

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Appeal from Richland County

S.C. Supreme Court

G. Thomas Cooper, Jr., Circuit Court Judge

STEVEN MICHAEL LECROY,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-000745

APPENDIX

CARMEN V. GANJEHSANI
Appellate Defender

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

MEGAN HARRIGAN
Assistant Attorney General

P. O. Box 11549
Columbia, SC 29211

ATTORNEYS FOR RESPONDENT

INDEX

INDEX	i
TRIAL TRANSCRIPT (dated February 24-25, 2009)	1
SENTENCING HEARING TRANSCRIPT (dated September 9, 2009)	371
OPINION OF THE COURT OF APPEALS	376
APPLICATION FOR POST-CONVICTION RELIEF	378
RETURN	389
POST-CONVICTION RELIEF HEARING TRANSCRIPT (dated January 17, 2013)	396
ORDER OF DISMISSAL	458
CLERK OF COURT RECORDS	471

1 STATE OF SOUTH CAROLINA)

2 COUNTY OF RICHLAND)

COURT OF GENERAL SESSIONS

07-GS-40-1329

07-GS-40-1330

07-GS-40-1331

5 STATE OF SOUTH CAROLINA,)

6 Plaintiff)

7 vs.)

TRANSCRIPT OF RECORD

8 STEVEN LECROY,)

9 Defendant.)

FEBRUARY 24-25, 2009
Columbia, South Carolina

14 B E F O R E:

15 THE HONORABLE J. MICHELLE CHILDS, JUDGE; and a
16 jury.

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

19 THEODORE N. LUPTON, ASSISTANT SOLICITOR
Attorney for the Plaintiff

20 J. RHODES BAILEY, ASSISTANT PUBLIC DEFENDER
21 JAMES D. COOPER, III, ASSISTANT PUBLIC DEFENDER
22 Attorney for the Defendant

25 DEBORAH M. McCURDY, RPR
Official Court Reporter

1	INDEX OF WITNESSES	
2	MICHAEL A. POOLE	
3	Direct By Mr. Lupton	88
4	Cross By Mr. Cooper	99
5	ANTHONY BRANHAM	
6	Direct By Mr. Lupton	135
7	Cross By Mr. Bailey	172
8	Redirect By Mr. Lupton	177
9	Recross By Mr. Bailey	178
10	JOHN LUTZ	
11	Direct By Mr. Lupton	185
12	Cross By Mr. Bailey	191
13	DAMON ROBERTSON	
14	Direct By Mr. Lupton	192
15	Cross By Mr. Bailey	202
16	MICHAEL A. POOLE	
17	Direct By Mr. Lupton	207
18	Cross By Mr. Cooper	227
19	Redirect By Mr. Lupton	241
20	Recross By Mr. Cooper	242
21	TENA GOFF	
22	Direct By Mr. Lupton	246
23	Cross By Mr. Cooper	259
24	WILLIAM CURTIS CEDARSTAFF	
25	Direct By Mr. Lupton	260

1 DAVID LEE BELL

2 Direct By Mr. Lupton 265

3 JAMES ANDREW FARMER

4 Direct By Mr. Lupton 273

5 » » o « «

6 Opening Statement by Mr. Lupton 127

7 Opening Statement by Mr. Cooper 130

8 Closing Statement by Mr. Lupton 303

9 Closing Statement by Mr. Bailey 315

10 Jury Charge 332

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1	STATE EXHIBITS			
2	<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
3	1	Photo	188	188
4	2	Photo	188	188
5	3	Meth from Pocket	286	286
6	4	Straw From Pocket	190	190
7	5	Photo	149	149
8	6	Photo	152	152
9	7	Photo	152	152
10	8	Photo	150	150
11	9	Pill Bottle	286	286
12	10	Scales	155	155
13	11	Photo	156	156
14	12	Photo	157	157
15	13	Photo	158	158
16	14	Marijuana	272	272
17	15	Meth	286	286
18	16	Photo	163	163
19	17	Photo	164	164
20	18	Statement	213	213
21	19	Photo	159	159
22	20	Photo	167	167
23	21	Photo	168	168
24	22	Photo	168	168
25	23	Photo	160	160

