3 days. One of the jurors that was on the jury was someone who should not have served on this trial because he did not let the courts know that he knew Marc Mckeiver. The name of that juror was Dave Cooper. He is married to my cousin Patti Hamilton. The entire home of Dave Cooper knows Marc Mckeiver, all his kids and himself. They are all from the Newtown area and Dave saw and shook Marc hand numerous times while he was at his next-door neighbor house. Dave next door neighbor is his best friend and Daves best friend's son is Marc Mckeiver best friend. So, he knew Marc well. This was an unfair trial and I feel it need to be retried.

Demetris Johnson
1-17-2022

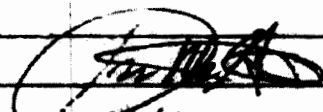
EX. F

I am Sub Juris Christopher Stockhase - Bey, on Wednesday, January 19, 2022, I'm writing this Statement to the Honorable Paul Burch who was the trial Judge in McKiever V State, Shipp Daniel who Prosecuted this case and to Thurmond Brooker, in which was the Defense Counsel for McKiever V State. Also to whomever else this may concern for A Special Judicial Review. During Mock trial I was not there during the Jury Selection however during the course of the two Day trial I were in and out the State Tribune wasn't sure of who all the jurors were at the time and I think it's because of all the receiving and protection of everyone wearing face masks also the large TV which was sort of Station very close to the Jurors prevented A observer like myself for being able to see clearly who all was on the jury duty. As the jury came back after being sent back to get a verdict and Mr. Brooker asked the Court to Poll the jury I noticed then that it appeared that I notice Mr. Dave Cooper was A Juror but still wasn't sure later during the weekend after the trial it came to my knowledge that Dave Cooper was A Juror. Dave and I were formally neighbors for several years when I stayed in the home of Shawn Bellamy near Gordonville Ct in Dillon South Carolina near the Newmarket area. Mark and his cousin had got into A fight his name is Brianhorn better known as Rock. They fought Dave and I neighbor Name Edward Rose and his Nephew Tyrone Rose. I personally didn't see the fight however Dave Cooper came to Shawn home seeming very upset about Mark and his cousin how they fought our neighbors. Page 1 of 2

Ex. G

Latoria Alls who's also was A Juror is my classmate and A good friend of mine but she is very close with the deceased C.T. Kane/Mark family and many of Kane family believed that Mark Mackiewicz had involvement to Kane death which he couldn't have because he was in jail. Several people from the community has reached out to me stating things as if Latoria was biased in her vote as A Juror because, being A former employee at the Public Defender office having prior knowledge to people like Mark criminal history. Also Mark did have arguments with Latoria child father and etc about his brother Maurice Alfred attempting or may have snitched on Mark and his cousin Rock and I remember calling Mark and Rock through his girlfriend Demetris Johnson phone on "Snap chat" trying to stop the trouble amongst the Newton community. It's my factual knowledge that Dave Cooper nor Latoria Alls was truthful by letting the court or Judge Birch, know the truth and it's entirety. As A Advocate here in Dillon County I do stand for justice and equality and when we have jurors who forget or intentionally mislead the court it costs a waste of god men and women time and the taxpayers money. If I can be any further assistance to this case feel free to contact me at 847 [REDACTED].

Christina Blackman - Bay
w/o Prejudice A.R.R.
1/19/2022


My commission expires
1/19/2031

1 STATE OF SOUTH CAROLINA) **TRANSCRIPT OF RECORD**
2 COUNTY OF DILLON) CASE NO.:2019-GS-17-996

3 **ORIGINAL**

4 -----

5 March 10, 2022

6 **BEFORE:** The Honorable Paul Burch

7 -----

8 STATE OF SOUTH CAROLINA,

9 Plaintiff,

10 vs.

11 MARC McKEIVER,

12 Defendant.

13 -----

14
15 APPEARANCES:

16
17 Thurmond Brooker, Esq.
18 Appearing for the Defendant.

19 Shipp Daniel, Esq.
20 Appearing for the State.

21 Official Court Reporter

22 Natalie Dahl, RPR
23
24
25

1 **NOTE: Pursuant to Rule 607 (h) (1) (B), SCACR "A COURT**
2 **REPORTER SHALL RECEIVE THE FEE OF \$1.00 PER PAGE FOR**
3 **FURNISHING A COPY OF A PREVIOUSLY PREPARED TRANSCRIPT."**
4 **All requests for a copy of the enclosed transcript**
5 **shall be sent to: Natalie Dahl, RPR**
6 **P.O. Box 762**
7 **Conway, SC 29526**

8
9
10 P-R-O-C-E-E-DI-N-G-S

11 MR. DANIEL: This is the defense's post-trial
12 motion in the case of Marc McKeiver, 2019-GS-17-996.
13 That was an indictment for trafficking 100 to
14 200 grams of methamphetamine. The jury returned a
15 guilty verdict in January. The Court sentenced the
16 defendant, and this is a post-trial motion of the
17 defense.

18 THE COURT: Mr. Brooker.

19 MR. BROOKER: Thank you, Your Honor. Your Honor,
20 we filed this post-trial motion. I'm asking the Court
21 to grant a new trial, which it is well within the
22 Court's discretion, that based upon the grounds of a
23 jury misconduct. Of course, the leading case I think
24 in South Carolina, that we think is a leading case,
25 specifically explains exactly what the standard is for
dealing with motions for new trial in situations where
there is allegations of juror misconduct; and, of
course, that is State versus Woods, 345 S.C. 583,
2021, South Carolina Supreme Court case. I think it
is cited in the motion we filed, Your Honor.

1 Of course, just very briefly, that case set out
2 the standard that the Court must apply in determining
3 whether or not a motion for a new trial should be
4 granted where juror misconduct is alleged.

5 Specifically that case and, of course, you know, it
6 goes without saying, it says all defendants are
7 entitled to a fair trial. And, of course, that is a
8 Constitutional right that is guaranteed under the
9 Federal Constitution, and specifically the Sixth and
10 Fourteenth Amendments, and also South Carolina's
11 Constitution.

12 Of course, the Woods court says that the
13 parties -- both parties in a criminal action, the
14 State, and also the defendant, are entitled to the
15 right of an impartial trial. Of course, it says that
16 the trial judge must ask questions of the jury panel
17 as to whether they are aware of any bias or either
18 prejudice. Of course, it says that when a juror
19 conceals information inquired during the voir dire
20 process, a new trial is required -- and, of course,
21 these are the two standards that the Court must apply
22 -- it is required when the Court finds that the juror
23 has intentionally concealed the information, and that
24 the information concealed would have supported a
25 challenge for cause or would have been -- would have

1 been a material factor in the use of the parties'
2 peremptory challenges.

3 It says when a juror withholds information
4 without justification, withholds information and fails
5 to disclose that information, you know, absent
6 anything to the contrary, it is deemed or it is
7 assumed that that juror is not partial.

8 So the question here is whether or not -- and, of
9 course -- whether or not any juror in connection with
10 Mr. McKeiver's trial intentionally withheld
11 information that the Court inquired about during the
12 voir dire process; that is the first standard. And,
13 of course, we're arguing, Your Honor, is that there
14 was information that the Court inquired about doing
15 the voir dire process, that at least two jurors that
16 we were aware of actually withheld the information,
17 and that information that they withheld was crucial in
18 the defendant making a determination as to whether or
19 not those jurors should be either stricken by
20 peremptory challenges or for cause. Specifically, we
21 attached the affidavits of some witnesses that has
22 provided us with statements, and it is attached to the
23 motion that we filed.

24 Of course is that in one of the affidavits, and
25 it specifically references I think Juror No. 6, which

1 was Ms. Auls. I think Juror No. 6 was selected as an
2 alternate. We did not challenge Juror No. 6. And, of
3 course, Juror No. 53, I believe that Your Honor did
4 ask a question. And, of course, I have that question,
5 Your Honor, but I forgot to bring the transcript. I
6 have it on my phone. This is the question that Your
7 Honor asked during the voir dire process in which
8 these jurors failed to answer or make it known that
9 they had, at least, personal knowledge of Mr. McKeiver
10 and also potentially a bias. I think on the
11 transcript, trial transcript -- I'm looking at Page
12 No. 8, Your Honor asked this of the jurors: Are any
13 of you or immediate family members ever been -- sorry.
14 That is the wrong question, Your Honor. I'm using my
15 phone, so let me get the question.

16 (A brief pause in the proceedings.)

17 MR. BROOKER: Here it is. It says -- question
18 that you asked, Your Honor, you said -- of course this
19 is Page 3, I believe. It says: Thank you, sir. It
20 says: You may be -- it says: You may be seated.
21 I'll repeat the question. Anybody on the panel
22 related by blood or marriage with Mr. McKeiver or have
23 any business, social, religious or fraternal
24 relationship with him; if so, we need you to raise
25 your hand at this time.

1 Of course, as a result of that question, there
2 were several jurors that did stand up. I think there
3 was specifically Juror No. 37. And, of course, Juror
4 37 I think stood up and indicated that she grew up
5 with Mr. McKeiver. And, of course, the Court inquired
6 whether or not that would cause her to be biased, and
7 she suggested that it would, and Your Honor I think
8 relieved her of the obligation to serve on that -- on
9 Mr. McKeiver's jury.

10 Juror No. 90 also stood up. She indicated that
11 she had worked with Mr. McKeiver previously, I think
12 at a job that they both worked at the same time. She
13 indicated that she could be fair and impartial. Of
14 course, I think that she was not relieved I think of
15 her responsibilities.

16 You also asked the jurors whether or not they
17 were aware of any witness -- I think on page -- Page 6
18 of the transcript you asked whether or not the jurors
19 were aware of any potential witnesses in question in
20 this case. And, of course, two witnesses that we
21 identified was Asia Page, being the brother of
22 Mr. McKeiver, and identified Winter Bennett, who was
23 the girlfriend of Mr. McKeiver and a potential witness
24 in connection with the case. None of the jurors stood
25 up, including the two jurors, Juror No. 6 and 53.

1 The reason that we believe, Your Honor, that they
2 answered falsely to these questions -- to that
3 question is based upon the affidavit that is attached
4 to the motion, and specifically the affidavit of
5 Mr. Smith. Of course in Mr. Smith's affidavit,
6 Mr. Smith indicated that he has had a personal
7 relationship with Juror No. 6, which was Ms. Ault
8 (phonetic), for somewhere between six to eight years.
9 He also indicated that he has had a relationship with
10 Ms. Bennett, Winter Bennett. He says that on one
11 occasion that he was with Ms. Bennett at, I think, his
12 grandmother's house when Juror No. 6 showed up. Juror
13 No. 6 advised him that -- on how long had he been in a
14 relationship with Winter Bennett. And, then, she also
15 advised him that Winter Bennett's boyfriend, which is
16 Mr. McKeiver, that there was word in the community
17 that he had a sexually transmitted disease, a
18 permanent sexually transmitted disease. There was
19 word in the community that he transferred that
20 sexually transmitted disease to his girlfriend,
21 Ms. Bennett, and that he should go and get himself
22 checked out.

23 So according to Mr. Smith, Juror No. 6, Ms. Ault,
24 had expressed knowledge of Mr. McKeiver, and even
25 expressed a negative opinion of Mr. McKeiver

1 indicating to him that she believed -- or the word in
2 the community was that Mr. McKeiver had a sexually
3 transmitted disease, that he had transferred that
4 disease to Ms. Bennett, and that he should get himself
5 checked out.

6 In addition to that, Mr. Smith said that Juror
7 No. 6, Ms. Ault also told him that she had jury duty,
8 but never mentioned who -- which jury she was serving
9 on. Of course he said later on he found out it was
10 Marc McKeiver's jury. He said that he talked with
11 Ms. Ault, and of course he said that Ms. Ault told
12 him -- and I'll make sure I have this right, and I'll
13 read from the affidavit -- she says that -- she says
14 that -- indulge me for just a second, Your Honor.

15 (A brief pause in the proceedings.)

16 MR. BROOKER: That when she told me that my
17 ex -- and of course she's -- he's making reference to
18 Winter Bennett -- looked -- and of course I can't read
19 the next word -- hard about her boyfriend, referencing
20 Marc McKeiver. Of course it goes on to say that he --
21 references Marc McKeiver -- she told Mr. Smith that
22 he, Marc McKeiver, had all kinds of women up at his
23 trial and that Marc knew what he was doing -- and I
24 quote this -- all kinds of bad shit in Dillon County,
25 and she already knew she was going to -- looks like

1 she was going to do her verdict as guilty.

2 Mr. Smith said that Ms. Ault also told him
3 that she was friends with Winter Bennett's family, and
4 that Winter Bennett's family wanted her to find
5 Mr. McKeiver guilty because they believed that
6 Mr. McKeiver knew something about Cane's (phonetic)
7 death. If you can remember, Cane was Mr. -- Winter
8 Bennett's brother and also the CI in connection with
9 the trial. So she's saying that the CI's family --
10 she was friends with the CI's family, which was Cane,
11 and that the CI's family wanted her to find
12 Mr. McKeiver guilty because they believed that
13 Mr. McKeiver had knowledge about Cane's death.

14 So I think there is no question based upon
15 this affidavit that that first standard is satisfied,
16 that Juror No. 6 knew of Marc McKeiver before the
17 trial, had some pretty negative opinions about Marc
18 McKeiver before the trial, and also that she may have
19 predetermined her verdict based upon the fact that she
20 was friends with the CI's family, and that they
21 believed that Mr. McKeiver may have had knowledge
22 about the CI's death.

23 Of course the question then becomes is if we
24 had known about this information, would this
25 information have been relevant to a challenge for

1 cause or either to use a peremptory challenge to
2 remove her on grounds of bias or prejudice? I don't
3 think anyone could argue that if she had disclosed
4 this information, I don't think it would have been
5 necessary for us to use a peremptory challenge that
6 she would have been struck for cause; because it's
7 clear, at least from this affidavit, that she posed a
8 bias that may have already had chosen to pre-decide
9 Mr. McKeiver's case before all of the evidence was
10 presented.

11 The next juror, Your Honor, was Juror 53; I
12 think that was Mr. David Cooper. There were multiple
13 affidavits that is attached in reference to Mr. David
14 Cooper. I think this is the affidavit of Terrell
15 McBride (phonetic), and that is the second affidavit
16 or Exhibit B attached to the motion. McBride is
17 friends with Mr. McKeiver. Mr. McBride also lives
18 next door, according to his affidavit, to Juror 53,
19 Mr. Cooper. Of course Mr. McBride says that
20 Mr. Cooper was best friends with his father, that
21 Mr. Cooper would come over to his house, and he
22 indicates that Mr. Cooper has been over at his house
23 numerous times when Marc McKeiver was at the house.
24 He has actually shook hands with Marc McKeiver, knew
25 Marc McKeiver, spoke with him on several occasions,

1 and that when he failed to mention that he knew
2 Mr. McKeiver and had prior knowledge of him, that he
3 was not being honest with the Court.

4 Of course I think the next affidavit, which is
5 the affidavit from Mr. Devonte Ladson (phonetic), who
6 states the same thing, that he has been over to --
7 that he also has been over to Mr. McBride's house, who
8 is a neighbor of Mr. Cooper's. He has been over there
9 on multiple occasions when Mr. Cooper came over to
10 Mr. McBride's house and has met Marc McKeiver, knew of
11 Marc McKeiver, and says not only did he have knowledge
12 of Marc McKeiver through his interaction with
13 Mr. McKeiver at Mr. McBride's house, but that he may
14 also have had knowledge of him through the community.
15 Winter Bennett wrote the same statement saying the
16 same thing about Mr. Cooper.

17 I think the last affidavit that was attached I
18 think is the affidavit of Christopher Stackhouse. Of
19 course, Your Honor, I didn't solicit these affidavits.
20 All of these affidavits came in to me after this
21 trial, and that is why I filed a motion -- filed this
22 motion as opposed to filing a motion -- filing a
23 notice of appeal.

24 I think in his affidavit it primarily relates
25 to Mr. Dave Cooper. I think Mr. Stackhouse says that

1 he used to live with Shonda Faye (phonetic), who was a
2 neighbor of Dave Cooper -- who was a neighbor of Dave
3 Cooper. So he knew Mr. Cooper as a neighbor and
4 through that relationship for many years.

5 Of course he indicates that Mr. Cooper was
6 aware of Mr. McKeiver. He also mentioned one occasion
7 in which Mr. Cooper came over to his house at the time
8 where he was living and Mr. Cooper appeared to be
9 upset regarding a fight that Mr. McKeiver was involved
10 in. It was a fight that involved, I think, a neighbor
11 or someone that Mr. Dave Cooper knew. He said he came
12 up to the house -- came over to their house and he was
13 upset about that fight that Marc McKeiver was involved
14 in.

15 Of course there is another affidavit in there,
16 Your Honor -- I'll speak with this one. I think in
17 Mr. Stackhouse's affidavit he also mentioned something
18 in reference to Ms. Ault, Juror No. 6. He says that
19 he went to school with Juror No. 6, Ms. Ault. Of
20 course, saying -- I think he says that he had can --
21 if you can indulge me for a second, I don't want to
22 misquote what he says in his statement.

23 It says here Ault, who also -- Ault -- says
24 Ault, who also known -- who was also a juror is my
25 classmate and a good friend of mine. She's very close

1 with the deceased. I think the deceased she's talking
2 about is the CI in the case, which is Cane Clark's
3 family. She went on to say that many of Cane's family
4 believed that Mr. McKeiver had involvement in Cane's
5 death, which he says -- which he says he couldn't have
6 because he was in jail at the time.

7 He says, Several people from the community had
8 reached out to me stating things as if -- LaToria
9 (phonetic), which is Juror No. 6, was biased in her
10 vote as a juror because -- because a former employee
11 -- because she was a former employee of the Public
12 Defenders Office and may have had prior knowledge of
13 people's cases, like Marc's criminal history; also,
14 that Marc did have arguments with Latoya's child's
15 father, so the father of Juror No. 6's children, about
16 his brother, Maurice Alford, attempting or may have
17 snitched on Marc McKeiver and his cousin -- looks like
18 "Rock."

19 So he is indicating that Marc McKeiver has
20 also had an altercation with Juror No. 6 -- the father
21 of Juror No. 6's child. Of course these are all
22 reasons to suggest that Juror No. 6 was biased. It
23 certainly appears that Juror No. 6 knew Marc McKeiver.
24 Juror No. 6 had a negative opinion of Marc McKeiver,
25 and Juror's No. 6's failed to disclose that.

1 I'll go back to the standard and I'll finish.
2 Under State versus Woods, it says that the first
3 inquiry that the Court should make, and that is -- and
4 I've already read this -- if the Court finds that a
5 juror intentionally conceals the information. So, of
6 course, Woods goes on to say that we hold that
7 intentional concealment occurs when the question
8 presented to the jury on voir dire is reasonably
9 comprehensible to the average juror, and the subject
10 of the inquiry is of such significance that the
11 juror's failure to respond is unreasonable.

12 So the question then becomes is -- so the
13 Court says -- what the Court is saying is that they
14 believe that a juror's concealment is intentional if
15 the question being asked by the judge is clear; and
16 after being asked a clear question, that that juror
17 fails to rise and present that information. I think
18 in this particular situation, Your Honor, I think when
19 you asked the question, when you had Mr. McKeiver to
20 stand up and ask that question about whether or not
21 anyone had these various relationships with
22 Mr. McKeiver, that that question was clear to the jury
23 -- to the jury pool. It was clear to Mr. -- Ms. Ault,
24 Juror No. 6. It was clear to Mr. Cooper, Juror
25 No. 51, as it was for those other jurors.

1 Like I said, two jurors stood up as a result
2 of that question and says, Yeah, I know Mr. McKeiver.
3 Of course is I think that that question was clearly
4 demonstrated by the fact that you had two people that
5 stood up and disclosed their relationships based upon
6 the question you asked; these jurors did not.

7 The Court went on to say whether a juror's
8 failure to respond is intentional is a determination
9 which may be made on a case by case determination.
10 What we're asking Your Honor to do -- and I haven't --
11 you have the affidavits and, of course, you can read
12 them for yourself, but for the ones we went over, they
13 clearly demonstrate that there is significant
14 information that these jurors failed to disclose
15 information in which the Court inquired about during
16 voir dire. There is also information -- this
17 information is of such importance that had we known
18 this, I definitely would not have allowed Mr. Ault to
19 serve on the jury, if I knew she had that type of
20 prejudice or bias against Mr. McKeiver.

21 So we're asking the Court to grant our motion
22 for a new trial. In the alternative, if the Court
23 believes that it needs additional information, we are
24 asking the Court to grant an evidentiary hearing so
25 that we can send out subpoenas to these two witnesses

1 and also to all of the individuals that provided
2 affidavits, which is attached to our motion, so at
3 that time the Court can ask any questions that he
4 might have regarding whether or not whether their
5 conduct was intentional and, of course, whether or not
6 they had a bias against Mr. McKeiver.

7 MR. DANIEL: Well, Your Honor, the one case
8 Mr. Brooker cited is State v. Woods, 345 S.C. 583.
9 There is also a second case that is on court of
10 appeals, just released in August -- no, March the 2nd,
11 last week. State v. Rowell 2018-000022. Those are
12 the two cases that South Carolina law relies on with
13 this issue.

14 I agree with everything Mr. Brooker said about
15 the Woods case and the standard it sets. The court of
16 appeals case was issued last week and is very similar.
17 It touches on three issues. The third issue is the
18 jury issue at hand. Neither of those cases deals
19 exactly with what we are dealing with here, but they
20 both give a standard. The court of appeals case
21 supports the supreme court case.

22 Before we get into all of that, though, I would
23 like to set the stage about where we are and how we
24 got to where we are. What had just happened here is
25 Marc McKeiver was just found guilty by a jury and

1 sentenced to a mandatory 25 years in prison and
2 assessed a fine.

3 Then, in the week after -- week or so after, we
4 get seven affidavits. Who filed these affidavits?
5 Treasury Smith, who is friends or knows the defendant,
6 was in a relationship maybe, if I'm clear about this,
7 was in a relationship with someone -- Winter Bennett,
8 who was the defendant's girlfriend. Winter Bennett
9 filed an affidavit; that is the defendant's girlfriend
10 and she was here in the courtroom for the whole trial.
11 Terrell McBride, friends of the defendant, admits to
12 making music and hanging out with the defendant
13 frequently. Deshawnly Katelyn (phonetic) admits to
14 making music and hanging out. Devonte Ladson is
15 friends with the defendant, made music and hung out
16 together. Demetrius Johnson, friends of the defendant
17 and sitting in the courtroom for the whole three-day
18 trial. Christopher Stackhouse, friends with the
19 defendant and sat in the courtroom for parts of the
20 trial. That is who wrote statements. All the
21 statements were written a week after their good friend
22 was found guilty by a jury and sentenced to a
23 mandatory 25 years in prison.

24 I ask the Court to consider -- before we get to
25 the law -- consider the motivations of those people

1 who submitted affidavits. Before we get in the
2 unintentional and intentional concealment, the first
3 issue to be explored is what were the specific voir
4 dire questions asked by the Court? Twice the Court
5 asks is anyone on the panel related by blood or
6 marriage or have business, social, religious or
7 fraternal relationships with Mr. McKeiver? The Court
8 asks the defendant to stand up, face the jury, and
9 then the Court asks again is anyone on the panel
10 related by blood or marriage with Mr. McKeiver or have
11 any business, social, religious relationship with him;
12 if so, we need you to raise your hand at this time.

13 So what was asked? The Court didn't ask, nor is
14 the Court required to ask, does anyone know Marc
15 McKeiver. It wasn't the question that was asked, and
16 that is not the question that the Court is required to
17 ask. It is does anyone have any business, social,
18 religious or fraternal relationship with Mr. McKeiver.
19 Now, again, it doesn't matter if people know the
20 defendant; if these people know a witness that is on a
21 potential list. It is Dillon County, a small county.
22 A lot of people know a lot of people in Dillon County.
23 But none of the affidavits submitted describes any
24 social relationship with the defendant.

25 Treasury Smith writes about the gossip, about the

1 defendant possibly giving his girlfriend an STD.
2 Christopher Stackhouse talks about how Juror Ault may
3 have known the confidential informant's family. As to
4 Juror Cooper, McBride, quote -- he quotes -- he writes
5 in his statement that Juror Cooper, quote, saw or
6 spoke to Marc on several occasions; quote, might have
7 spoke and went their separate ways; that is not a
8 social relationship. Katelyn says I saw or witnessed,
9 quote, spoke to Marc, Terrell -- at Mr. Cooper --
10 spoke to Marc McKeiver, Terrell, and also me on
11 occasion. Quote, Cooper was well aware of the
12 defendant. Again, that does not describe a social
13 relationship. Devonte Ladson wrote, quote, Cooper
14 would acknowledge Marc; not a social relationship.
15 Winter Bennett, quote, Cooper has spoke to Marc and I
16 and even shook Marc's hand; not a social relationship.
17 Demetrius Johnson wrote, quote, Dave saw and shook
18 Marc (sic) hand numerous times; not a social
19 relationship. Stackhouse wrote, quote, Cooper came to
20 Shawn's home seeming very upset about Marc and his
21 cousin; again, not a social relationship.

22 The other relevant voir dire question that the
23 Court asked is: Does anyone on the panel have any
24 opinion, biases, any prejudice towards either the
25 State or the defendant whereby you cannot be a fair

1 and an impartial juror? The Court further asked:
2 Does anyone on the panel know of any reason why you
3 should not serve as a juror on this particular case?
4 No hands went up.

5 So, Judge, when considering the affidavits, there
6 are no claims that support that either of these jurors
7 even should have raised their hands. As to Juror
8 Ault, someone she used to date said that Ault had
9 heard that the defendant gave his current girlfriend
10 an incurable STD. Gossip about STDs hardly equates to
11 bias in jury service. The only other affidavit that
12 mentions Ault suggests that Ault may have been close
13 with the confidential informant's family, Cane Clark.
14 Well, Cane's identity was not known to the jury prior
15 to the trial, prior to qualifications. The defense
16 didn't even know Cane Clark's identity until the week
17 before trial, and that was just conversations that
18 Mr. Brooker and I had together, because I had just
19 recently found out about it. Of course, we all knew
20 that he had been killed recently. He was not
21 mentioned at voir dire, so the jury was never
22 questioned about the confidential informant.

23 Pursuant to relevant policy and case law, that
24 information was not shared until just before trial.
25 Since he's dead, of course, he wasn't a witness;

1 therefore, he wasn't mentioned. So no juror could
2 have possibly known the identity of the confidential
3 informant.

4 As to Mr. Cooper, that juror, nothing in these
5 six affidavits that mention him would qualify as any
6 evidence that Juror Cooper could not be fair and
7 impartial. Only one of them vaguely mentioned
8 something about some neighborhood fight and Juror
9 Cooper seemed upset that a fight between several
10 people in his neighborhood took place; this does not
11 amount to prejudice.

12 Finally, this defendant sat through roll call of
13 the jury, sat through jury qualifications, sat through
14 jury selection and three days of trial and at no point
15 did Mr. McKeiver, through his lawyer or presumably any
16 of the supporters sitting in the courtroom, several
17 whom wrote affidavits, none of them ever said a word
18 through Mr. Brooker to the Court, hey, I know that
19 guy. Hey, I've shaken that guy's hand. Hey, that guy
20 has come to my house. Never was that mentioned by the
21 defense. Now, why is that? Is that because maybe the
22 defendant was confident enough in his defense he
23 didn't think he would be convicted so it didn't
24 matter? Or is it because maybe he thought, well,
25 Mr. Cooper shaking my hand several times, maybe he is

1 someone good I need on the jury, maybe he'll vote my
2 way? You can't have it both ways. But nothing was
3 said from the defense at any point until now after
4 conviction and a 25-year sentence.

5 Even if we take these affidavits as truth, and
6 the State does not take these affidavits as truth,
7 again, written by seven of his best friends, some who
8 watched the whole trial in support of him, three or
9 four days after he was convicted. None of the
10 information presented in these affidavits indicates
11 that either juror answered the Court's questions
12 dishonestly.

13 One final point. It is a slippery slope if we
14 begin in this state overturning jury convictions
15 because seven of the convicted defendant's friends,
16 naturally and understandably upset about their friend
17 getting convicted, get together and write affidavits
18 alleging ambiguous things that don't support the
19 defense's contentions. We're having a murder trial on
20 the 28th of March. What happens if the jury
21 convicts that defendant, Court sentences that
22 defendant to decades in prison, and then all of that
23 defendant's friends get together, pick a couple jurors
24 that they may have a tangential relationship with or
25 ran into Food Lion one day and shook hands, they start

1 writing affidavits, and then here we are again? We'll
2 never have a conviction that sticks.

3 Here, in this case, in January, this Court
4 conducted a complete and proper jury qualification and
5 voir dire, which the defendant and his supporters sat
6 through and watched, never mentioning now what is
7 asserted today, that he knew two of the potential
8 jurors might have had an ax to grind with. Then he
9 gets convicted and seven of his closest friends write
10 affidavits, the veracity would be suspect, at best,
11 given the motivation that they would have to write
12 such affidavits. Even if all of them are true, the
13 State contends they don't indicate any concealment on
14 the part of either jury, so we don't even get to the
15 analysis mentioned in Woods about intentional or
16 unintentional concealment.

17 This Court has discretion to review its own
18 record, which it has been done through the transcript
19 that we have of the voir dire process. This Court has
20 the discretion to consider the facts and the
21 motivation of the parties involved and to use that
22 discretion to deny this motion, and that is what the
23 State requests.

24 MR. BROOKER: I think Mr. Daniel had made an
25 argument as to why there has to be an evidentiary

1 hearing in connection with this. The reason is that
2 Mr. Daniel, I think, made some allegations in which it
3 is alleging to the Court as factual and asking the
4 Court to make a determination based upon information
5 in which I think Mr. McDaniel has absolutely no idea
6 whether it is true or false.

7 The first thing Mr. McDaniel says is that these
8 witnesses are all friends of Marc McKeiver's. Now,
9 I'm going to say this, Your Honor, but, Your Honor,
10 you shouldn't accept this as factual from me is that
11 because it is not evidence. I can't testify for
12 Mr. Smith. But I will say to you, Your Honor, is that
13 Mr. Smith is not friends with Mr. McKeiver -- that's
14 right. Mr. McKeiver doesn't even know Mr. Smith,
15 never met Mr. Smith. So when Mr. Daniel says these
16 are seven of Mr. McKeiver's closest friends -- of
17 course is that I guess that statement is based upon
18 what? That is exactly the reason why we need an
19 evidentiary hearing. If we have an evidentiary
20 hearing then he can ask those witnesses, Are you
21 friends with Mr. McKeiver? Was your decision to write
22 this statement motivated by bias? When Mr. Daniel
23 says that none of the questions that Your Honor asks
24 should have invoked any of the jurors to stand up,
25 when Your Honor asks whether or not any of these

1 defendants (sic) had any information or knew anything
2 about this case, or anything about the witnesses that
3 may be unfair or bias -- when Mr. Smith says that
4 Juror No. 6 said to him that Ault -- that she had
5 already predetermined what her decision was in the
6 trial, and that Marc McKeiver had done a lot of shit
7 around Dillon and suggested that he needed to get
8 convicted, and Mr. Daniel says that doesn't go to
9 bias. That is not a credible argument. If a
10 witness -- if a juror says I know the defendant and
11 the defendant has done a lot of shit around Dillon,
12 and that my decision is guilty, I've already
13 predetermined my decision. That is the definition of
14 bias. I can't understand his argument. If that is
15 not bias, I don't know what it is.

16 Then she also says -- and he says, well, none of
17 the defendants knew Cane. Well, Ms. Ault did.
18 Mr. Smith says Ms. Ault knew the confidential
19 informant, knew Cane. Ms. Ault may not know that the
20 confidential informant or Cane was the confidential
21 informant in connection with this case, but Mr. Smith
22 says that Ms. Ault says that they thought -- that she
23 was friends with Cane's family and that they thought
24 that Mr. McKeiver has something to do with his death,
25 and they wanted her to find him guilty. In what world

1 or in what universe is that not -- is there anyone
2 sitting on the jury that has any reason to be biased
3 or prejudiced against the State or the defense?

4 He just made the point on why there needs to be
5 an evidentiary hearing. He says all of these people
6 are lying and they are just trying to help their
7 friends out; that is not a factual statement. Of
8 course what Woods says is that -- Woods says that
9 whether or not there is a jury bias is a fact-driven
10 question. Everything in that Mr. Daniel just said,
11 none of it is facts. We submitted seven affidavits,
12 and of course if Mr. Daniel believes that these people
13 are not credible, then he should be joining in -- with
14 me in asking for an evidentiary hearing so that we
15 could get the facts and not present conjecture to the
16 Court, which is no evidence at all. Thank you very
17 much.

18 THE COURT: Upon receiving a copy of the motion,
19 statements, immediately took time to review all of
20 those statements and also needing to review the
21 transcript to see exactly my voir dire questions,
22 which I had a pretty good idea what they were because
23 that is what I normally do, the primary duty of the
24 Court is to see that the ends of justice are met to
25 the best of our ability, but also it is very important

1 to protect the sanctity of the jury process and the
2 jury's decision. There was something that was
3 mentioned that gives me great concern, that some of
4 the providers of the statements did have an interest
5 in this case and were present in court. If all of
6 this was to the degree they allege, why someone during
7 the lengthy trial didn't notify the defense, that
8 certainly is a mystery and gives me concern. Dillon
9 is one of the smaller counties. It is not as small as
10 mine, but I can tell you both, in all of these years
11 in the many trials I've resided over in Chesterfield
12 County, I can't ever remember having a jury that I
13 didn't at least know four, five people. Dillon is
14 even smaller than Chesterfield. You have that
15 situation in smaller counties where a lot of people
16 know practically everyone that lives in the county
17 unless they recently moved into the area.

18 Both of these cases you handed up, Rowell and
19 Woods, the key word is "intentional concealment" to
20 the voir dire questions posed by the Court, and I do
21 not find enough credibility within these statements,
22 nor what was presented to the Court, to justify any
23 reason to overturn this jury's verdict and grant a new
24 trial; therefore, the motion is denied. That's the
25 way it is. There won't be any further hearings here;

424
App.428

1 it will be in Columbia. Thank you all.

2 (Whereupon, the hearing concluded.)

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

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

CERTIFICATE OF REPORTER

State of South Carolina)
County of Dillon)

I, Natalie Dahl, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the hearing of the captioned case, relative to appeal, in the Court of General Sessions for Dillon County, South Carolina, on the 10th day of March, 2022.

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

May 19, 2022

Natalie Dahl, RPR
Court Reporter

ARREST WARRANT

2019A1710100467

STATE OF SOUTH CAROLINA

[X] County/ [] Municipality of

Dillon

THE STATE against

Marc Yasin Mckeiver

Address: [Redacted]
Phone: [Redacted] SSN: [Redacted]
Sex: M Race: B Height: 6 Weight: 202
DL State: SC DL #: [Redacted]
DOB: [Redacted] Agency ORI#: SCLED0000
Prosecuting Agency: State Law Enforcement Division
Prosecuting Officer: James T Martin - S00302
Offense: Drugs / Trafficking in meth. or cocaine base - 100 g or more, but less than 200 g
Offense Code: 0368
Code/Ordinance Sec: 44-53-0375(C)(3)

This warrant is CERTIFIED FOR SERVICE in the
[] County/ [] Municipality of
The accused is to be arrested and brought before me to be dealt with according to the law.

FILED GVENTHYAT 2019 SEP 14 10 39 AM CLERK OF COURT DILLON COUNTY

Signature of Judge

Date: [Redacted]

A copy of this arrest warrant was delivered to defendant Marc Yasin Mckeiver on 9-19-19

Sgt Jeffrey Cook Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:
426 ADD-430 General Sessions
PO Box 1220
301 West Main Street
Dillon, SC 29536

426 ADD-430

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA
[X] County/ [] Municipality of
Dillon

Personally appeared before me the affiant James T Martin who being duly sworn deposes and says that defendant Marc Yasin Mckeiver did within this county and state on or about 9/9/2019 violate the criminal laws of the State of South Carolina (or ordinance of [X] County/ [] Municipality of Dillon) in the following particulars:

DESCRIPTION OF OFFENSE: Drugs / Trafficking in meth. or cocaine base - 100 g or more, but less than 200 g

further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

That on September 9, 2019, in the county of Dillon, one Marc Yasin Mckeiver did commit the crime of Drugs / Trafficking in meth. or cocaine base - 100 g or more, but less than 200 g that he/she did unlawfully distribute a quantity of methamphetamine, a Schedule I controlled substance, weighing greater than 100 grams, to a Confidential informant working at the direction of the South Carolina Law Enforcement Division (SLED). this distribution is supported by an audio/video recording and law enforcement surveillance. This violation taking place in Dillon County, South Carolina. This being in violations of Section 44-53-375, South Carolina Code of Laws, 1976 as amended.