1	24	Pills	286	286
2	25	Photo	166	166
3	26	Baggies	166	166
4	27	Bag	254	255
5	28	Evidence Bag	255	256
6	29	Drug Report	271	272
7	30	Drug Report	286	287
8				
9				
10				
11				
12				
13				
14				
15				
16				
17				
18				
19				
20				
21				
22				
23				
24				
25				

	COURT EXHIBITS			
	<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
1	1	Bond Form	7	
2	2	Notice for Court	7	
3	3	Order	7	
4	4	E-Mail, Ted Lupton to Rhodes Bailey and Judge Childs	7	
5	5	Bench Warrant	7	
6	6	Research Offenders Secure Access	7	
7	7	Research Offenders Secure Access	7	
8	8	Incarcerated Inmate Search	7	
9	9	Defense Pretrial Motions	26	
10	10	State's Voir Dire	55	
11	11	State's Witness List	55	
12	12	Juror Note	183	
13	13	Foreperson Note		
14	14	Request to Charge Defendant's Absence	300	
15	15	Jury Charges		
16				
17				
18				
19				
20				
21				
22				
23				
24				
25				

FEBRUARY 24, 2009

MR. LUPTON: I need you to mark these as
Court's Exhibits.

(WHEREUPON, Court's Exhibit No. 1 was
marked for identification only.)

(WHEREUPON, Court's Exhibit No. 2 was
marked for identification only.)

(WHEREUPON, Court's Exhibit No. 3 was
marked for identification only.)

(WHEREUPON, Court's Exhibit No. 4 was
marked for identification only.)

(WHEREUPON, Court's Exhibit No. 5 was
marked for identification only.)

(WHEREUPON, Court's Exhibit No. 6 was
marked for identification only.)

(WHEREUPON, Court's Exhibit No. 7 was
marked for identification only.)

(WHEREUPON, Court's Exhibit No. 8 was
marked for identification only.)

THE COURT: Okay, the next matter will be The
State versus Steven Lecroy. Ted Lupton is
representing the State in this matter, and for the
Defendant, Mr. Cooper and also Mr. Rhodes Bailey.

The Court just wanted to put a little personal
information on here. I have been aware of this

1 case for quite some time. In fact, I believe it
2 was last year around Good Friday or so that Ms.
3 Lane Danielsen was actually representing Mr.
4 Lecroy. It is the same case?

5 MR. LUPTON: Yes, Your Honor. Obviously, in
6 the State's showing of why we should be allowed to
7 have a TIA, I was going to go into all of that.

8 THE COURT: Okay, but just to let you know
9 that the Court does have some personal information
10 about this case because I have been involved for
11 quite some time with respect to Mr. Lecroy
12 appearing or not appearing, and I was trying to set
13 the trial and continued the trial and, you know, I
14 kind of have an extensive history.

15 I understand that Mr. Lecroy is not present in
16 the courtroom today, is that correct?

17 MR. COOPER: Yes, ma'am. Yes, Your Honor.

18 THE COURT: Okay, so the issues that come
19 before the Court on whether or not we should try
20 this case in his absence, as the parties are aware
21 that under South Carolina Criminal Rules of
22 Procedure Rule Number 16, that as to presence of
23 the accused at trial, the Court has to make certain
24 findings, particularly whether or not the Defendant
25 has received notice of his right to be present and

1 that a warning was given that the trial would
2 proceed in his absence upon a failure to attend the
3 court.

4 So that is what the purpose of this proceeding
5 is right now before we can decide whether or not to
6 actually go forward with the case.

7 So if you all would please tailor your
8 comments to those issues.

9 MR. LUPTON: Your Honor, I'm going to present
10 several items to the Court, as well as present
11 information.

12 Your Honor, the first thing I would hand up is
13 what has been marked as Court's Exhibit 1. It is a
14 copy of the bond form. And all this is stuff that
15 the Defense -- none of this is any kind of
16 surprise -- the bond form, which I have highlighted
17 the part where it says that he understands his
18 right to be present and his duty to be present and
19 the trial will continue in his absence if he fails
20 to show.