Signature of Affiant

STATE OF SOUTH CAROLINA
[X] County/ [] Municipality of
Dillon

Affiant's Address P. O. Box 21398
Columbia, SC 29221-
Affiant's Telephone

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 9/9/2019 defendant Marc Yasin Mckeiver did violate the criminal laws of the State of South Carolina (or ordinance of [X] County/ [] Municipality of Dillon) as set forth below:

DESCRIPTION OF OFFENSE: Drugs / Trafficking in meth. or cocaine base - 100 g or more, but less than 200 g

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable Sworn to and subscribed before me

on 9/12/2019
Signature of Issuing Judge Andrew Victor Bethea
Judge Code: 7400

Judge's Address Post Office Box 1016
Dillon, SC 29536-
Judge's Telephone (843)774-1406

Issuing Court: [X] Magistrate [] Municipal [] Circuit

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

S.C. Attorney General
April 21, 2003
SCCA 518

AFFIDAVIT

ACERTIFIED TRUE COPY

STATE OF SOUTH CAROLINA)
)
COUNTY OF DILLON)

INDICTMENT FOR

Drugs / Trafficking in meth. or cocaine base - 100 g
or more, but less than 200 g

§44-53-0375(C)(3)


At a Court of General Sessions, convened on November 21, 2019, the Grand Jurors of Dillon County present upon their oath:

TRAFFICKING METHAMPHETAMINE
(100 - 200 GRAMS)

CDR: 0368 44-53-0375(C)(3))

That Marc Yasin Mckeiver did in Dillon County on or about September 9, 2019, knowingly, sell, deliver, purchase, or bring into this State; or did aid, abet, attempt or conspire to sell, deliver, purchase or bring into this State, or was in actual or constructive possession or attempted to become in actual or constructive possession of a quantity of Methamphetamine in an amount of one hundred grams or more but less than two hundred grams, same being a controlled substance all within the meaning of Section 44-53-110, et seq., S. C. Code of Laws, 1976, as amended, such possession not having been authorized and in violation of Section 44-53-375(C)(3), S. C. Code of Laws, 1976, as amended, for the crime of trafficking.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


WILLIAM B. ROGERS, JR.
SOLICITOR

WITNESSES

James T Martin

SLED

Law Enforcement Case #:
085

WAIVER OF PRESENTMENT

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to:

Defendant

ARREST WARRANT NUMBER
2019A1710100467

ARRESTED ON: 2019-09-20

ACTION OF GRAND JURY

TRUE BILL

William T. McQ
Grand Jury Foreperson
3-12-2020
Date

VERDICT

- X 1. Guilty of trafficking in methamphetamine
100 grams of more but less than 200 grams
- 2. Guilty of possession of methamphetamine.
- 3. Not Guilty

William B. Rogers, Jr.
Petit Jury Foreperson
Date 1/12/22

DOCKET NUMBER:
2019-GS-17-0996

The State of South Carolina

County of Dillon

COURT OF GENERAL SESSIONS

Term:
November 2019

THE STATE

vs.

Marc Yasin Mckeiver

INDICTMENT FOR

Drugs / Trafficking in meth. or cocaine base -
100 g or more, but less than 200 g

§44-53-0375(C)(3)

CDR Code: 0368

William B. Rogers, Jr., Solicitor

25 yrs.

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF DILLON

STATE VS. Marc Yasin Mckeiver

INDICTMENT/CASE#: 2019-GS-17-0996

FILED
GWEN T WYATT

A/W#: 2019A1710100467

Date of Offense: 9/9/2019

S.C. Code § : 44-53-0375(C)(3)

CDR Code #: 0368

AKA: 2022 JAN 13 A 8 48

Race: Black Sex: M Age: 25

DOB: [REDACTED] SS#: [REDACTED]

Address: [REDACTED]

City, State, Zip: [REDACTED]

DL#: [REDACTED] SID#: [REDACTED]

*CDL Yes No CMV Yes No Hazmat Yes No

SENTENCE SHEET

CLERK OF COURT
DILLON COUNTY

In disposition of the above indictment comes now the Defendant who was

TO: Trafficking Meth

In violation of § 44-53-375(C)(3) of the S.C. Code of Laws, bearing CDR Code # 0368

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS \$17-25-45
(CSC w/minor 1st or CSC w/minor 3rd)

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. (def.'s initials)

The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST:

Wsl

76085

[Signature]

SCB16225

Daniel, Shipp

SC Bar#

Defendant

Brooker, Thurmond
Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections County Detention Center,

for a determinate term of 25 days/months/years/Time Served Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ 50,000.00 provided that upon the service of _____ days/months/years/Time Served and or payment

of \$ _____ ; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

The sentence shall run

CONCURRENT or CONSECUTIVE to sentence on: _____

The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by SCDOC.

90 days/months To include time spent on monitored house arrest prior to trial and sentencing.

The Defendant Shall be Released from County Detention Center.

Pursuant to 18 U.S.C. § 922 and § 16-25-30 it is unlawful for a person convicted of a violation of § 16-25-20 or § 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

STATE VS

Marc Yasin Mckeiver

INDICTMENT/CASE#:

2019-GS-17-0998

SPECIAL CONDITIONS:

PTUP after _____ months/years
And Other Terms Listed Below:

- Substance Abuse Counseling
- Attend Voc. Rehab. or Job Corp
- Mental Health Counseling
- Sex Offender Registry pursuant to S.C. Code § 23-3-430
- Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.
- Other: _____
- Completion of GED
- No Contact with _____
- May serve W/E beginning: _____
- Public Service Employment 0 _____ days/hours
- Random Drug/Alcohol testing
- Domestic Violence Intervention Program

RESTITUTION: Deferred Def. Waives Hearing Ordered

Total: \$ _____ plus 20% fee: _____ \$ _____

Payment Term _____ Set by SCDPPPS

Recipient: _____

*Fine: Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ Beginning

- §14-1-206 (Assessments 107.5 %) _____
- §14-1-211(A)(1) (Conv. Surcharge)
- §14-1-211(A)(2) (DUI Surcharge)
- §56-5-2995 (DUI Assessment)
- §56-1-286 (DUI Breath Test)
- §14-1-212 (Law Enforce. Funding)
- §14-1-213 (Drug Court Surcharge)
- §34-11-70(b)and(c), and 34-11-90(c)and(d) (Admin Fraud Check Court Costs)
- §50-21-114(BUI Breath Test Fee)
- §56-5-2942(J) (Vehicle Assessment)
- 3% to County (if paid in instalments)

- Appointed PD or appointed other counsel, Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees.
- § 17-3-30(B) Unpaid Application Fee to be paid to the Public Defender Fund

Clerk of Court/ Deputy Clerk:

[Signature]
[Signature]

Presiding Judge:

Judge Code:

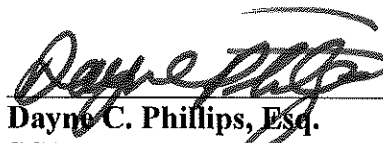
Sentence Date:

[Signature]
2048
1/12/2022

\$ 50,000.00
\$ 53750.00
\$ 100.00
\$ 100
\$ 12
\$ 25
\$ 25
\$ 150
\$ 41
\$ 50
\$ 40/ea
\$ 1508.25
\$ 500
\$ TBD
TOTAL \$ 106965.50

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.



Dayne C. Phillips, Esq.

SC Bar No. 77712

Price Benowitz LLP

1614 Taylor Street, Suite D

Columbia, SC 29201

(803) 807-0234

ATTORNEY FOR APPELLANT

June 21, 2023

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM DILLON COUNTY
Court of General Sessions

Paul M. Burch, Circuit Court Judge

Appellate Case No. 2022-000324

Trial Court Case No. 2019-GS-16-0996

The State of South Carolina,

Respondent,

v.

Marc Yasin McKeiver,

Appellant.

FINAL BRIEF OF APPELLANT

Dayne Phillips
SC Bar Number 77712

PRICE BENOWITZ LLP
1614 Taylor Street, Ste. D.
Columbia, SC 29201
(803) 272-4503

Attorney for Appellant

TABLE OF CONTENTS

Table of Authorities	2
Statement of Issues on Appeal	3
Statement of the Case	4
Relevant Facts	5
Arguments	11
1. THE TRIAL COURT ERRED IN REFUSING TO SUPPRESS THE PHOTOGRAPHS OBTAINED FROM SNAPCHAT BECAUSE THE COUNTY MAGISTRATE JUDGE DID NOT HAVE THE AUTHORITY TO ISSUE A SEARCH WARRANT TO THAT OUT-OF-STATE ENTITY FOR RECORDS THAT WERE NOT PHYSICALLY LOCATED IN THIS STATE	11
2. THE TRIAL COURT ERRED IN ADMITTING PHOTOGRAPHS OBTAINED FROM SNAPCHAT BECAUSE THIS EVIDENCE WAS NOT PROPERLY AUTHENTICATED PURSUANT TO RULE 901, SCRE, BY PERSONAL KNOWLEDGE, DISTINCTIVE CHARACTERISTICS, OR RECORDS CUSTODIAN	13
3. THE TRIAL COURT ERRED IN REFUSING TO SUPPRESS THE DECEASED CI'S VIDEO RECORDING OF INSIDE APPELLANT'S HOME IN VIOLATION OF ARTICLE 1, SECTION 10'S PROHIBITION AGAINST UNREASONABLE INVASIONS OF PRIVACY	16
4. THE TRIAL COURT ERRED BY FAILING TO GRANT A NEW TRIAL, OR IN THE ALTERNATIVE, TO GRANT AN EVIDENTIARY HEARING, WHERE DEFENSE COUNSEL PRODUCED SEVEN AFFIDAVITS AT A POST-TRIAL HEARING INDICATING TWO JURORS INTENTIONALLY CONCEALED INFORMATION IN RESPONSE TO THE COURT'S VOIR DIRE QUESTIONS, AND WHERE THE DEFENSE COUNSEL WOULD HAVE STRUCK THEM HAD THE JURORS NOT CONCEALED THE INFORMATION	19
Conclusion	26

TABLE OF AUTHORITIES

Cases

<i>Deep Keel, LLC v. Atlantic Private Equity Group, LLC</i> , 413 S.C. 58, 773 S.E.2d 607 (Ct. App. 2015).....	13
<i>McDonough Power Equipment, Inc. v. Greenwood</i> , 464 U.S. 548 (1984)	23
<i>Porter v. Zook</i> , 898 F.3d 408, 428 (4 th Cir. 2018)	20, 24
<i>State v. Benton</i> , 435 S.C. 250, 865 S.E.2d 919 (Ct. App. 2021)	9
<i>State v. Boston</i> , 433 S.C. 177, 857 S.E.2d 27 (Ct. App. 2021).....	16, 17
<i>State v. Brown</i> , 424 S.C. 479, 818 S.E.2d 735 (2018).....	13
<i>State v. Coaxum</i> , 410 S.C. 320, 764 S.E.2d 242.....	20
<i>State v. Counts</i> , 413 S.C. 153, 776 S.E.2d 59 (2015)	16
<i>State v. Eubanks</i> , 878 S.E.2d 335 (Ct. App. 2022).....	20
<i>State v. Green</i> , 427 S.C. 223, 830 S.E.2d 711 (Ct. App. 2019).....	13, 14
<i>State v. Guillebeaux</i> , 362 S.C. 270, 607 S.E.2d 99 (2004).....	20
<i>State v. Warner</i> , 436 S.C. 395, 872 S.E.2d 638 (2022)	8, 11, 12
<i>State v. Woods</i> , 345 S.C. 583, 550 S.E.2d 282 (2001).....	passim
<i>United States v. Hassan</i> , 742 F.3d 104 (4 th Cir. 2014)	13

Rules

Rule 901, SCRE.....	9, 13, 14, 15
Rule 901(b), SCRE	13, 14
Rule 901(b)(1), SCRE.....	14
Rule 901(b)(4), SCRE.....	15

Constitutional Provisions

S.C. Const. art. I, § 10.....	16, 18
S.C. Const. art. I, § 14	19, 24, 25
U.S. Const. amend. VI.....	19, 24, 25
U.S. Const. amend. VIII.....	19, 24, 25

Other Authorities

<i>Wharton's Criminal Evidence</i> § 14:2 (15 th ed. 2021).....	14
--	----

STATEMENT OF ISSUES ON APPEAL

- I. DID THE TRIAL COURT ERR IN REFUSING TO SUPPRESS THE PHOTOGRAPHS OBTAINED FROM SNAPCHAT WHEN THE COUNTY MAGISTRATE JUDGE DID NOT HAVE THE AUTHORITY TO ISSUE A SEARCH WARRANT TO THAT OUT-OF-STATE ENTITY FOR RECORDS THAT WERE NOT PHYSICALLY LOCATED IN THIS STATE?

- II. DID THE TRIAL COURT ERR IN ADMITTING PHOTOGRAPHS OBTAINED FROM SNAPCHAT WHEN THIS EVIDENCE WAS NOT PROPERLY AUTHENTICATED PURSUANT TO RULE 901, SCRE, BY PERSONAL KNOWLEDGE, DISTINCTIVE CHARACTERISTICS, OR RECORDS CUSTODIAN?

- III. DID THE TRIAL COURT ERR IN REFUSING TO SUPPRESS THE DECEASED CI'S VIDEO RECORDING OF INSIDE APPELLANT'S HOME IN VIOLATION OF ARTICLE 1, SECTION 10'S PROHIBITION AGAINST UNREASONABLE INVASIONS OF PRIVACY?

- IV. DID THE TRIAL COURT ERR BY FAILING TO GRANT A NEW TRIAL, OR IN THE ALTERNATIVE TO GRANT AN EVIDENTIARY HEARING, WHERE DEFENSE COUNSEL PRODUCED SEVEN AFFIDAVITS AT A POST-TRIAL HEARING INDICATING TWO JURORS INTENTIONALLY CONCEALED INFORMATION IN RESPONSE TO THE COURT'S VOIR DIRE QUESTIONS, AND WHERE THE DEFENSE COUNSEL WOULD HAVE STRUCK THEM HAD THE JURORS NOT CONCEALED THE INFORMATION?

STATEMENT OF THE CASE

On March 12, 2020, the Dillon County Grand Jury indicted Appellant, Marc Yasin McKeiver, for Trafficking Methamphetamine, 100 grams or more, but less than 200 grams, first offense (Indictment 2019-GS-17-0996). (R. 427).

On January 10, 2022, Appellant proceeded to trial before the Honorable Paul M. Burch and a jury. (R. 1). Thurmond Brooker represented Appellant, and Assistant Solicitor Shipp Daniel prosecuted the case on behalf of the State. (R. 1). The jury returned a verdict of guilty on January 12, 2022. (R. 352, line 20 – 353, line 1). The Trial Court sentenced Appellant to twenty-five (25) years imprisonment. (R. 368, lines 19-25).

On January 20, 2022, Appellant filed a Motion for a New Trial. (R. 384). The parties appeared before Trial Court and presented their arguments on March 10, 2022. (R. 397). The Trial Court denied the motion at the conclusion of the hearing. (R. 423, lines 18-25). Appellant timely filed a Notice of Appeal on March 16, 2022.

This appeal follows.

RELEVANT FACTS

During opening statement, the Prosecutor outlined the State's case and addressed the unique factual issue of the State's key witness being deceased prior to trial:

You're gonna hear from three witnesses. That's it. This ain't gonna [sic] be a long one. Three witnesses. They're all law enforcement agents. You're going to hear from J.T. Martin of [the South Carolina Law Enforcement Division (SLED)], who was overseeing a task force that was investigating the drug trade in Dillon County back in 2019.

...

You're going to hear from Alex Blake, who used to be with [SLED], now, works for the FBI. You're going to hear about what they did. How they targeted this defendant. You're going to hear how they used a confidential informant, we call them CI's. He was a confidential informant. To go to where [Appellant] was and buy a bunch of pills from him.

...

You're not going to hear from the confidential informant himself because, unfortunately, he died a while back, a while, a while ago, in a completely unrelated situation having nothing to do with this defendant. So you can't hear from him. But you will hear from, from these three sled agents. That's it. Plain and simple, straightforward, but very important.

(R. 134, line 25 – 135, line 23).

During pre-trial, the Prosecutor provided a more detailed explanation of the State's case to the Trial Court in anticipation of Defense Counsel's motions in limine:

This [CI] is now dead. He was murdered in an unrelated situation a while ago. The [CI] met with law enforcement on September 9 at whatever meeting location they had. The [CI] was searched by [SLED] agents. He had to make sure he didn't have any drugs, money, weapons, anything on him. He did not. They outfitted him with a camera. They get in the car. An undercover [SLED] agent drove the under, drove the [CI] to Mr. [Appellant's] house.

...

[A]t least two phone calls were placed from [CI's] phone to [Appellant's] phone. [Appellant] answers. They have a conversation that was on speaker phone and the [SLED] agent heard the conversation where the CI was setting up the buy that was to take place shortly, thereafter. [SLED] agent drives confidential informant to the house. Broad daylight. Let's

[CI] out in the front yard. [CI] walks up - and you see all this on video - walks up to the door and [Appellant] answers the door. [Appellant] takes the [CI] back to a back bedroom. You see in the, in the video, it's a little blurry, this particular part of it, but you see something that looks like a plastic bag in [Appellant's] hand to CI, has some sort of conversation. The only - - there's only one other person that is visible in the video and that is the defendant's girlfriend, Winter Bennett . . . [.]

...

[The CI] returns to the [SLED] agent's car. He's only in the house for, I mean, not even two minutes. When he returns to [SLED] agent's car he gives the [SLED] agent, two bags of pastel colored oddly shaped pills. These pills were sent to [SLED] and they turned out to be methamphetamine, 134, 136 grams of methamphetamine.

(R. 31, line 2 – 32, line 14).

Motion to Suppress Deceased CI's Statements

Defense Counsel moved to suppress “any statements that were made, that was made by the CI whether written or either record[ed] statements, that would include statements that was made by the CI on the video[.]” (R. 38, line 24 – 39, line 3).

In response, the Prosecutor agreed to mute the audio of the CI's video recording. (R. 39). Defense Counsel provided no additional argument on this issue.

Motion to Suppress Deceased CI's Video Recording

Defense Counsel also moved to suppress the video recording made by the deceased CI, arguing the “South Carolina [Constitution] provides also the additional protection against invasion of privacy”. (R. 44, lines 1-3). Specifically, Defense Counsel explained that the CI is an agent of the State who has entered a private citizen's residence wearing a live recording device, which allowed the State (law enforcement) to view inside the home without the owner's consent, and more importantly, without a warrant. (R. 40 – 44). Defense Counsel noted that the distinguishing factor is when there is a “controlled buy” (drug deal) done by a CI *inside* of a residence: “So the question then

becomes . . . whether or not law enforcement can do something through technology that they would not be able to otherwise physically do.” (R. 43, lines 4-6). In response, the Prosecutor argued that “[n]o warrant is required for a confidential informant to go inside a house whether there’s a live feed or not.” (R. 45, lines 12-13).

The Trial Court denied the motion and stated, “What flies in the face of your argument . . . is the fact that if you had to get a warrant for a CI to go in and make a buy, you got to serve that warrant and no supplier of drugs is gonna sell somebody drugs or give them drugs after a warrant has been served on them”. (R. 45, lines 18-24). Defense Counsel replied, “[T]he question is . . . whether or not [law enforcement] can outfit a [CI] with a live feed wire with law enforcement on the other end and walk into a private residence.” (R. 46, lines 9-13). The Prosecutor injected that the CI had two cameras and claimed that the live feed camera did not work but needed to check with law enforcement for confirmation. (R. 46, line 23 – 47, line 8).

On cross-examination during the pre-trial hearing, Special Agent Alex Blake of the Federal Bureau of Investigation (FBI) testified that he had never spoken to or met with Appellant prior to the alleged drug deal with the CI. (R. 99, line 12 – 100, line 1). Agent Blake also admitted that the only information of illegal activity he had regarding Appellant was provided to him by the deceased CI and the other Special Agent. (R. 101, lines 15). Notably, Special Agent James Martin of SLED maintained that he did not recall whether the video feed was live when the deceased CI went into Appellant’s residence but conceded to the “audio being transmitted live”. (R. 113, lines 13-23).

Motion to Suppress Photographs from Snapchat: Invalid Search Warrant

Furthermore, Defense Counsel moved to suppress photographs that were

allegedly posted on the social media platform Snapchat and obtained by law enforcement due to a search warrant signed by a Dillon County Magistrate Judge. (R. 66 – 77). Specifically, Defense Counsel argued that “magistrate judges only have the authority to issue search warrants within their jurisdictional boundaries.” (R. 67, lines 1-3). Defense Counsel noted that Snapchat Incorporated was not located in Dillon County and that “a magistrate’s judges jurisdiction is [in] the county in which that judge sit.” (R. 68, lines 11-12). The Trial Court replied, “If a magistrate issued that on Snapchat that warrant is not gonna hold water, solicitor.” (R. 68, lines 22-23). The Prosecutor disagreed, and the Trial Court stated:

Y’all are both wrong there. They way I understand that we've been instructed by federal precedent, the magistrates the jurisdiction ends at their county lines. If the legislature were to come in and declare and force the issue the magistrate’s are a court of record, it won't be an issue anymore. But any circuit judge in this state operates a court of record, therefore, the circuit court judges can issue warrants in the matters of these cell phones and these computer records. A magistrate cannot, unless, that specific servers is located in that county. Now, if the Attorney General disagrees with that they’re sure different from what I've been instructed.

(R. 69, lines 5-17).

In response, the Prosecutor cited a recent oral argument in *State v. Warner*, 436 S.C. 395, 872 S.E.2d 638 (2022) and maintained that the photographs were obtained by law enforcement in good faith and were “created in the jurisdiction of this magistrate.” (R. 69, line 18 – 70, line 24). The Trial Court ultimately held, “I’m trying to apply a common sense approach to this whole thing since there’s not much present . . . I’m gonna have to deny the motion in limine or to suppress that particular Snapchat evidence. (R. 91, lines 2-6).

During a subsequent pre-trial hearing, Special Agent James Martin of SLED

testified that he presented a search warrant for Snapchat and that the magistrate judge signed the warrant. (R. 108, lines 12-25). Agent Martin conceded on cross-examination that he did not subpoena any records from a cell phone provider to identify the account owner of the specific number provided by the deceased CI. (R. 110, lines 12-23). Agent Martin further admitted he had no knowledge that the cell phone number was assigned to Appellant. (R. 110, line 23 – 111, line 2). Notably, the State never subpoenaed any phone records to substantiate the allegation that the phone number was associated with Appellant. (R. 106, lines 7-15).

Motion to Suppress Photographs from Snapchat: Authentication

Defense Counsel also moved to suppress the photographs allegedly posted on Snapchat based on the State's inability to properly authenticate the messages. (R. 47 – 4). Specifically, Defense Counsel argued that the State did not have a custodian of records for Snapchat available to testify: “[O]ur first argument is, is that if these [photographs] come from, comes from Snapchats servers, Snapchat has to authenticate these records and they have to have a records custodian to come here and testify and authenticate where these records are coming from.” (R. 48, line 23 – 49, line 4).

In response, the Prosecutor noted Snapchat provided a letter stating, “this is the certificate of authenticity from Snapchat” and argued the letter is sufficient to authenticate the photographs pursuant to Rule 902(8) of the South Carolina Rules of Evidence. (R. 50, line 25 – 51, line 14). Defense Counsel replied that the controlling authority on the issue is Rule 901, SCRE, and *State v. Benton*, 435 S.C. 250, 865 S.E.2d 919 (Ct. App. 2021). (R. 53 – 57; R. 60 – 61). The Trial Court interjected and refused to rule on the issue: “[T]hat’s for y’all to argue with the jury.” (R. 57, lines 22-23). Both

lawyers continued to reiterate their arguments on this issue. (R. 58 – 66).

The following day, Defense Counsel moved to admit the search warrant for Snapchat into evidence, and the Trial Court admitted the document without objection from the State. (R. 81 – 82).

Post-Trial Motion for a New Trial: Juror Misconduct

On March 10, 2022, Defense Counsel argued that the Trial Court should grant a new trial, or in the alternative to grant an evidentiary hearing because of two jurors intentionally concealed information in response to the Court's voir dire questions when Defense Counsel would have struck them had the jurors not concealed the information. (R. 397-425).

ARGUMENT**I. THE TRIAL COURT ERRED IN REFUSING TO SUPPRESS PHOTOGRAPHS OBTAINED FROM SNAPCHAT BECAUSE THE COUNTY MAGISTRATE JUDGE DID NOT HAVE THE AUTHORITY TO ISSUE A SEARCH WARRANT TO THAT OUT-OF-STATE ENTITY FOR RECORDS THAT WERE NOT PHYSICALLY LOCATED IN THIS STATE.**

In *State v. Warner*, our Supreme Court held that a county magistrate judge had the authority to issue a search warrant to an out-of-state entity for cell phone records that are not physically located in this State. *State v. Warner*, 436 S.C. 395, 872 S.E.2d 638 (2022). Specifically, the Court found that the cell phone provider “clearly does business in South Carolina, in particular, in [that particular] County” and “therefore, is subject to the jurisdiction of [that] County magistrate.” *Id.* at 403, 872 S.E.2d at 643. The Court further noted that “[t]he warrant sought records reflecting information generated in South Carolina through the interaction of [the defendant’s] cell phone and [the providers] cell towers in [that] County.” *Id.* Therefore, the Court held that the cell phone provider “is in possession and control of property that section 17-13-140 permits to be seized.” *Id.* at 404, 872 S.E.2d at 643. Section 17-13-140 of the South Carolina Code of Laws provides, in pertinent part:

Any magistrate ... may issue a search warrant to search for and seize ... property constituting evidence of crime or tending to show that a particular person committed a criminal offense The property described in this section, or any part thereof, may be seized from any place where such property may be located, or from the person, possession or control of any person who shall be found to have such property in his possession or under his control.

S.C. Code § 17-13-140.

[Remainder of Page Intentionally Left Blank]

Discussion

In this case, the Trial Court erred in refusing to suppress photographs obtained from snapchat because the Dillon County Magistrate Judge did not have the authority to issue a search warrant to that out-of-state entity for records that were not physically located in this State. Specifically, the facts presented here are distinct from *State v. Warner* for the following reasons: (1) the State failed to present any evidence that Snapchat does business in South Carolina or in Dillon County; (2) the State failed to present sufficient evidence that the records sought were generated in South Carolina; (3) the State failed to subpoena or request a search warrant for cell phone provider records to corroborate that the phone number associated with the Snapchat account belonged to Appellant; (4) the State could not prove that Appellant posted those pictures on Snapchat; and (5) the State's key witness who allegedly had this personal knowledge regarding Appellant died prior to trial. *Cf. Warner*, 436 S.C. 395, 872 S.E.2d 638.

Agent Martin conceded on cross-examination that he did not subpoena any records from a cell phone provider to identify the account owner of the specific number provided by the deceased CI. (R. 110, lines 12-23). Agent Martin further admitted he had no knowledge that the cell phone number was assigned to Appellant. (R. 110, line 23 – 111, line 2). Notably, the State never subpoenaed any phone records to substantiate the allegation that the phone number was associated with Appellant. (R. 106, lines 7-15). Therefore, the State did not provide sufficient evidence to prove Snapchat was in possession and control of property that section 17-13-140 permits to be seized.

II. THE TRIAL COURT ERRED IN ADMITTING PHOTOGRAPHS OBTAINED FROM SNAPCHAT BECAUSE THIS EVIDENCE WAS NOT PROPERLY AUTHENTICATED PURSUANT TO RULE 901, SCRE, BY PERSONAL KNOWLEDGE, DISTINCTIVE CHARACTERISTICS, OR RECORDS CUSTODIAN.

“[E]vidence must be authenticated or identified in order to be admissible.” *State v. Brown*, 424 S.C. 479, 488, 818 S.E.2d 735, 740 (2018). “The authentication standard is not high, and a party need not rule out any possibility the evidence is not authentic.” *State v. Green*, 427 S.C. 223, 230, 830 S.E.2d 711, 714 (Ct. App. 2019) (citation omitted), *aff’d as modified*, 432 S.C. 97, 851 S.E.2d 440 (2020). “The trial judge acts as the authentication gatekeeper, and a party may open the gate by laying a foundation from which a reasonable juror could find the evidence is what the party claims.” *Id.*

The following are examples of authentication or identification conforming with the requirements of this rule:

- (1) Testimony of Witness With Knowledge. Testimony that a matter is what it is claimed to be.
- ...
- (4) Distinctive Characteristics and the Like. Appearance, contents, substance, internal patterns, or other distinctive characteristics, taken in conjunction with circumstances.

Rule 901(b), SCRE. Notably, “‘the burden to authenticate ... is not high’ and requires only that the proponent must offer a satisfactory foundation to permit the jury to conclude the evidence is authentic. *Deep Keel, LLC v. Atlantic Private Equity Group, LLC*, 413 S.C. 58, 64-65, 773 S.E.2d 607, 610 (Ct. App. 2015) (citing *United States v. Hassan*, 742 F.3d 104, 133 (4th Cir. 2014)).

“Social media messages and content are writings, and evidence law has always viewed the authorship of writings with a skeptical eye.” *Green*, 427 S.C. at 230, 830 S.E.2d at 714. “*The requirement of authentication cannot be met by merely offering the*

writing on its own. Something more must be set forth connecting the writing to the person the proponent claims the author to be.” *Id.* at 231, 830 S.E.2d at 714 (citation omitted) (emphasis added). “Rule 901(b), SCRE, lists ten non-exclusive methods of authentication.” *Id.* at 231, 830 S.E.2d at 715. “Rule 901, SCRE, does not care what form the writing takes, [a]ll that matters is whether it can be authenticated, for the rule was put in place to deter fraud.” *Id.* at 231, 830 S.E.2d at 714.

Under Rule 901(b)(1), SCRE, evidence may be authenticated by “having someone with personal knowledge about the writing testify the matter is what it is claimed to be.” *Id.* at 231, 830 S.E.2d at 715. “This method may be accomplished by testimony from a person who sent or received the writing.” *Id.* Additionally, “[o]ne who witnessed the creation or signing of the writing also has the personal knowledge Rule 901(b)(1), SCRE, demands.” *Id.* “As long as a witness with personal knowledge testifies that an exhibit accurately portrays what it depicts, that should be sufficient to establish its authenticity.” 3 Barbara E. Bergman et al., *Wharton’s Criminal Evidence* § 14:2 (15th ed. 2021).

In *Green*, the defendant asserted the trial court erred by admitting into evidence Facebook messages allegedly between his codefendant and the victim because they were not properly authenticated. 427 S.C. at 227, 229, 830 S.E.2d at 712, 714. First, this Court noted social media’s seemingly unique authentication problems “dissolve against the framework of Rule 901, SCRE.” *Id.* at 230, 830 S.E.2d at 714. Applying that framework, this Court determined the messages could not be authenticated by personal knowledge under Rule 901(b)(1), SCRE, because the testifying witness did not send or receive the messages, nor witness their creation. *Id.* at 231, 830 S.E.2d at 715.

However, this Court then applied Rule 901(b)(4), SCRE, and determined the messages had been authenticated because their content “was distinctive enough that a reasonable jury could find [his codefendant] wrote them.” *Id.* at 233, 830 S.E.2d at 715. This court noted several facts linked the messages to the defendant via his codefendant and ruled that “[t]aken together, th[o]se circumstances serve[d] as sufficient authentication to meet the low bar Rule 901(b)(4), SCRE, sets.” *Id.* at 233, 830 S.E.2d at 715-16. This Court concluded it was “persuaded the [fraud] risk [surrounding social media] is one Rule 901, SCRE, contemplates and can contain. Lawyers can always argue case-specific facts bearing on this risk and attempt to convince the jury the writing is not genuine.” *Id.* at 234, 830 S.E.2d at 716.

Discussion

In this case, the Trial Court erred in admitting photographs obtained from Snapchat because this evidence was not properly authenticated pursuant to Rule 901, SCRE, by personal knowledge, distinctive characteristics, or records custodian. The Prosecutor maintained that the “certificate of authenticity” from Snapchat was sufficient to authenticate the photographs pursuant to Rule 902(8) of the South Carolina Rules of Evidence. (R. 50, line 25 – 51, line 14). The State did not properly authenticate the Snapchat records by (1) failing to present any witness who had personal knowledge that Appellant posted those photographs on Snapchat; (2) failing to provide evidence that the photographs of Appellant were distinctive enough that a reasonable juror could find Appellant had ownership or control over that Snapchat account; and (3) failing to subpoena a Records Custodian from Snapchat to authenticate the records. Accordingly, the Trial Court erred in admitting this evidence for the jury’s consideration.

III. THE TRIAL COURT ERRED IN REFUSING TO SUPPRESS THE DECEASED CP'S VIDEO RECORDING OF INSIDE APPELLANT'S HOME IN VIOLATION OF ARTICLE 1, SECTION 10'S PROHIBITION AGAINST UNREASONABLE INVASIONS OF PRIVACY.

The South Carolina Constitution grants citizens an express right to privacy. S.C. Const. art. I, § 10 (“The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures and *unreasonable invasions of privacy* shall not be violated”) (emphasis added). Our Supreme Court has held, “[T]he privacy interests in one’s home are the most sacrosanct, [and] there must be some threshold evidentiary basis for law enforcement to *approach* a private residence.” (emphasis added). *State v. Counts*, 413 S.C. 153, 172, 776 S.E.2d 59, 69 (2015). The Court further held that “[Officers] must have reasonable suspicion of illegal activity at a targeted residence prior to approaching the residence and knocking on the door.” *Id.* at 172, 776 S.E.2d at 70 (emphasis added).

“In establishing this threshold requirement, our Supreme Court reaffirmed that the South Carolina Constitution’s privacy protection against unreasonable searches and seizures ‘favors an interpretation offering a higher level of privacy protection than the Fourth Amendment.’” *State v. Boston*, 433 S.C. 177, 183, 857 S.E.2d 27, 30 (Ct. App. 2021) (quoting *Counts*, 413 S.C. at 168, 776 S.E.2d at 68), cert. granted, S.C. Sup. Ct. Order Dated Jan. 13, 2022. The Court explained its ruling in *Counts* as follows:

For our state constitutional right to privacy to have any significance, we believe there must be some minimum evidentiary standard met before law enforcement conduct a warrantless search of a South Carolina citizen’s home. Therefore, we hold that law enforcement must have reasonable suspicion of illegal activity before approaching the targeted residence and conducting the “knock and talk” investigative technique.

Id. at 174, 776 S.E.2d at 70–71.

In *Boston*, this Court determined that officers had reasonable suspicion to approach and knock on the door of an apartment where the defendant was visiting. 433 S.C. at 186, 857 S.E.2d at 32. After responding to a call, an officer proceeded to patrol a nearby apartment community known for high volumes of narcotic activity and because “vulnerable” adults lived there. *Id.* at 179, 857 S.E.2d at 28. While surveilling the apartments, the officer observed two men that he knew were associated with drug activity enter an apartment. *Id.* at 180, 857 S.E.2d at 28. The officer knew the apartment to be the residence of an individual with mental disabilities that used narcotics. *Id.* Based on concerns for the resident’s safety and the nature of the activities that might take place inside the apartment, the officer decided to conduct a knock and talk. *Id.* at 180, 857 S.E.2d at 28–29.

In response to a knock, the resident opened her door and allowed the officers to enter the apartment. *Id.* at 180, 857 S.E.2d at 29. Once inside, officers saw two men in the kitchen huddled around a microwave, two plastic bags with white residue on them, and a scale. *Id.* When the men noticed the officers, they opened the microwave, hid their hands, and ran to the bathroom. *Id.* Concerned for their safety, the officers conducted a protective sweep of the apartment and ordered the men out of the bathroom. *Id.* at 180–181, 857 S.E.2d at 29. The officers found a glass measuring cup filled with a steaming substance suspected to be crack cocaine. *Id.*

This Court reasoned that the officers had reasonable suspicion to conduct the knock and talk because of the investigating officer’s knowledge of (1) the two men in the apartment, (2) criminal drug investigation, and (3) the apartment community he surveilled. *Id.* at 185, 857 S.E.2d at 31. Specifically, the officer testified to his objective

knowledge of the apartment community and the three people inside the apartment, stating he knew all three and that he had previous encounters with the two men that entered the apartment. *Id.* The officer also had eleven years of criminal drug investigation experience and knew the apartment community was a hot spot for drug activity. *Id.*

Discussion

In this case, the Trial Court erred in refusing to suppress the deceased CI's video recording of inside Appellant's home in violation of Article I, Section 10's prohibition against unreasonable invasions of privacy. Defense Counsel argued that the CI is an agent of the State who has entered a private citizen's residence wearing a live recording device, which allowed the State (law enforcement) to view inside the home without the owner's consent, and more importantly, without a warrant. (R. 40 – 44). Notably, the State's key witness died prior to trial and was not previously cross-examined by Defense Counsel.

On cross-examination during the pre-trial hearing, Agent Alex Blake testified that he had never spoken to or met with Appellant prior to the alleged drug deal with the CI. (R. 99, line 12 – 100, line 1). Agent Blake also admitted that the only information of illegal activity he had regarding Appellant was provided to him by the deceased CI and the other Special Agent. (R. 101, line 15). Agent James Martin maintained that he did not recall whether the video feed was live when the deceased CI went into Appellant's residence but conceded to the "audio being transmitted live". (R. 113, lines 13-23). The primary purpose of our state constitution's heightened protection is to protect a citizen's right not to have law enforcement invade the privacy of their home. Therefore, the State violated Appellant's right against unreasonable invasions of privacy by admitting a video

from a dead CI who provided a live feed for law enforcement to invade Appellant's home.