21 Under case law, that is deemed sufficient
22 notice of the fact that the trial will proceed in
23 his absence if he fails to show.

24 Additionally, I will hand up Court's Exhibit
25 2. It is just a copy of the handwritten notice for

1 trial that the Defendant signed. This was signed
2 in July of 2008 noticing him for trial in August of
3 2008. The trial is underlined emphasizing that it
4 is for trial, and handwritten is, if you cannot
5 show for your trial you will be tried in your
6 absence. The Defendant signed that indicating that
7 he understood. And I hand that up as Court's
8 Exhibit 2.

9 Thirdly, Your Honor, as you have indicated,
10 the history of this case, which is documented in
11 the record in various locations, as this has come
12 before various courts many times, Ms. Lane
13 Danielsen originally represented the Defendant.
14 She asked for continuances, and ultimately the case
15 was set for disposition back in I believe it was
16 March of 2008.

17 The Defendant failed to show. A bench warrant
18 was issued. The case was actually being called for
19 trial during that week in March. A bench warrant
20 was issued. He was informed at that time that the
21 case would be tried in his absence if he failed to
22 show.

23 The case was getting set to be tried in his
24 absence when he was ultimately arrested on a bench
25 warrant, made allegations in front of Judge Early

1 that he had not been aware of his trial date,
2 everyone told him to leave the courthouse and did
3 not inform him of the trial.

4 I am certainly not going to comment on the
5 credibility of those statements, but giving him the
6 benefit of the doubt, Judge Early vacated the bench
7 warrant, appointed Rhodes Bailey, of the Public
8 Defender's Office and Rhodes Bailey ended up with
9 it, at that time.

10 He was told very specifically if he didn't
11 show up for court, the Defendant, that is, was told
12 very specifically if he didn't show up for court
13 the case would proceed to trial in his absence. He
14 was told that repeatedly.

15 THE COURT: And what month was that?

16 MR. LUPTON: I believe that that was done in
17 May, if I'm not mistaken.

18 THE COURT: Of 2008?

19 MR. LUPTON: Of 2008.

20 MR. BAILEY: I have May 29th. Yes, that's
21 what I have.

22 MR. LUPTON: I believe that's correct. That
23 sounds right. But in any event, he was aware at
24 that point.

25 Then we came back again. The Defense was

1 given some time to prepare with the Public
2 Defender's Office. Ultimately Mr. Lecroy kept
3 telling the Defense attorneys that he was going to
4 hire private counsel. He never was able to do
5 that.

6 We had a trial that was ultimately called in
7 front of the Honorable Judge Newman. At that point
8 he did show up, but he showed up with a motion to
9 fire his lawyers and continue the case. That was
10 heard in camera.

11 THE COURT: And that was heard in what month?

12 MR. LUPTON: That would have been August of
13 2008.

14 I have not seen and am not aware of the
15 contents of that. Specifically when I ordered a
16 copy of the transcript for that day's proceedings,
17 I specifically asked that I not be given any
18 portion of that in camera to avoid the possibility
19 of learning anything that was privileged and would
20 cause any problems.

21 THE COURT: But he was not relieved -- then
22 Mr. Bailey was not relieved?

23 MR. BAILEY: That is correct, Your Honor. The
24 Defendant's motion was to have counsel relieved,
25 and it was denied.

1 MR. LUPTON: And also the motion for
2 continuance. And we proceeded to trial and the
3 Defendant's demeanor was basically despondent. He
4 spent a good deal of the trial basically sitting in
5 his chair silently.

6 Then during the State's case, the State's lead
7 investigator inadvertently and without thinking
8 mentioned that the marijuana charges were a first.

9 I immediately stopped the proceeding, asked
10 for the jury to be taken -- removed from the
11 courtroom.

12 Obviously there was no way to cure that
13 problem, and I agreed that that was prejudicial and
14 that the jury could not be informed of the fact
15 that he had a prior record, prior conditions.

16 THE COURT: And this was tried when?

17 MR. BAILEY: That was August 28th.

18 THE COURT: Okay.

19 MR. LUPTON: And Defense counsel made a motion
20 for a mistrial, and the State conceded that there
21 was nothing the Court could do to cure that
22 prejudice.

23 That having been done, the case was then
24 recalled for trial. We attempted to call it in the
25 beginning of September. At that point the Defense

1 counsel asked for continuance -- I believe it was
2 on September 8th, according to the order --
3 continuance to get a copy of the transcript. Your
4 Honor heard that motion.

5 The Defendant -- I believe Defense counsel had
6 contacted the Defendant based on statements to the
7 Court prior to that, but the Defendant did not show
8 up for court that week despite the State requesting
9 that the Defendant be present. I called the case
10 for trial, noticed it for trial. Motion was made
11 for continuance and that motion was granted, but
12 the Defendant did not show up at that point.

13 At that point he had been told numerous times
14 that he would be tried in his absence if he didn't
15 show up. It was emphasized over and over again.

16 At that point the motion for continuance
17 resulted in a written order, which I will hand up
18 as Court's Exhibit 3. In that, at the bottom of
19 the first page is the Court's specific order that
20 he be, that the Defendant be required to be in
21 court on September 15th. The Defendant did not
22 show up for court on September 15th.

23 And I sent an e-mail which I will hand up,
24 that is marked as Court's Exhibit 4, in which I
25 basically affirmed through Mr. Bailey and yourself

1 that the Defendant had not been there. And I will
2 hand that up as Court's Exhibit 4. And a reminder
3 that the case was subject for trial in absentia.

4 As a result of his not showing up for court, a
5 check was made with the Department of Corrections
6 of South Carolina and the Richland County Jail. He
7 was not present in either place and a bench warrant
8 was issued. I will show that as Court's Exhibit 5.

9 After that, investigators for the Richland
10 County Sheriff's Department Narcotics attempted to
11 locate the Defendant, contacting various sources,
12 learned that he had gone to Atlanta, and ultimately
13 learned that he had gone to California.

14 Part of the evidence of that is that the car
15 that I believe may have been registered to his
16 mother, and as I understand it was reported stolen
17 by the sister, the Defendant's sister, that the
18 mother states that the Defendant was driving, that
19 that vehicle received a parking ticket that went
20 unpaid in San Diego.

21 Additionally, the bonding company was
22 contacted concerning the trial. Since I can't
23 locate the Defendant, I notified the bonding
24 company and the Defendant's attorney of the trial,
25 as well as the fact that the trial is published on

1 the internet, the trial docket is published on the
2 internet, and is posted within the courthouse. So
3 I notified the attorney and the bonding company of
4 the trial and that it would be TIA.

5 The bonding company, Ms. Edith at ABC Bonding,
6 stated that she had information he was in Atlanta.
7 Over the weekend she attempted to locate him in
8 Atlanta. She went to Atlanta. And I spoke with
9 her earlier today. She indicated she had gone to
10 several addresses, spoke with several of Mr.
11 Lecroy's acquaintances, and that they all said that
12 he was now currently in California.

13 Based on all of that, I had also checked --

14 THE COURT: Is his leaving to go out of state
15 a violation of his bond?

16 MR. LUPTON: Yes, Your Honor. That is also on
17 the bond form that he remain in state. And he
18 never received permission from the chief
19 administrative judge, which would be yourself, or
20 any other judge that I am aware of, and I would
21 have had to be notified of him seeking to modify
22 bond. He has never received permission to leave
23 the State.

24 I will finally hand up Court's Exhibit 6, 7
25 and 8. Today I attempted to locate the Defendant

1 in the Alvin S. Glenn Detention Center and the
2 South Carolina Department of Corrections by the
3 websites of each location, received -- on all three
4 the search indicated that the Defendant was not
5 incarcerated in either of those locations.

6 Your Honor, based on -- and the Court is aware
7 of much of the proceedings where the State's intent
8 to try this case in his absence if the Defendant
9 didn't show up was discussed. And you have, I
10 believe, personal knowledge that he has been
11 informed it would be a TIA.

12 Additionally, we have the notice of intent to
13 try it in his absence in writing. He has, based on
14 all the evidence, willfully fled the state in order
15 to avoid trial.