IV. THE TRIAL COURT ERRED BY FAILING TO GRANT A NEW TRIAL, OR IN THE ALTERNATIVE, TO GRANT AN EVIDENTIARY HEARING, WHERE DEFENSE COUNSEL PRODUCED SEVEN AFFIDAVITS AT A POST-TRIAL HEARING INDICATING TWO JURORS INTENTIONALLY CONCEALED INFORMATION IN RESPONSE TO THE COURT'S VOIR DIRE QUESTIONS, AND WHERE THE DEFENSE COUNSEL WOULD HAVE STRUCK THEM HAD THE JURORS NOT CONCEALED THE INFORMATION.

Appellant's right to a trial by a fair and impartial jury pursuant to the Sixth and Fourteenth Amendments of the United States Constitution, and Article I, section 14 of the South Carolina Constitution was violated when two jurors—Juror Number 6, and Juror Number 53—intentionally concealed information regarding knowledge of the defendant, as well as bias and prejudice against the defendant in response to the trial court's questions during voir dire. As such, the trial court abused its discretion by denying Appellant's motion for new trial, and alternatively refusing to even hold an evidentiary hearing on what is "necessarily" a "factually intensive determination." *State v. Woods*, 345 S.C. 583, 587, 550 S.E.2d 282, 284 (2001).

A new trial is required when a juror intentionally conceals information that would either (a) support a challenge for cause, or (b) been a material factor in the use of a peremptory strike. *Id.*, 345 S.C. at 587, 550 S.E.2d at 284. Moreover, as our Supreme Court affirmed in *Woods*, "[w]here a juror, without justification, fails to disclose a relationship, it may be inferred, nothing to the contrary appearing, that the juror is not impartial. *Id.* 345 S.C. at 587, 550 S.E.2d 282, at 288. However, "such an inference may not be drawn where there is information to the contrary or the failure to disclose is innocent." *State v. Guillebeaux*, 362 S.C. 270, 275, 607 S.E.2d 99, 102 (2004) (holding,

after a post-trial evidentiary hearing included testimony of the Juror in question and other relevant witnesses to the matter, that Juror's answers to voir dire were honest).

The initial inquiry to be made is whether the concealment by the juror was intentional. *Woods*, 345 S.C. at 587, 550 S.E.2d at 288. Specifically, "intentional concealment occurs when the question presented to the jury on *voir dire* is reasonably comprehensible to the average juror and the subject of the inquiry is of such significance that the juror's failure to respond is unreasonable." *Id.* On the other hand, "[u]nintentional concealment... occurs where the question posed is ambiguous or incomprehensible to the average juror, or where the subject of the inquiry is insignificant or so far removed in time that the average juror's failure to respond is reasonable under the circumstances." *State v. Eubanks*, 878 S.E.2d 335 (Ct. App. 2022) (quoting *State v. Coaxum*, 410 S.C. 320, 325 n.4, 764 S.E.2d 242, 244 n.4) *Id.* Further, "whether a juror's failure to respond is intentional is a fact intensive determination which must be made on a case by case basis." *Woods*, 345 S.C. at 587, 550 S.E.2d at 288 (emphasis added). Such determinations should be made after an evidentiary hearing. *Porter v. Zook*, 898 F.3d 408, 428 (4th Cir. 2018).

Discussion

In the present case, the Trial Court asked the jury panel several voir dire questions pertaining to relationships, biases, and prejudices toward the parties. Specifically, the Trial Court asked the following question:

Is anybody on the panel related by blood or by marriage or have any business, social, religious, or fraternal relationship with Marc McKeiver? And with that said, I'm gonna ask Mr. McKeiver, if he would, to stand and let the jury take a look and make sure you, we covered the question about relationship.

(R. 6, ln. 16-21). Although two jurors in the panel raised their hands, neither included Juror Number 6, or Juror Number 53. Further, the Trial Court also asked the following pertinent questions:

THE COURT: Winter Bennett. Anybody on the panel connected by blood or by marriage or have any business, social, religious or fraternal relationship with any of these potential witnesses? If so, we need you to raise your right hand.

(Whereupon, no one raises their hand)

THE COURT: Anybody on the panel have any personal knowledge or have developed an opinion about this case, if so, we need you to raise your right hand but don't make any comment?

(Whereupon, no one raises their hand)

THE COURT: Does anybody on the panel have any opinion, any biasness, or any prejudice toward either the State or the defendant whereby you cannot be a fair and impartial juror? We need you to raise your right hand but don't say anything.

(Whereupon, no one raises their hand)

THE COURT: Does anybody on the panel know of any reason why you should not serve as a juror on this particular case, please raise your right hand?

(Whereupon, no one raises their hand)

(R. 10, ln. 5-25).

However, as was brought to the attention of Defense Counsel after the conclusion of trial, two jurors—Juror Number 6, and Juror Number 53—were ultimately seated in Appellant's case that failed to respond to voir dire questions concealing their knowledge of the defendant, as well as bias and prejudices against him. *Id.* Defense Counsel raised the matter by way of post-trial motion based on January 20, 2022, shortly thereafter. *See* Notice and Motion for New Trial Pursuant to Rule 29(A), SCRCrimP. The matter was

heard by the trial court on March 10, 2022, seeking a new trial, or in the alternative at least an evidentiary hearing to question both the Jurors and witnesses who provided the affidavits. (R. 398, ln. 14-18; R. 411, ln. 21—412, ln. 6.

Juror Number 6

Appellant's motion and affidavits readily indicated that Juror Number 6—who was initially seated as an alternate juror but was moved to the petit jury when another could not continue due to illness—not only knew one of the witnesses in the case, but also harbored bias and prejudice against Appellant due to her relationship with the family of the deceased confidential informant involved in the case. Specifically, Juror Number 6, who was well known to the affiant Treasury Smith, not only personally knew witness Winter Bennett, but also told affiant Smith that Appellant gave Ms. Bennett a sexually transmitted disease.

Juror Number 6 further intimated to Smith that Appellant was doing a lot of bad things in Dillon and she already determined that she was going to vote guilty for Appellant. *See* Motion for New Trial, p. 3 with attached affidavits. Moreover, Smith indicated that Juror Number 6 was close to the family of the deceased confidential informant who was involved with this case, and that they too wanted her to find Appellant guilty due to their belief that Appellant had knowledge about the informant's death. Finally, the father of Juror Number 6's children was involved in an altercation with Appellant, and Juror Number 6 knew of the matter. *Id.*

All these allegations present a question of juror misconduct for intentional concealment. First, based upon the information provided, Juror Number 6 socially or fraternally knew witness Winter Bennett, and yet she failed to respond to the trial court's

question directly addressing the matter. She likewise had reasons to be biased and hold prejudice against Appellant not only for getting into a fight with the father of her children, but also for the more concerning fact that she knew the family of the deceased confidential informant in the case.

However, what is most concerning is that she told others that she was going to vote for a guilty verdict. In each instance alleged, Juror Number 6 would have a bias or prejudice against Appellant, and even developed an opinion regarding guilt or innocence—all of which were questions clearly asked by the trial court in plain language concealed by Juror Number 6. Had Juror Number 6 come forward during the voir dire process, she would have been struck—if not for cause, then certainly by the defense’s use of a peremptory strike.¹ Under such circumstances, and without any evidence to the contrary from the State, the Court erred by failing to grant Appellant a new trial. *See Woods*, 345 S.C. at 587, 550 S.E.2d 282, at 288 (“Where a juror, without justification, fails to disclose a relationship, it may be inferred, nothing to the contrary appearing, that the juror is not impartial.”). Further, even if the Court thought there might be other reasons for Juror Number 6’s concealment, then the trial court should have ordered an evidentiary hearing. *Id.* (“whether a juror’s failure to respond is intentional *is a fact intensive determination* which must be made on a case by case basis.”). *See, e.g., McDonough Power Equipment, Inc. v. Greenwood*, 464 U.S. 548, 551 n.3, 104 S.Ct. 845, 848 n.3 (1984)² *Porter v. Zook*, 898 F.3d at 428 (“These determinations [by the trial

¹ At the time Juror Number 6 was seated as an alternate juror, Appellant had two strikes remaining to use. (R. 25, ln. 2-13).

² “While considerations of judicial economy might have motivated the Court of Appeals in this case to proceed directly to the issue of the effect of juror Payton's non-disclosure,

court] are not only contrary to the legal standard, but should be properly made *after an evidentiary hearing.*”); *Woods*, 345 S.C. at 587, 550 S.E.2d at 288 (“[W]hether a juror’s failure to respond is intentional *is a fact intensive determination* which must be made on a case by case basis.”) (emphasis added). Regardless, Appellant’s right to a trial by a fair and impartial jury pursuant to the Sixth and Fourteenth Amendments of the United States Constitution, and Article I, section 14 of the South Carolina Constitution were violated. Accordingly, his conviction and sentence must be reversed.

Juror Number 53

As for Juror Number 53, Appellant likewise presented information to the court of potential bias and prejudice against Appellant. Specifically, Appellant’s Motion included several affidavits indicating Juror Number 53 was upset with Appellant for fighting with Juror Number 53’s family or friends. *See* Motion for New Trial, p. 4 with attached affidavits. Further, Juror Number 53 personally knew Appellant well enough that he apparently disliked Appellant for playing his music loudly in public.

As with Juror Number 6, Juror Number 53’s concealment of information in the face of questions from the court not only about social relationships with Appellant, but also regarding bias, prejudice, and any reason why they should not be seated as a juror, indicate the concealment was intentional. Had Defense Counsel known of these biases and prejudices harbored by Juror Number 53 against Appellant, then he would have used

in cases in which a party is asserting a ground for new trial, the normal procedure is to remand such issues to the district court for resolution. Although petitioner does not dispute respondents’ version of the telephone call to juror Payton, it is foreseeable that in another such case, the parties could present the appellate court with a continuing, difficult factual dispute. Appellate tribunals are poor substitutes for trial courts *for developing a record or resolving factual controversies.*” (emphasis added).

a peremptory strike. Accordingly, as with Juror Number 6, the Trial Court erred by failing to grant Appellant a new trial. *See Woods*, 345 S.C. at 587, 550 S.E.2d 282, at 288 (“Where a juror, without justification, fails to disclose a relationship, it may be inferred, nothing to the contrary appearing, that the juror is not impartial.”).

Further, even if the Trial Court thought there might be other reasons for Juror Number 53’s concealment, then the court should have ordered an evidentiary hearing. *Id.* (“whether a juror’s failure to respond is intentional *is a fact intensive determination* which must be made on a case by case basis.”). Regardless, Appellant’s right to a trial by a fair and impartial jury pursuant to the Sixth and Fourteenth Amendments of the United States Constitution, and Article I, section 14 of the South Carolina Constitution was violated. Accordingly, his conviction and sentence must be reversed.

CONCLUSION

Based on the foregoing reasons, Appellant Marc Mckeiver respectfully requests that this Court reverse the Trial Court and remand to the Dillon County Court of General Sessions for a new trial.

Respectfully submitted,



Dayne Phillips
S.C. Bar No. 77712
(803) 807-0234
dayne@pricebenowitz.com

PRICE BENEWITZ LLP
1614 Taylor Street, Ste. D.
Columbia, SC 29072

ATTORNEYS FOR APPELLANT

June 21, 2023

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM DILLON COUNTY
Court of General Sessions

Paul M. Burch, Circuit Court Judge

Appellate Case No. 2022-000324

Trial Court Case No. 2019-GS-16-0996

The State of South Carolina,

Respondent,

v.

Marc Yasin Mckeiver,

Appellant.

CERTIFICATE OF COUNSEL

The undersigned Counsel certifies that this Final Brief of Appellant complies with Rule 211(b), SCACR.



Dayne C. Phillips, Esq.
SC Bar No. 77712
Price Benowitz LLP
1614 Taylor Street, Suite D
Columbia, SC 29201
(803) 807-0234

ATTORNEY FOR APPELLANT

June 21, 2023

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM DILLON COUNTY
Court of General Sessions

Paul M. Burch, Circuit Court Judge

Appellate Case No. 2022-000324

Trial Court Case No. 2019-GS-16-0996

The State of South Carolina,

Respondent,

v.

Marc Yasin Mckeiver,

Appellant.

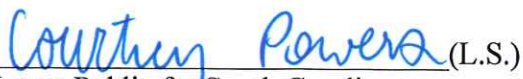
CERTIFICATE OF SERVICE

The undersigned Counsel certifies that a true copy of the Final Brief of Appellant has been served upon **Mark Farthing, Esquire**, at S.C. Attorney General's Office, PO Box 11549, Columbia, SC 29211, on **June 21, 2023**.



Dayne Phillips
PRICE BENOWITZ LLP
1614 Taylor Street, Ste. D.
Columbia, SC 29201
(803) 807-0234
Attorney for Appellant

SUBSCRIBED AND SWORN TO before me
this 21st day of June, 2023.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: May 2, 2027.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Dillon County
Honorable Paul M. Burch, Circuit Court Judge
Appellate Case No. 2022-000324

THE STATE,

Respondent,

vs.

MARC YASIN MCKEIVER,

Appellant.

FINAL BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

MARK R. FARTHING
Assistant Deputy Attorney General

Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

WILLIAM B. ROGERS, JR.
Solicitor, Fourth Judicial Circuit

Post Office Box 616
Bennettsville, SC 29512
(843) 479-6516

ATTORNEYS FOR RESPONDENT

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

STATEMENT OF ISSUES ON APPEAL1

COUNTER-STATEMENT OF ISSUES ON APPEAL2

STATEMENT OF THE CASE.....3

STATEMENT OF FACTS4

ARGUMENT8

I. Pursuant to the law-of-the-case doctrine, Appellant’s appellate challenge to the propriety of the trial judge’s ruling denying the suppression motion related to the search warrant sent to Snapchat cannot be successful on appeal as a matter of law because Appellant has not challenged the actual grounds upon which the trial judge denied the suppression motion, which means those unchallenged grounds have now become the law of the case regardless of whether they were right or wrong.8

II. The trial judge did not abuse his broad discretion or otherwise err by finding several Snapchat photographs were properly authenticated because the State authenticated those photographs by establishing in multiple ways a basis upon which a factfinder could reasonably conclude they were what they were purported to be, which was all that was required for those photographs to be authenticated.16

III. The trial judge correctly declined to suppress the recording captured on the informant’s hidden camera because Appellant voluntarily relinquished any expectation of privacy he may have had in the home where the drug transaction was conducted by inviting the informant inside and, thus, his constitutional right to be free from unreasonable invasions of privacy was not violated merely because his trust in the informant proved to be misplaced.26

IV. The trial judge did not abuse his broad discretion or otherwise err by denying the new trial motion and by declining to grant an additional evidentiary hearing in response to Appellant’s post-trial claim of jury misconduct because no credible evidence was presented to support the claim and the claim was not timely raised at Appellant’s first opportunity to do so as was necessary for it to conceivably be a valid one.33

CONCLUSION.....43

TABLE OF AUTHORITIES

South Carolina Cases:

<u>Anderson v. Short</u> , 323 S.C. 522, 476 S.E.2d 475 (1996).	15
<u>Atl. Coast Builders & Contractors, LLC v. Lewis</u> , 398 S.C. 323, 730 S.E.2d 282 (2012).	13
<u>Deep Keel, LLC v. Atl. Priv. Equity Grp., LLC</u> , 413 S.C. 58, 773 S.E.2d 607(Ct. App. 2015).	21
<u>Dreher v. S.C. Dep’t of Health & Env’t Control</u> , 412 S.C. 244, 772 S.E.2d 505 (2015).	13
<u>Jones v. Lott</u> , 387 S.C. 339, 692 S.E.2d 900 (2010).	14
<u>Morris v. Jensen</u> , 309 S.C. 153, 420 S.E.2d 710 (Ct. App. 1992).	41, 42
<u>Saro Invs. v. Ocean Holiday P’ship</u> , 314 S.C. 116, 441 S.E.2d 835 (Ct. App. 1994).	40
<u>Sheppard v. State</u> , 357 S.C. 646, 594 S.E.2d 462 (2004).	15
<u>State v. Aldret</u> , 333 S.C. 307, 509 S.E.2d 811 (1999).	40
<u>State v. Allen</u> , 370 S.C. 88, 634 S.E.2d 653 (2006).	38
<u>State v. Anderson</u> , 386 S.C. 120, 687 S.E.2d 35 (2009).	21
<u>State v. Aragon</u> , 354 S.C. 334, 579 S.E.2d 626 (Ct. App. 2003).	20
<u>State v. Baccus</u> , 367 S.C. 41, 625 S.E.2d 216 (2006).	12
<u>State v. Ballew</u> , 83 S.C. 82, 63 S.E. 688 (1909).	42
<u>State v. Benton</u> , 435 S.C. 250, 865 S.E.2d 919 (Ct. App. 2021).	23
<u>State v. Bixby</u> , 388 S.C. 528, 698 S.E.2d 572 (2010).	20
<u>State v. Black</u> , 400 S.C. 10, 732 S.E.2d 880 (2012).	12, 15
<u>State v. Bryant</u> , 372 S.C. 305, 642 S.E.2d 582 (2007).	27
<u>State v. Campbell</u> , 259 S.C. 339, 191 S.E.2d 770 (1972).	23
<u>State v. Coaxum</u> , 410 S.C. 320, 764 S.E.2d 242 (2014).	38, 39
<u>State v. Covington</u> , 343 S.C. 157, 539 S.E.2d 67 (Ct. App. 2000).	41