16 He is not currently incarcerated in any
17 location that we are aware of. Obviously if he is
18 incarcerated somewhere that we are unaware of, at
19 such time as he is located he can raise that issue,
20 but absent that, we have diligently attempted to
21 locate him. And we have shown that he has
22 willfully failed to appear and was notified of the
23 fact that the case would go without him and he was
24 notified of the trial.

25 Additionally, obviously, Your Honor, he was

1 hoping that the case would continue and hold over
2 until such time as it was reached before he fled.
3 And he had knowledge of that because it has done so
4 in the past. It has come close to coming up in the
5 past as a TIA when he was served.

6 THE COURT: Okay. All right, Defense counsel?

7 MR. BAILEY: Thank you very much, Your Honor.
8 On behalf of our client, Mr. Lecroy, we would move
9 to postpone this case until he can be present.

10 Obviously our responsibility is to Mr. Lecroy
11 on this, and it is our position that we are more
12 able to defend our clients adequately when they are
13 here to help provide assistance.

14 If Your Honor denies our motion to continue
15 it, Mr. Cooper and I are certainly prepared to go
16 forward, although I would just like to speak
17 briefly to some of our legal and policy concerns.

18 Just for the record, I know that Rule 16
19 requires that the Defendant get clear notice, that
20 not only is there a bench warrant out on them, but
21 that they would be tried in their absence should
22 they not appear in court.

23 Obviously Mr. Lecroy has had documented notice
24 that he was supposed to be here for trial. I
25 actually can't speak to whether or not Mr. Lupton

1 respectfully provided documentation that Mr. Lecroy
2 specifically knew that there would be a TIA if he
3 was not present for this, just to speak to the
4 technical side of that law.

5 I mean, I know that Mr. Lupton has made that
6 clear to me as he presented this e-mail. And I
7 haven't been in contact with my client for quite
8 some time.

9 THE COURT: That is what I wanted to know,
10 when is the last time you had contact?

11 MR. BAILEY: The last time I spoke with Mr.
12 Lecroy, and I make documentation on the record
13 here, was September 24th, 2008. I had been trying
14 to reach him for some time. Obviously he --

15 THE COURT: Have you tried to reach him since
16 then?

17 MR. BAILEY: Yes, Your Honor.

18 THE COURT: And have you had any ability to do
19 so -- I mean, any success?

20 MR. BAILEY: No, I have not, Your Honor.

21 THE COURT: Okay. And you have tried to
22 contact him. What means did you try to contact
23 him, at what location, by what means and method?

24 MR. BAILEY: Well, the only number I had was a
25 friend's number that he gave me -- well, first I

1 tried his old number numerous times. Then he
2 called me on September 24th and left me a phone
3 number of a friend. I called that number a few
4 times and tried to get an answer. I left messages
5 for him..

6 Also, I sent him notice to his last previous
7 address. I want to state, when I did speak with
8 him on the phone on September 24th, I told him that
9 it was my understanding that a bench warrant had
10 been issued. And that was September 24th.

11 He has been on the trial docket, the backup
12 docket, kind of off and on for some time. It is
13 generally our office's policy that after a bench
14 warrant has been out for a certain amount of time
15 we close the file and reopen it when necessary, but
16 being that he was on the backup docket, I left the
17 file open.

18 I did send him a letter on January 27th, you
19 know, reiterating that there was a bench warrant to
20 his last known address.

21 THE COURT: Did that letter come back at all?

22 MR. BAILEY: I can't remember if the letter
23 was sent back to me. I mean, obviously I haven't
24 gotten a response.

25 THE COURT: But you sent it to the last known

1 address?

2 MR. BAILEY: Yes, ma'am, I sent it to the
3 address we had on record.

4 THE COURT: And he has not made any effort to
5 contact you?

6 MR. BAILEY: No, Your Honor, or not to my
7 knowledge.

8 THE COURT: Okay. So regardless of if you
9 knew a specific trial date, based on your attempts
10 to contact him, you are not sure that he would even
11 show?

12 MR. BAILEY: Well, I can't say that. I mean,
13 the main thing is he knew when there was a mistrial
14 that his case was still on the docket. We had had
15 several discussions.