State v. Emory, 178 S.C. 461, 183 S.E. 323 (1936).37

State v. Eubanks, 437 S.C. 458, 878 S.E.2d 335 (Ct. App. 2022).37

State v. Forrester, 343 S.C. 637, 541 S.E.2d 837 (2001).28

State v. Foster, 269 S.C. 373, 237 S.E.2d 589 (1977).28

State v. Frasier, 437 S.C. 625, 879 S.E.2d 762 (2022).12, 28

State v. Galloway, 305 S.C. 258, 407 S.E.2d 662 (Ct. App. 1991).15

State v. Gaster, 349 S.C. 545, 564 S.E.2d 87 (2002).20

State v. Green, 427 S.C. 223, 830 S.E.2d 711 (Ct. App. 2019).20, 21

State v. Groome, 274 S.C. 189, 262 S.E.2d 31 (1980).19

State v. Guillebeaux, 362 S.C. 270, 607 S.E.2d 99 (Ct. App. 2004).36

State v. Hall, 437 S.C. 107, 876 S.E.2d 328 (Ct. App. 2022).24

State v. Harris, 340 S.C. 595, 30 S.E.2d 62 (2000).38

State v. Herring, 387 S.C. 201, 692 S.E.2d 490 (2009).29

State v. Hicks, 387 S.C. 378, 692 S.E.2d 919 (2010).13, 14, 15

State v. Kelley, 319 S.C. 173, 460 S.E.2d 368 (1995).25

State v. Mayfield, 235 S.C. 11, 109 S.E.2d 716 (1959).42

State v. McKnight, 291 S.C. 110, 352 S.E.2d 471 (1987).9, 40

State v. Missouri, 361 S.C. 107, 603 S.E.2d 594 (2004).9

State v. Parker, 381 S.C. 68, 671 S.E.2d 619 (Ct. App. 2008).38

State v. Patterson, 425 S.C. 500, 823 S.E.2d 217 (Ct. App. 2019).20

State v. Patterson, 324 S.C. 5, 482 S.E.2d 760 (1997).27

State v. Rich, 293 S.C. 172, 359 S.E.2d 281 (1987).21

State v. Sparkman, 358 S.C. 491, 596 S.E.2d 375 (2004).38, 39

<u>State v. Torres</u> , 390 S.C. 618, 703 S.E.2d 226 (2010).	20
<u>State v. Tucker</u> , 423 S.C. 403, 815 S.E.2d 467 (Ct. App. 2018).	37, 39, 40, 42
<u>State v. Warner</u> , 436 S.C. 395, 872 S.E.2d 638 (2022).	8, 9, 10
<u>State v. Weaver</u> , 374 S.C. 313, 649 S.E.2d 479 (2007).	28
<u>State v. Whitner</u> , 399 S.C. 547, 732 S.E.2d 861 (2012).	12, 31
<u>State v. Woods</u> , 345 S.C. 583, 550 S.E.2d 282 (2001).	38, 39
<u>State v. Zeigler</u> , 364 S.C. 94, 610 S.E.2d 859 (Ct. App. 2005).	38
<u>Thompson v. O'Rourke</u> , 288 S.C. 13, 339 S.E.2d 505 (1986).	39
<u>Weeks v. McMillan</u> , 291 S.C. 287, 353 S.E.2d 289 (Ct. App. 1987).	13
<u>Winburn v. Minnesota Mut. Life Ins. Co.</u> , 261 S.C. 568, 201 S.E.2d 372 (1973).	21, 25
<u>United States Supreme Court Cases:</u>	
<u>Bond v. United States</u> , 592 U.S. 334 (2000).	29, 30
<u>Braswell v. United States</u> , 487 U.S. 99 (1988).	24
<u>California v. Ciraolo</u> , 476 U.S. 207 (1986).	30
<u>Florida v. Jimeno</u> , 500 U.S. 248 (1991).	29
<u>Hoffa v. United States</u> , 385 U.S. 293 (1966).	29
<u>Katz v. United States</u> , 389 U.S. 347 (1967).	29
<u>Lewis v. United States</u> , 385 U.S. 206 (1966).	30
<u>Lopez v. United States</u> , 373 U.S. 427 (1963).	31, 32
<u>Massachusetts v. Sheppard</u> , 468 U.S. 981 (1984).	9
<u>Messerschmidt v. Millender</u> , 565 U.S. 535 (2012).	9
<u>Minnesota v. Olsen</u> , 495 U.S. 91 (1990).	30
<u>On Lee v. United States</u> , 343 U.S. 747 (1952).	32

<u>Smith v. Maryland</u> , 442 U.S. 735 (1979).	29
<u>Smith v. Phillips</u> , 455 U.S. 209 (1982).	42
<u>Tanner v. United States</u> , 483 U.S. 107 (1987).	39
<u>United States v. Leon</u> , 468 U.S. 897 (1984).	9
<u>United States v. White</u> , 401 U.S. 745 (1971).	30, 31, 32
<u>Williams v. Illinois</u> , 567 U.S. 50 (2012).	24
<u>Other State Cases:</u>	
<u>Commonwealth v. Meola</u> , 125 N.E.3d 103 (Mass. App. Ct. 2019).	22, 23, 25
<u>State v. Vanderford</u> , 980 S.W.2d 390 (Tenn. Crim. App. 1997).	30
<u>Other Federal Cases:</u>	
<u>Billings v. Polk</u> , 441 F.3d 238 (4th Cir. 2006).	39
<u>Gilliam v. Foster</u> , 75 F.3d 881 (4th Cir. 1996).	22
<u>Gray v. Hutto</u> , 648 F.2d 210 (4th Cir. 1981).	41
<u>Johnson v. United States</u> , 290 A.3d 500 (D.C. Cir. 2023).	22, 24
<u>Milton v. Sec’y, Dep’t of Corr.</u> , 347 F. App’x 528 (11th Cir. 2009).	41
<u>United States v. Anderson</u> , 76 F.3d 685 (6th Cir. 1996).	37
<u>United States v. Brathwaite</u> , 458 F.3d 376 (5th Cir. 2006).	31
<u>United States v. Breit</u> , 712 F.2d 81 (4th Cir. 1983).	41
<u>United States v. Davis</u> , 918 F.3d 397 (4th Cir. 2019).	23
<u>United States v. Davis</u> , 326 F.3d 361 (2d Cir. 2003).	29
<u>United States v. Hassan</u> , 742 F.3d 104 (4th Cir. 2014).	21
<u>United States v. Hoeffener</u> , 950 F.3d 1037 (8th Cir. 2020).	10
<u>United States v. Kaixiang Zhu</u> , 854 F.3d 247 (4th Cir. 2017).	20, 21, 25

<u>United States v. Lawrence</u> , 735 F.3d 385 (6th Cir. 2013).	39
<u>United States v. Meregildo</u> , 883 F. Supp. 2d 523 (S.D.N.Y. 2012).	10
<u>United States v. Perez</u> , 61 F.4th 623 (8th Cir. 2023).	22
<u>United States v. Recio</u> , 884 F.3d 230 (4th Cir. 2018).	25
<u>United States v. Thompson</u> , 811 F.3d 944 (7th Cir. 2016).	32
<u>United States v. Willis</u> , 277 F.3d 1026 (8th Cir. 2002).	37
<u>Constitutional Provisions, Statutes, and Rules:</u>	
S.C. Const. art. I, § 10.	28
S.C. Code Ann. § 17-13-140.	10
S.C. Code Ann. § 17-30-30.	31
Rule 901, SCRE.	20, 21, 23, 24
<u>Other Authorities:</u>	
<u>Black’s Law Dictionary</u> (9th ed. 2009).	40

STATEMENT OF ISSUES ON APPEAL

I.

“Did the trial court err in refusing to suppress the photographs obtained from Snapchat when the county magistrate judge did not have the authority to issue a search warrant to that out-of-state entity for records that were not physically located in this state?”

II.

“Did the trial court err in admitting photographs obtained from Snapchat when the evidence was not properly authenticated pursuant to Rule 901, SCRE, by personal knowledge, distinctive characteristics, or records custodian?”

III.

“Did the trial court err in refusing to suppress the deceased CI’s video recording of incident Appellant’s home in violation of Article I, Section 10’s prohibition against unreasonable invasions of privacy?”

IV.

“Did the trial court err in by failing to grant a new trial, or in the alternative to grant an evidentiary hearing, where defense counsel produced seven affidavits at a post-trial hearing indicating two jurors intentionally concealed information in response to the court’s voir dire questions, and where the defense counsel would have struck them had the jurors not concealed the information?”

COUNTER-STATEMENT OF ISSUES ON APPEAL

I.

In light of the law-of-the-case doctrine, is Appellant's appellate challenge to the propriety of the trial judge's ruling denying the suppression motion related to the search warrant sent to Snapchat capable of being successful on appeal when Appellant has not challenged the actual grounds upon which the trial judge denied the suppression motion, which means those unchallenged grounds have now become the law of the case regardless of whether they were right or wrong?

II.

Did the trial judge abuse his broad discretion or otherwise err by finding several Snapchat photographs were properly authenticated when the State authenticated those photographs by establishing in multiple ways a basis upon which a factfinder could reasonably conclude they were what they were purported to be, which was all that was required for those photographs to be authenticated?

III.

Did the trial judge err by declining to suppress the recording captured on the informant's hidden camera when Appellant voluntarily relinquished any expectation of privacy he may have had in the home where the drug transaction was conducted by inviting the informant inside and, thus, his constitutional right to be free from unreasonable invasions of privacy was not violated merely because his trust in the informant proved to be misplaced?

IV.

Did the trial judge abuse his broad discretion or otherwise err by denying the new trial motion and by declining to grant an additional evidentiary hearing in response to Appellant's post-trial claim of jury misconduct when no credible evidence was presented to support the claim and the claim was not timely raised at Appellant's first opportunity to do so as was necessary for it to conceivably be a valid one?

STATEMENT OF THE CASE

In September of 2019, Appellant Marc Yasin Mckeiver was arrested after he sold a large quantity of methamphetamine to a confidential informant during the course of a controlled drug transaction. In November of 2019, the Dillon County Grand Jury indicted Appellant for trafficking in methamphetamine. On January 10, 2022, a jury trial was commenced in the Dillon County Court of General Sessions with the Honorable Paul M. Burch, circuit court judge, presiding.¹ At the conclusion of the three-day trial, the jury convicted Appellant as indicted. Following the verdict, the trial judge sentenced Appellant to a mandatory twenty-five-year term of imprisonment and \$50,000 fine. A few days later, Appellant filed a motion seeking a new trial, and, on March 10, 2022, the trial judge conducted a hearing on the matter in the Dillon County Court of General Sessions. At the conclusion of the hearing, the trial judge orally denied the motion. Appellant then timely filed a notice of appeal.

¹ By the time of his trial on the trafficking in methamphetamine charge, Appellant—in total—had nine pending charges in Dillon County stemming from four distinct incidents, and he was facing a potential sentence of up to 135 years as a result of those charges. (R. pp. 29-30; p. 108; p. 365).

STATEMENT OF FACTS

Over the course of several months in 2019, Agent James Martin of the South Carolina State Law Enforcement Division (“SLED”) spearheaded a drug investigation targeting Appellant, who was suspected of being a drug dealer, in conjunction with a number of other law enforcement entities.² (R. pp. 95-96; p. 104; pp. 107-108; pp. 141-142). As part of that investigation, Agent Martin decided to attempt to surreptitiously purchase narcotics from Appellant with the assistance of a cooperating informant. (R. pp. 142-143; p. 206).

In carrying out that plan, Agent Martin met up on September 9, 2019, with both SLED Agent Alex Blake, who was working in an undercover role, and the confidential informant at an arranged location. (R. p. 95; p. 143; p. 146; p. 206; p. 213). Upon meeting together there, Agent Blake—in Agent Martin’s presence—searched the informant and verified he was not in possession of any concealed drugs, weapons, or money. (R. pp. 144-145; pp. 167-168; pp. 207-209; p. 217). Agent Martin then equipped the informant with a hidden camera to record the transaction along with a separate device designed to allow the transaction to be live-monitored, and he also gave the informant \$700 in pre-recorded government funds. (R. p. 145). Following that, the informant got into Agent Blake’s vehicle, and the two set out to conduct the controlled narcotics buy. (R. p. 95; p. 145).

Along the way, the informant called a particular phone number he identified as Appellant’s—whom he referred to both by name and as “Duke”—and, with Agent Blake listening in, Appellant responded by inviting the informant to come to a particular address. (R. pp. 96-97; p. 100; p. 109; p. 159; pp. 209-211; p. 215). Agent Blake then drove the informant to

² Specifically, in addition to SLED, the United States Drug Enforcement Administration, the Dillon Police Department, and the Dillon County Sheriff’s Office were all involved in the investigation. (R. p. 142).

that address, which was the address of a double-wide trailer home located in Hamer, South Carolina. (R. p. 104; pp. 209-212; State's Ex. # 1 (Transaction Recording)).

Upon arriving there, the informant exited Agent Blake's vehicle, approached the home, and announced his presence. (R. p. 211; State's Ex. # 1). Seconds later, Appellant greeted the informant at the door, allowed him inside, and escorted him to a back room. (R. p. 223; State's Ex. # 1). The two briefly conversed in that location, and, as they did, the informant's recording equipment captured images of Appellant with a plastic bag in the palm of his hand. (R. p. 229; State's Ex. # 1). Following that, the informant quickly left the residence and returned to Agent Blake's vehicle, and, as he was doing so, Agent Blake personally observed Appellant peer out from the residence and look in their direction. (R. pp. 104-105; p. 212).

Once he was safely back inside the vehicle, the informant confirmed to Agent Blake he had successfully been able to purchase two bags containing \$500 worth of uniquely-shaped multi-colored pills from Appellant.³ (R. p. 105; pp. 196-197; pp. 212-213; pp. 239-241; pp. 212-213; State's Ex. # 6 (Photograph)). The two then drove away from the scene and met back up with Agent Martin. (R. p. 213). When they did, Agent Martin took possession of and secured two plastic bags containing approximately 500 pills along with the remaining \$200 in government funds. (R. p. 150; p. 173; pp. 213-214). Likewise, the confidential informant was again searched, and, at that time, he was not in possession of anything. (R. p. 215).

A few days later, Appellant was arrested for selling the pills to the confidential informant. (R. p. 426). Subsequent to that, Appellant was indicted for trafficking in methamphetamine, and he elected to proceed forward to trial. (R. p. 6; pp. 427-428).

³ Regarding their shapes, some of the pills were shaped like skulls, some were shaped like mushrooms, some were shaped like the Batman logo, some were shaped like a "mud flap girl," and some were shaped like the ghost from the Snapchat logo. (R. pp. 196-197; pp. 202-203; pp. 212-213; pp. 239-241).

During the course of Appellant's trial, Agent Martin and Agent Blake recounted the details of the controlled buy and confirmed the informant—who was carefully searched prior to the transaction—returned with two bags of distinctively-shaped multi-colored pills after meeting up with Appellant as had been arranged.⁴ (R. pp. 141-185; pp. 192-229). In addition to that, a recording of the transaction was admitted into evidence over objection and played for the jury.⁵ (R. pp. 154-155). On that recording, the informant was depicted entering a residence after being greeted at the door by Appellant, following Appellant—who had a plastic bag in his hand consistent with what was ultimately purchased from him—to a back room, conferring briefly with Appellant, and then promptly leaving the residence within less than two minutes of his arrival. (R. pp. 154-157; p. 173; p. 212; p. 229; State's Ex. # 1). Furthermore, a few photographs depicting both Appellant and bags of pills identical in shape to the ones purchased by the informant were admitted into evidence over objection and identified as having been obtained from a Snapchat account associated with the same phone number used to call Appellant prior to the transaction. (R. pp. 158-159; pp. 161-162; pp. 192-197; pp. 209-210). Beyond that evidence, Maribeth McCormack, a forensic chemist at SLED, testified about her analysis of the pills purchased during the controlled buy and confirmed they constituted at least 108.69 grams of methamphetamine.⁶ (R. pp. 233-237; p. 242; pp. 247-248; pp. 372-375).

⁴ By the time of trial, Agent Blake was working for the Federal Bureau of Investigation. (R. p. 95).

⁵ Significantly, the recording was played for the jury without sound because the informant was murdered at some point after the incident date and, thus, was obviously not present for trial. (R. p. 143; p. 155).

⁶ McCormack conducted her analysis by separating pills from each of the two plastic bags into like groups based on color and shape and then testing a representative sample from each like group. (R. pp. 239-241; p. 245; p. 255). Pursuant to policy, McCormack stopped her analysis once she reached a total threshold weight exceeding 100 grams. (R. p. 241). However, her

Following the presentation of all that evidence, the parties rested their cases, and the case was ultimately submitted to the jury. (R. p. 274; p. 284; p. 346). After deliberating on the matter for a little over two hours, the jury convicted Appellant as indicted. (R. pp. 352-353).

preliminary testing prior to reaching the threshold weight suggested the remaining untested pills were indicative of methamphetamine. (R. p. 243).

ARGUMENT

I.

Pursuant to the law-of-the-case doctrine, Appellant’s appellate challenge to the propriety of the trial judge’s ruling denying the suppression motion related to the search warrant sent to Snapchat cannot be successful on appeal as a matter of law because Appellant has not challenged the actual grounds upon which the trial judge denied the suppression motion, which means those unchallenged grounds have now become the law of the case regardless of whether they were right or wrong.

Appellant contends the trial judge erred by refusing to suppress a number of photographs obtained from Snapchat pursuant to a search warrant issued by a magistrate in Dillon County. As support for that contention, Appellant maintains the search warrant was invalid because the magistrate did not have authority to issue a search warrant to Snapchat—an out-of-state entity—for records not physically located in South Carolina. Likewise, Appellant maintains the search warrant was also invalid because the State purportedly failed to provide sufficient evidence establishing Snapchat was in possession and control of property our state’s search warrant statute permits to be seized pursuant to a South Carolina warrant. Importantly though, the trial judge did *not* deny the suppression motion upon finding the search warrant was a valid one. Instead, the trial judge—who did not have the benefit of our Supreme Court’s recent decision in State v. Warner, 436 S.C. 395, 872 S.E.2d 638 (2022), for guidance—*agreed* with defense counsel’s argument about the invalidity of the search warrant and explicitly found the magistrate’s jurisdiction ended at the county line.⁷ Nevertheless, the trial judge denied the suppression

⁷ In Warner, our Supreme Court—subsequent to Appellant’s trial—analyzed our state’s search warrant statute to determine whether a magistrate in South Carolina can validly issue a search warrant to an out-of-state entity for digital data or records not physically located in the state. State v. Warner, 436 S.C. 395, 402, 872 S.E.2d 638, 641 (2022). Upon analyzing the language of Section 17-13-140 of the South Carolina Code of Laws, the Supreme Court found the issuance of such a search warrant was not beyond the power of a South Carolina magistrate. Id. at 403-404, 872 S.E.2d at 642. In reaching that conclusion, the Supreme Court determined limiting language in the statute concerning jurisdiction was *not* applicable to the portion of the statute

motion not based on a finding the search warrant was valid but based on his independent conclusions: (1) the investigating officers acted in good faith in obtaining and relying upon the judicially-issued search warrant because their actions were consistent with common practices in South Carolina at that time;⁸ and (2) Appellant had no expectation of privacy in the information obtained from the search warrant under the specific circumstances involved.⁹ Critically, since

concerning magistrates. *Id.* at 402 n. 5, 872 S.E.2d at 641 n. 5. The Supreme Court then analyzed the circumstances of Warner’s case and found the magistrate in Anderson County could validly issue a search warrant to T-Mobile for data and records potentially stored in New Jersey because T-Mobile did business in Anderson County and, thus, was “subject to the jurisdiction of our courts[.]” *Id.* at 403-404, 872 S.E.2d at 642. Furthermore, as part of its analysis, the Supreme Court noted the search warrant sought records for information generated in South Carolina. *Id.* at 403, 872 S.E.2d at 642.

⁸ Particularly in light of our Supreme Court’s explanation the language of the search warrant statute does not preclude magistrates in South Carolina from issuing search warrants to an out-of-state entity for records being stored out of state, the officers in Appellant’s case unquestionably acted in good faith by seeking the search warrant from the magistrate in Dillon County and by relying on that judicially-issued warrant to obtain the photographs from Snapchat, which—just as the trial judge correctly recognized—meant there was no legitimate reason for that evidence to be suppressed. *See United States v. Leon*, 468 U.S. 897, 922-923 (1984) (instructing the exclusionary rule should ordinarily not be applied when an officer who conducted a search acted in objectively reasonable reliance on a judicially-approved search warrant issued by a detached and neutral magistrate that was only later determined to be invalid); *see also Messerschmidt v. Millender*, 565 U.S. 535, 546 (2012) (“Where the alleged Fourth Amendment violation involves a search or seizure pursuant to a warrant, the fact that a neutral magistrate has issued a warrant is the clearest indication that the officers acted in an objectively reasonable manner or, as we have sometimes put it, in objective good faith.” (citation and internal quotations omitted)); *Massachusetts v. Sheppard*, 468 U.S. 981, 989-990 (1984) (“[W]e refuse to rule that an officer is required to disbelieve a judge who has just advised him, by word and by action, that the warrant he possesses authorizes him to conduct the search he has requested.”); *State v. McKnight*, 291 S.C. 110, 113, 352 S.E.2d 471, 473 (1987) (explaining exclusion is the appropriate remedy *when* the State cannot “demonstrate a good faith attempt to comply with the [search warrant] statute”)

⁹ During trial, testimony was presented establishing all the photographs admitted into evidence were *publicly* posted to Snapchat, which allows for both private communications between users and public postings to a user’s “story.” (R. pp. 192-193). In light of that, it remains unclear—just as the trial judge recognized—how Appellant could have possessed a *legitimate* expectation of privacy in those publicly-posted photographs. *See State v. Missouri*, 361 S.C. 107, 112, 603 S.E.2d 594, 596 (2004) (explaining criminal defendants bear the burden of demonstrating “they

the trial judge’s ruling denying the suppression motion was based on multiple grounds completely independent from the validity or invalidity of the search warrant, Appellant was required to challenge all those grounds in order for his appellate challenge to the trial judge’s ruling to be conceivably valid, but he has wholly failed to do so. As a result, the ruling denying the suppression motion must be affirmed because the unchallenged grounds upon which it was based have now become the law of the case.¹⁰ Appellant’s conviction should be affirmed.

Relevant Facts

Toward the outset of Appellant’s trial, defense counsel moved to suppress the evidence obtained as a result of the search warrant sent to Snapchat. (R. pp. 66-67). As support for that

have a legitimate expectation of privacy” before they can properly raise a constitutional challenge to a search); cf. United States v. Hoeffner, 950 F.3d 1037, 1044 (8th Cir. 2020) (“A defendant has no legitimate expectation of privacy in files made available to the public through peer-to-peer file-sharing networks.”); United States v. Meregildo, 883 F. Supp. 2d 523, 526 (S.D.N.Y. 2012) (“While Colon undoubtedly believed that his Facebook profile would not be shared with law enforcement, he had no justifiable expectation that his ‘friends’ would keep his profile private. And the wider his circle of ‘friends,’ the more likely Colon’s posts would be viewed by someone he never expected to see them. Colon’s legitimate expectation of privacy ended when he disseminated posts to his ‘friends’ because those ‘friends’ were free to use the information however they wanted—including sharing it with the Government.” (citations omitted)).

¹⁰ Notably, in light of the Warner decision, the trial judge’s finding the search warrant issued in Appellant’s case exceeded the magistrate’s jurisdictional authority was obviously incorrect. See Warner, 436 S.C. at 404, 872 S.E.2d at 642 (recognizing a county magistrate could validly issue a search warrant for an out-of-state company’s records regardless of whether those records were physically stored in South Carolina). And, because Snapchat obviously does business with South Carolina’s citizens and the evidence presented during trial supported a conclusion the photographs obtained from Snapchat were created by Appellant in Dillon County since some depicted the very drugs he sold in that county after using the same phone number associated with the Snapchat account to arrange the transaction in which they were sold, the search warrant issued by the magistrate in Appellant’s case was not invalid for the same reasons the search warrant in Warner’s case was not invalid. See S.C. Code Ann. § 17-13-140 (instructing “[a]ny magistrate . . . may issue a search warrant to search for and seize” various types of property, including “property constituting evidence of crime or tending to show that a particular person committed a criminal offense”); cf. Warner, 436 S.C. at 404, 872 S.E.2d at 642 (“T-Mobile is a ‘person’ doing business in Anderson County. Thus, T-Mobile is subject to the jurisdiction of our courts, and we find it was not beyond the power of the magistrate to issue the warrant.”).

motion, defense counsel asserted a magistrate in South Carolina could not validly issue a warrant authorizing a search outside the magistrate’s jurisdictional boundaries while noting Snap Inc.—the corporation behind Snapchat—was not a company located within Dillon County. (R. pp. 66-68). As a result, defense counsel argued the search warrant was purportedly void since it was issued by a Dillon County magistrate. (R. pp. 67-68).

Immediately in response to those remarks, the trial judge expressed agreement and instructed the solicitor the warrant was “not gonna hold water” if it was issued for Snapchat records. (R. p. 68). The solicitor then attempted to explain why he believed the warrant would “hold water,” but, before he could offer that explanation, the trial judge interrupted and reiterated his view a magistrate could not issue a warrant for digital evidence held on a server unless the specific server was physically located in the magistrate’s county.¹¹ (R. p. 69).

Following that, the solicitor—in addition to noting the issue was currently pending before the South Carolina Supreme Court in the Warner case—noted the evidence was created in Dillon County in the magistrate’s jurisdiction and, thus, clearly had a connection to Dillon County. (R. pp. 69-70). Moreover, the solicitor asserted the officers acted in good faith and the evidence would inevitably be obtained through other means if the warrant issued by the magistrate in Dillon County was not valid. (R. pp. 69-70; pp. 73-74; pp. 83-87). Beyond that, the solicitor noted the records in question stemmed from “posts” Appellant “put out for all of his followers to see” and, thus, were not truly private. (R. p. 86).

Ultimately, after considering the matter overnight, the trial judge denied the suppression motion. (R. p. 74; p. 76; p. 91). In so doing, the trial judge found “there was good faith on the

¹¹ Later on, the trial judge reiterated he had been instructed magistrates in South Carolina could not “issue on a server that’s not within that particular county where the magistrate has jurisdiction.” (R. p. 71).

part of law enforcement” in obtaining the search warrant because the officers’ actions were consistent with common practices in South Carolina at the time the warrant was obtained. (R. pp. 88-89). Furthermore, the trial judge concluded Appellant did not have a reasonable expectation of privacy in the photographs while analogizing Appellant’s posting of them for “a mass of people” to view to placing an ad in a printed newspaper.¹² (R. pp. 89-91).

Subsequent to that, the trial proceeded forward, the solicitor sought to admit a number of the photographs obtained from Snapchat, and defense counsel renewed his objection to their admission. (R. pp. 193-194). However, once again, the trial judge declined to suppress those photographs. (R. p. 194).

Standard of Review

In criminal cases, appellate courts sit to review errors of law only. State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). When conducting appellate review of an issue hinging on interpretation of a statute, the appellate court will review the matter de novo and is free to decide it without affording any deference to the trial judge because questions of statutory interpretation are questions of law. State v. Whitner, 399 S.C. 547, 552, 732 S.E.2d 861, 863 (2012). Meanwhile, when reviewing a ruling on a constitutional search-and-seizure issue on appeal, the appellate court will “review the trial court’s factual findings for any evidentiary support” and treat “the ultimate legal conclusion” as “a question of law subject to de novo review.” State v. Frasier, 437 S.C. 625, 633, 879 S.E.2d 762, 766 (2022).

Argument

Pursuant to the law-of-the-case doctrine, a ruling becomes the law of the case regardless of whether it is right or wrong when it is not appealed. State v. Black, 400 S.C. 10, 28, 732

¹² Based on the evidence presented during trial, all the relevant photographs were *publicly* posted to the Snapchat account associated with the search warrant. (R. pp. 192-193).

S.E.2d 880, 890 (2012). In light of that doctrine, an appellant is necessarily required to appeal *all* the grounds upon which a ruling is based when one is based on multiple independent grounds. State v. Hicks, 387 S.C. 378, 379, 692 S.E.2d 919, 920 (2010). Significantly, “should the appealing party fail to raise all of the grounds upon which a [trial judge]’s decision was based, those unappealed findings—whether correct or not—become the law of the case.” Dreher v. S.C. Dep’t of Health & Env’t Control, 412 S.C. 244, 250, 772 S.E.2d 505, 508 (2015).

Therefore, when an appellant only *partially* appeals a trial judge’s ruling based on more than one ground, the ruling automatically must be affirmed on appeal regardless of its actual correctness. Hicks, 387 S.C. at 379, 692 S.E.2d at 920; see Atl. Coast Builders & Contractors, LLC v. Lewis, 398 S.C. 323, 328, 730 S.E.2d 282, 284 (2012) (“Under the two issue rule, where a decision is based on more than one ground, the appellate court will affirm unless the appellant appeals all grounds because the unappealed ground will become law of the case.” (citation and internal quotations omitted)); Weeks v. McMillan, 291 S.C. 287, 292, 353 S.E.2d 289, 292 (Ct. App. 1987) (“Where a decision is based on alternative grounds, either of which independent of the other is sufficient to support it, the decision will not be reversed even if one of the grounds is erroneous.”).

In the case sub judice, the trial judge’s ruling denying the suppression motion related to the search warrant sent to Snapchat was *not* based on a finding of the warrant was properly issued or valid. Instead, in declining to suppress the incriminating photographic evidence obtained from Snapchat, the trial judge—who agreed with defense counsel’s argument a magistrate in South Carolina could not properly issue a search warrant authorizing a search outside the magistrate’s particular county—found suppression was not warranted in Appellant’s case *despite the purported invalidity of the warrant* because the good faith exception to the

exclusionary rule was applicable under the circumstances involved and because Appellant did not have a legitimate expectation of privacy in the publicly-posted photographs.

Now, on appeal, Appellant contends the trial judge erred by denying the suppression motion. (App. Br. pp. 11-12). However, in doing so, Appellant does not maintain the trial judge was wrong to find the good faith exception to the exclusionary rule was applicable and does not maintain the trial judge erred by concluding he had no legitimate expectation of privacy in the photographs. (App. Br. pp. 11-12). In fact, Appellant does not even *acknowledge* the trial judge made such rulings at all. (App. Br. pp. 8-9; pp. 11-12). Instead, Appellant *solely* maintains the trial judge's suppression ruling should be reversed based on the supposed invalidity of the search warrant standing alone. (App. Br. pp. 11-12).

Critically, since the ruling denying the suppression motion was based on grounds independent of the validity or invalidity of the search warrant, Appellant was fundamentally required to appeal all the grounds upon which the ruling was based in order for it to be conceivably possible for his appellate challenge to the ruling to be a viable one. See Jones v. Lott, 387 S.C. 339, 346, 692 S.E.2d 900, 903 (2010) (“Under the two issue rule, where a trial court’s decision is based on more than one ground, the appellate court will affirm unless the appellant appeals all grounds because the unappealed ground will become the law of the case.”), abrogated on other grounds by Repko v. County of Georgetown, 424 S.C. 494, 818 S.E.2d 743 (2018). However, Appellant has not done so on appeal and, instead, has only challenged the validity of the search warrant itself as opposed to the *actual* grounds upon which the trial judge based his decision to deny the suppression motion. Cf. Hicks, 387 S.C. at 379, 692 S.E.2d at 920 (“In this case, the Court of Appeals erred in addressing the merits of petitioner’s argument regarding the revocation of probation based on [one ground] because the probation revocation

judge revoked petitioner's probation on two additional grounds, *which petitioner did not challenge.*" (emphasis added)). As a result, the unchallenged portion of the ruling denying the suppression motion has become the law of the case, and, thus, there can be—and is—no proper basis upon which to reverse that ruling on appeal since the unappealed independent grounds upon which it was based must be treated as correct pursuant to the law-of-the-case doctrine. See Black, 400 S.C. at 28, 732 S.E.2d at 890 (instructing an unappealed ruling—regardless of whether it is right or wrong—becomes the law of the case); cf. Anderson v. Short, 323 S.C. 522, 525, 476 S.E.2d 475, 477 (1996) (“[T]he trial judge ruled against Paul on two grounds. . . . Paul has only challenged the second ground. Because he has not appealed on all grounds, the trial court’s decision is affirmed.”); State v. Galloway, 305 S.C. 258, 263, 407 S.E.2d 662, 665 (Ct. App. 1991) (“[T]he unappealed alternative ruling that the motion was untimely constitutes an independent ground for upholding the judgment.”). Accordingly, Appellant’s appellate challenge to the suppression ruling—which was not directed at the basis upon which suppression was actually denied—must be rejected. See Hicks, 387 S.C. at 379, 692 S.E.2d at 920 (“Where the ruling of a trial judge is based on more than one ground, an appellate court must affirm unless the appellant appeals all grounds upon which the ruling was based.”); cf. Sheppard v. State, 357 S.C. 646, 662, 594 S.E.2d 462, 471 (2004) (“[T]he trial court ruled the statement was admissible under Rule 803(3), SCRE. Because [Sheppard] does not appeal the trial court’s ruling that the statement is a Rule 803(3) exception to the hearsay rule, that ruling is the law of the case. Accordingly, the trial court did not err by admitting Lynch’s testimony.” (citation and footnote omitted)). Appellant’s conviction should be affirmed.

II.

The trial judge did not abuse his broad discretion or otherwise err by finding several Snapchat photographs were properly authenticated because the State authenticated those photographs by establishing in multiple ways a basis upon which a factfinder could reasonably conclude they were what they were purported to be, which was all that was required for those photographs to be authenticated.

Appellant contends the trial judge reversibly erred by finding a number of Snapchat photographs were sufficiently authenticated to be admissible. In support of that contention, Appellant maintains those photographs were not properly authenticated because the State failed to present any witness who had personal knowledge he posted the photographs to Snapchat, failed to provide evidence the photographs were distinctive “enough” such that a reasonable juror could conclude he had ownership or control over the Snapchat account to which they were posted, and failed to subpoena a record custodian from Snapchat to authenticate the records. To the contrary, the evidence presented during trial was sufficient for a reasonable factfinder to conclude the photographs were exactly what they were purported to be—photographs posted by Appellant to a Snapchat account around the time of the incident, which was all that was required for the photographs to be properly authenticated. Under those circumstances, the trial judge committed no error by finding the photographs were sufficiently authenticated and admissible. Appellant’s conviction should be affirmed.

Relevant Facts

During in limine discussions conducted toward the outset of trial, the solicitor alerted the trial judge a number of photographs had been obtained from a Snapchat social media account, including a photograph of the pills purchased during the drug transaction that was posted to the account on the very same date as the transaction. (R. pp. 32-33). The solicitor further noted numerous photographs from the account depicted Appellant, but he confirmed the State did not

intend to introduce them unless the defense sought to dispute Appellant's identity as the holder of the Snapchat account. (R. pp. 33-34).

Following that, defense counsel moved to suppress the photographs obtained from the Snapchat account due to the State's purported inability to authenticate them. (R. p. 47). As support for that motion, defense counsel initially argued a records custodian from Snapchat had to be present and the State was likewise required to establish a chain of custody for all the records. (R. p. 48; p. 50).

In response to defense counsel's arguments, the solicitor confirmed Snapchat had provided a certificate of authenticity for all the records while referencing Rule 902(8) of the South Carolina Rules of Evidence, and he further noted that certificate had already been provided to the defense in advance of trial.¹³ (R. pp. 50-51). Moreover, the solicitor emphasized authentication was not a high bar and only required some foundational showing the evidence was what it was purported to be. (R. pp. 51-52).

In rebuttal, defense counsel conceded circumstantial evidence could be used to authenticate social media content but nonetheless maintained establishing ownership of a social media account alone was not sufficient. (R. pp. 53-55). As opposed to simply establishing account ownership, defense counsel maintained something had to be presented to establish the defendant authored the content in order for it to be properly authenticated.¹⁴ (R. pp. 56-57).

¹³ Although he referenced it during the in limine discussion, the solicitor did *not* end up introducing or actually relying upon the certificate of authenticity to authenticate the Snapchat records in Appellant's case. (R. pp. 141-232).

¹⁴ As part of his remarks, defense counsel also referenced his own social media accounts and began discussing his wife's ability to post things to those accounts due to the access she had been provided. (R. p. 57). However, the trial judge promptly interrupted and explained he believed those particular arguments constituted arguments for the jury. (R. p. 57).

In response to that, the solicitor explained he intended to connect the photographs from the Snapchat account to Appellant in a variety of ways. (R. pp. 58-59). Specifically, the solicitor indicated he could do so through the fact Appellant posted hundreds of photographs of himself to the account and through the fact the account was associated with the same phone number used by the confidential informant to call Appellant. (R. pp. 58-59; pp. 62-64).

At that point, defense counsel indicated he intended to “leave” the matter for the time being. (R. p. 64). However, before doing so, he reiterated his view evidence of account ownership “normally” would be provided by a records custodian. (R. pp. 64-65).

As the trial continued forward, testimony was presented from Agent Martin establishing: (1) he personally received records—including 2,804 photographs—from Snapchat associated with an account in the name of “duke_ttg” in response to a search warrant he had obtained for those records; (2) he believed that particular account was Appellant’s because he had seen multiple videos and photographs of Appellant posted to it and knew Appellant’s nickname was “Duke;” (3) the account information provided by Snapchat identified the phone number associated with the account as a particular number that he believed to be Appellant’s based on his investigation; (4) one of the photographs from the account depicted pills consistent in appearance and packaging with the uniquely-shaped multi-colored pills purchased during the drug transaction, and it was posted to the account on the same date as the transaction; (5) another photograph from the account posted on the same date as the transaction depicted Appellant; and (6) numerous other photographs of Appellant were posted to the account between August 24, 2019, and September 14, 2019. (R. pp. 158-162; pp. 196-197; p. 199; p. 202). Likewise, testimony was presented from Agent Blake establishing: (1) he verified the informant called the same number on the date of the incident as the one Agent Martin identified as being linked to the

Snapchat account; and (2) he heard Appellant's voice during the conversation that ensued after the informant placed the call to that particular number. (R. p. 159; pp. 209-210; p. 226).

Ultimately, in addition to the agents' testimony, just ten of the thousands of photographs obtained from the targeted Snapchat account were admitted into evidence over defense counsel's objection. (R. pp. 161-162; pp. 194-196). Of those admitted photographs, one depicted several bags of distinctive uniquely-shaped multi-colored pills, one depicted Appellant along with text reflecting the date of the incident, one depicted Appellant seated in a vehicle, and the other seven depicted "selfies" of Appellant from varying angles. (R. p. 162; pp. 194-196; State's Ex. # 4 (Photograph); State's Ex. # 5 (Photograph); State's Ex. # 11 (Photograph); State's Ex. # 13 (Photograph); State's Ex. # 14 (Photograph); State's Ex. # 15 (Photograph); State's Ex. # 16 (Photograph); State's Ex. # 17 (Photograph); State's Ex. # 18 (Photograph); State's Ex. # 19 (Photograph)).

Beyond that, law enforcement's post-controlled-buy photographs of the pills purchased during the transaction were introduced, and the pills in those photographs indeed appeared to be identical to the pills depicted in the photograph from the Snapchat account. (R. pp. 202-203; State's Ex. # 6; State's Ex. # 8 (Photograph)). Similarly, the recording from the transaction was admitted into evidence along with two still shots from that recording, and Appellant's physical appearance in those items was also consistent with his appearance in the photographs from the Snapchat account. (R. pp. 154-155; p. 157; State's Ex. # 1; State's Ex. # 2 (Photograph); State's Ex. # 3 (Photograph)).

Standard of Review

The reception or exclusion of evidence is a matter left largely to the sound discretion of the trial judge. State v. Groome, 274 S.C. 189, 190-191, 262 S.E.2d 31, 32 (1980). On appeal,

appellate courts give “great deference” to trial judges when reviewing evidentiary rulings. State v. Torres, 390 S.C. 618, 625, 703 S.E.2d 226, 230 (2010); see State v. Bixby, 388 S.C. 528, 556, 698 S.E.2d 572, 587 (2010) (“[D]eference is due to the trial court’s admission of the evidence.”). Moreover, an appellate court will not reverse a trial judge’s decision to admit or exclude evidence absent a clear prejudicial abuse of the trial judge’s broad discretion in evidentiary matters. State v. Gaster, 349 S.C. 545, 557, 564 S.E.2d 87, 93 (2002). “An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law.” State v. Patterson, 425 S.C. 500, 507, 823 S.E.2d 217, 221 (Ct. App. 2019) (citation and internal quotations omitted)).

Argument

In general, evidence must be authenticated before it can be admitted. State v. Aragon, 354 S.C. 334, 336, 579 S.E.2d 626, 627 (Ct. App. 2003); see State v. Green, 427 S.C. 223, 230, 830 S.E.2d 711, 714 (Ct. App. 2019) (“Authentication is a subspecies of relevance, for something that cannot be connected to the case carries no probative force.”), aff’d as modified on other grounds, 432 S.C. 97, 851 S.E.2d 440 (2020). For evidence to be authenticated, the party offering the evidence must provide a sufficient basis upon which the jury *could* reasonably find the evidence is what it is claimed to be. United States v. Kaixiang Zhu, 854 F.3d 247, 257 (4th Cir. 2017); see Rule 901(a), SCRE (“The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.”).

Importantly, the requirement for authentication can be satisfied in numerous ways, including through the presentation of the testimony of a witness with knowledge the matter is what it is purported to be and through things like “[a]pppearance, contents, substance, internal

patterns, or other distinctive characteristics, *taken in conjunction with the circumstances.*” Rule 901(b), SCRE (emphasis added). Meanwhile direct proof is *not* required in order to authenticate a particular piece of evidence, and, instead, evidence can be authenticated through indirect or circumstantial evidence. Winburn v. Minnesota Mut. Life Ins. Co., 261 S.C. 568, 576-577, 201 S.E.2d 372, 376 (1973); see State v. Anderson, 386 S.C. 120, 131, 687 S.E.2d 35, 41 (2009) (recognizing evidence can be authenticated through a “more generalized approach”).

Significantly, no matter what method is used to authenticate, the burden for doing so is *not* a high one. Deep Keel, LLC v. Atl. Priv. Equity Grp., LLC, 413 S.C. 58, 64, 773 S.E.2d 607, 610 (Ct. App. 2015); see Kaixiang Zhu, 854 F.3d at 257 (“The burden to authenticate under Rule 901 is not high—only a prima facie showing is required.” (citation and internal quotations omitted)). Ultimately, once the low threshold requirement of authentication has been met, the evidence can then properly be admitted during trial if it is otherwise admissible. State v. Rich, 293 S.C. 172, 173, 359 S.E.2d 281, 282 (1987); see United States v. Hassan, 742 F.3d 104, 133 (4th Cir. 2014) (“[T]he burden to authenticate under Rule 901 is not high—only a prima facie showing is required, and a district court’s role is to serve as gatekeeper in assessing whether the proponent has offered a satisfactory foundation from which the jury could reasonably find that the evidence is authentic.” (citation and internal quotations omitted)).

In the case at bar, the State offered a limited number of photographs while purporting them to be photographs posted by Appellant to a Snapchat account around the time of the incident. Significantly, in light of the many available avenues through which any evidence can be authenticated and looking to what was presented during Appellant’s trial, the evidence and testimony offered to authenticate the photographs was sufficient to constitute a prima facie showing those photographs were, in fact, exactly what they were purported to be. See Green,

427 S.C. at 231, 830 S.E.2d at 715 (recognizing there are many ways in which evidence can be authenticated and the specific means identified in our state’s evidentiary rules are “non-exclusive”); see also Commonwealth v. Meola, 125 N.E.3d 103, 114 (Mass. App. Ct. 2019) (recognizing “digital evidence may be authenticated circumstantially based on its contents and the surrounding circumstances”).

Supporting just such a conclusion, the photographs were authenticated through the connection established between Appellant and the “duke_ttg” Snapchat account through their distinctive contents depicting Appellant himself, through the evidence connecting Appellant to the exact same phone number associated with that particular social media account, and through the evidence indicating the account name was consistent with Appellant’s own nickname. See United States v. Perez, 61 F.4th 623, 626 (8th Cir. 2023) (“[A] party may authenticate social media evidence with circumstantial evidence that adequately links a particular person to the social media account.”); cf. Johnson v. United States, 290 A.3d 500, 512 (D.C. Cir. 2023) (concluding Instagram evidence was sufficiently linked to Johnson and properly authenticated for admissibility purposes based in part because the phone number connected to the Instagram account was also connected to Johnson and because the account contained numerous photographs of Johnson). Similarly, the photographs depicting Appellant were authenticated as actually being photographs of Appellant through both the testimony establishing he was the individual in the photographs and through the fact they could be compared both to his appearance in the courtroom and to his appearance in the recording and associated images captured during the controlled buy involving him. See Gilliam v. Foster, 75 F.3d 881, 897 (4th Cir. 1996) (“[U]nder South Carolina law, normally it is sufficient to justify admittance of photographs into evidence if a person familiar with the scene can say that the pictures truly

represent the scene involved.” (citation, internal quotations, and brackets omitted)); cf. State v. Campbell, 259 S.C. 339, 344, 191 S.E.2d 770, 773 (1972) (“The photographs offered in evidence were identified by a police officer who saw the scene depicted and who testified that they were correct representations of the area they portrayed. Argument that the photographer himself should have been present for cross-examination under the facts of this case is without merit. Normally it is sufficient to justify admittance of photographs into evidence if a person familiar with the scene can say that the pictures truly represent the scene involved.”). Likewise, the photographs were connected to Appellant through the fact he was repeatedly depicted in the images, which supported a conclusion he was the one posting the photographs since so many of them were of him and appeared to have been taken by him personally. See State v. Benton, 435 S.C. 250, 263, 865 S.E.2d 919, 926 (Ct. App. 2021) (recognizing the contents of a message sent through social media can demonstrate a particular individual was in possession of the phone used to send it when it was sent); see also United States v. Davis, 918 F.3d 397, 402 (4th Cir. 2019) (recognizing “contextual evidence” may be sufficient to make the prima facie showing necessary to authenticate evidence); cf. Meola, 125 N.E.3d at 114-115 (concluding sufficient confirming circumstances had been presented to authenticate a message sent through a social media account such that it could be admitted into evidence because the account used to send the message was in the defendant’s name, the video recording attached to the message depicted the defendant, and the recording was “self-authored” by the defendant as reflected by its contents). Relatedly, the authenticity of the photograph of the exceedingly-distinct pills posted to the very same account as the numerous photographs of Appellant—including one with the date of the incident identified on it—was established through the fact unique pills identical in appearance to the ones depicted in the photograph were sold to the informant by Appellant. See Rule 901(b)(3), SCRE

(instructing evidence can be authenticated through comparison with an authenticated specimen); Rule 901(b)(4), SCRE (instructing evidence can be authenticated through proof of distinctive characteristics); cf. Williams v. Illinois, 567 U.S. 50, 75 (2012) (plurality opinion) (“[T]he fact that the Cellmark profile matched Williams—the very man whom the victim identified in a lineup and at trial as her attacker—was itself striking confirmation that the same that Cellmark tested was the sample taken from the victim’s vaginal swabs.”); State v. Hall, 437 S.C. 107, 120, 876 S.E.2d 328, 335 (Ct. App. 2022) (“While there is a risk the video messages were not contemporaneously recorded at the time they were sent, a reasonable jury could find the messages were what Jackson said they were[.]”). Furthermore, the photographs’ connection to the “duke_ttg” Snapchat account was further authenticated by the testimony establishing Agent Martin received them directly from Snapchat in response to his search warrant for the “duke_ttg” account records. Cf. Braswell v. United States, 487 U.S. 99, 118 (1988) (“The Government may offer testimony—for example, from the process server who delivered the subpoena and from the individual *who received the records*—establishing that the corporation produced the records subpoenaed. The jury may draw from the corporation’s act of production the conclusion that the records in question are authentic corporate records, which the corporation possessed, and which it produced in response to the subpoena.” (emphasis added)).

In light of the multiple ways the Snapchat photographs were authenticated in Appellant’s case, both the trial judge and the jury could reasonably and reliably conclude those photographs—which depicted both Appellant himself and what appeared to be the exact same highly-unique pills he sold to the informant—were, in fact, exactly what they were purported to be—photographs posted by Appellant to a Snapchat account around the time of the incident—even if contrary arguments could be made by the defense. See Johnson, 290 A.3d at 513

(explaining the requirement of authentication does *not* require the prosecution to prove with absolute certainty the defendant was using a social media account and, instead, only requires the prosecution to demonstrate “the reasonable possibility that he did so”); Meola, 125 N.E.3d at 113 (explaining “the mere possibility that a digital communication was fraudulently sent by someone other than the person associated with a particular social media or e-mail account from which the communication originated is not a bar to its authentication”); see also Winburn, 261 S.C. at 576-577, 201 S.E.2d at 376 (instructing evidence can be authenticated by indirect or circumstantial evidence); cf. United States v. Recio, 884 F.3d 230, 237 (4th Cir. 2018) (“[W]hat matters is not whether a jury could find that Recio did *not* author the [Facebook] post in question, but rather whether the jury could reasonably find that he *did*.”); Kaixiang Zhu, 854 F.3d at 257 (“The reasons identified by Zhu to doubt the authenticity of the email go to its weight, not its admissibility, and counsel for Zhu was free to highlight these deficiencies during cross examination of Officer Butler. The district court’s job was not to find that the evidence was necessarily what the proponent claimed, but only that there was sufficient evidence that the *jury* ultimately might do so.” (citation, internal quotations, and brackets omitted)). Therefore, under such circumstances, the trial judge did not abuse his broad discretion or otherwise err by finding the challenged evidence was sufficiently authenticated to be admissible. See State v. Kelley, 319 S.C. 173, 176, 460 S.E.2d 368, 370 (1995) (recognizing trial judges have wide latitude in ruling on the admissibility of evidence and instructing trial judge’s evidentiary rulings will not be disturbed on appeal absent a showing of a prejudicial abuse of discretion). Appellant’s conviction should be affirmed.

III.

The trial judge correctly declined to suppress the recording captured on the informant's hidden camera because Appellant voluntarily relinquished any expectation of privacy he may have had in the home where the drug transaction was conducted by inviting the informant inside and, thus, his constitutional right to be free from unreasonable invasions of privacy was not violated merely because his trust in the informant proved to be misplaced.

Appellant contends the trial judge reversibly erred by refusing to suppress the recording captured on the confidential informant's recording equipment while he was inside the residence conducting the drug transaction. As support for that contention, Appellant maintains an unreasonable invasion of privacy was committed because the informant "provided a live feed for law enforcement to invade [his] home." Importantly though, Appellant voluntarily invited the informant into the residence for the purpose of conducting a drug transaction and, thus, relinquished any expectation of privacy he may have had in that constitutionally-protected space by knowingly exposing it to a third-party. Under such circumstances, Appellant's rights pursuant to the South Carolina Constitution were not violated as no unreasonable invasion of privacy occurred, and, therefore, the trial judge correctly declined to suppress the recording captured on the informant's hidden camera. Appellant's conviction should be affirmed.

Relevant Facts

Toward the outset of Appellant's trial, defense counsel moved to suppress the recording captured on the confidential informant's hidden equipment pursuant to both the state and federal constitutions. (R. pp. 39-40). As support for that motion, defense counsel contended the informant was an agent of the State and, thus, purportedly could not do anything a law enforcement officer could not also do. (R. pp. 40-41). Defense counsel further maintained an officer could not have gotten into the residence without either "*permission*" or a warrant. (R. p. 43) (emphasis added). Resultantly, defense counsel asserted the informant's entry into the

residence with a camera constituted an unreasonable and unconstitutional invasion of Appellant's privacy. (R. p. 44).

In rebuttal, the solicitor noted informants are routinely and commonly used in South Carolina. (R. pp. 44-45). Furthermore, the solicitor argued nothing existed suggesting a warrant was necessary in order for a confidential informant to be able to go inside a private residence under circumstances like the ones involved. (R. pp. 44-45).

Upon considering the matter, the trial judge denied the motion. (R. p. 45). In so doing, the trial judge explained the application of the warrant requirement to the circumstances involved in Appellant's case would functionally eliminate the ability of law enforcement to employ confidential informants to fight crime. (R. p. 45).

Following that ruling, the trial continued forward, and the solicitor sought to admit the recording from the confidential informant's camera into evidence. (R. p. 154). At that time, defense counsel renewed his earlier objection, and the recording was admitted subject to that objection and played for the jury.¹⁵ (R. p. 154).

Standard of Review

When reviewing a ruling on a motion seeking the suppression of evidence based on a purportedly unconstitutional search or seizure, an appellate court in South Carolina generally

¹⁵ Following the trial judge's pre-trial ruling on the matter, defense counsel clarified he was *only* arguing a "live feed wire" with an officer "watching on the other end" could not be used on a confidential informant who entered a residence, and the solicitor quickly followed that clarification by explaining he was not seeking to admit any evidence from the "live feed" device equipped to the informant, who was equipped with both live and non-live devices. (R. pp. 46-47). In light of defense counsel's clarification, it is questionable whether any issue with the recording actually admitted into evidence was properly preserved for appellate review since that particular recording was not captured through the use of the "live feed" device. See State v. Bryant, 372 S.C. 305, 315-316, 642 S.E.2d 582, 588 (2007) (explaining an issue conceded at trial cannot be asserted later on appeal); State v. Patterson, 324 S.C. 5, 19, 482 S.E.2d 760, 767 (1997) (instructing an appellant "is limited to the grounds raised at trial").

must now employ a two-step analysis. Frasier, 437 S.C. at 633, 879 S.E.2d at 766. Pursuant to that “dual inquiry,” the appellate court will review the trial judge’s factual findings for “any evidentiary support” and will treat the ultimate legal conclusion as a question of law subject to de novo review. Id. at 633-634, 879 S.E.2d 762, 766.

Argument

Much like the Fourth Amendment of the United States Constitution, the South Carolina Constitution provides protections to the state’s citizens against unreasonable searches and seizures. State v. Forrester, 343 S.C. 637, 643, 541 S.E.2d 837, 840 (2001); see S.C. Const. art. I, § 10 (“The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures and unreasonable invasions of privacy shall not be violated[.]”). Furthermore, primarily in order to guard against invasive technological advancements, the South Carolina Constitution also expressly protects our citizens from “unreasonable invasions of privacy.” S.C. Const. art. I, § 10; see Forrester, 343 S.C. at 647, 541 S.E.2d at 842 (“[T]he drafters of our state constitution’s right to privacy provision were principally concerned with the emergence of new electronic technologies that increased the government’s ability to conduct searches.”).

Through the additional provision regarding invasions of privacy, “the people of South Carolina have indicated that searches and seizures that do not offend the federal Constitution may still offend the South Carolina Constitution.” State v. Weaver, 374 S.C. 313, 322, 649 S.E.2d 479, 483 (2007). Thus, “the South Carolina Constitution favors an interpretation offering a higher level of privacy protection than the Fourth Amendment.” Id. However, the South Carolina Constitution by its express language only forbids searches, seizures, and invasions of privacy that are *unreasonable*. S.C. Const. art. I, § 10; see State v. Foster, 269 S.C. 373, 378,

237 S.E.2d 589, 591 (1977) (“It is only unreasonable searches and seizures that are prohibited.”). Accordingly, just as is true of the federal constitution, the touchstone of our state constitution’s search and seizure protections is reasonableness. See Florida v. Jimeno, 500 U.S. 248, 250 (1991) (“The touchstone of the Fourth Amendment is reasonableness.”).

Historically, an analysis of whether an unconstitutional privacy invasion occurred has involved two distinct components. Bond v. United States, 592 U.S. 334, 338 (2000); see Smith v. Maryland, 442 U.S. 735, 740 (1979) (explaining the application of constitutional protections to a claimed invasion of privacy depends on whether a justifiable, reasonable, or legitimate expectation of privacy was invaded by government action). First, it must be determined whether the individual exhibited an actual expectation of privacy such that the individual sought to preserve something as private. Bond, 592 U.S. at 338. That determination is key because an individual does not and cannot possess an actual—and constitutionally-protected—expectation of privacy in something the individual “knowingly exposes to the public, *even in his own home or office[.]*” Katz v. United States, 389 U.S. 347, 351 (1967) (emphasis added); see State v. Herring, 387 S.C. 201, 209 n. 4, 692 S.E.2d 490, 494 n. 4 (2009) (“What a person knowingly exposes to the public, even in his own home or office, is not a subject of Fourth Amendment protection.”). Critically, that is equally true—as has long been recognized—of something voluntarily revealed to a confidential informant even if that informant turns out to be secretly working in conjunction with law enforcement. See Hoffa v. United States, 385 U.S. 293, 302 (1966) (explaining “a wrongdoer’s misplaced belief that a person to whom he voluntarily confides his wrongdoing will not reveal it” is not entitled to constitutional protection); United States v. Davis, 326 F.3d 361, 365 (2d Cir. 2003) (“[A] defendant does not have a privacy interest in matters voluntarily revealed to a government agent, including a confidential