16 THE COURT: He is aware and -- because at that
17 date his trial had not been set.

18 MR. BAILEY: Yes, ma'am. He should -- I mean,
19 it is my understanding that is correct.

20 THE COURT: Okay.

21 MR. BAILEY: And if I can just speak relating
22 to policy, you know, I know that the federal law
23 does not allow TIA's without people present,
24 obviously South Carolina does, but it is our
25 position that this might not be the best way for

1 the State to attempt to bring a Defendant to
2 justice.

3 Also, we have numerous stuff on the docket, we
4 probably have 50 or 60 trials on the backup docket.

5 THE COURT: And we'll have 50 or 60 more next
6 week, the week after, and the week after.

7 MR. BAILEY: Yes, Your Honor. And, again,
8 this is no -- and I am in no position to -- I am
9 not trying to stall this.

10 THE COURT: I understand what you are saying.
11 I guess, to cut to the chase of it, this matter has
12 been dealt with by the Solicitor's Office for quite
13 some time, and it has to get resolved at some time
14 or another.

15 MR. BAILEY: Yes, Your Honor.

16 THE COURT: I feel that way with people who
17 are in jail two years or more, and they know I am
18 very hard on them about bringing those cases to
19 justice, but it is just the same thing for somebody
20 who has been out on bond for five years. That case
21 has to be brought to justice as well.

22 MR. BAILEY: Yes, Your Honor.

23 THE COURT: Because it affects somebody
24 somewhere, whether it be a victim or either the
25 person who has pending charges who cannot get a job

1 because the employers are considering their arrest
2 for whatever the crimes are.

3 So one way or the other the trials have to go
4 forward.

5 If this was in October we might be at a
6 different juncture, but we are now in February.

7 MR. BAILEY: Yes, Your Honor.

8 THE COURT: And so with you all also not
9 indicating any real reasonable ability to get in
10 touch with your client --

11 MR. BAILEY: Yeah, I mean, obviously that
12 document --

13 THE COURT: No, no, you have made the
14 attempts, but I'm just saying right now you cannot
15 tell me that you have a reasonable ability to get
16 in touch with your client?

17 MR. BAILEY: I do not know how to reach Mr.
18 Lecroy. Again, I just wanted to, in an effort to
19 protect Mr. Lecroy's rights, since he is not here
20 to speak for himself --

21 THE COURT: Sure.

22 MR. BAILEY: -- I do believe that there is
23 always a possibility that we can be found with
24 ineffective of counsel due to the fact that a trial
25 went forward without him present to assist in this

1 case.

2 Again, though, Your Honor, if the Court finds
3 it necessary to proceed today, Mr. Cooper and I
4 will be ready to proceed.

5 THE COURT: Okay. I believe that based on the
6 information I have before me, that pursuant to
7 South Carolina Rule of Civil Procedure 16, that Mr.
8 Lecroy has received ample notice of his right to be
9 present at trial, and that he was warned that his
10 trial would proceed in his absence upon a failure
11 to attend the court, that the Solicitor's Office
12 has diligently attempted to locate him in terms of
13 whether or not he was in jail, has recently
14 received some information that he might have been
15 in California. I also find that there have been
16 more than ample attempts by the Public Defender's
17 Office with respect to his attorneys that they have
18 tried to reach him. He has also placed himself on
19 the courthouse steps and at those various times has
20 been provided information about his charges still
21 pending and that the Solicitor's Office had every
22 intention to proceed with those charges and go
23 forward with his trial.

24 So this trial will go forward.

25 MR. LUPTON: Thank you, Your Honor.

1 THE COURT: Judge Barber is going to pick a
2 jury. That won't affect us because as I understand
3 it there are about 75 jurors or so ready to select
4 from. And we can split the panel, if that is okay.
5 Is that appropriate? Do you all have any
6 objection?

7 MR. BAILEY: We don't have any objection.

8 THE COURT: Okay. All right, so 2:30, is that
9 fine? And we can pick a jury and then go into the
10 pretrial and send the jurors home and then we'll
11 probably be ready to start a little later after
12 that. I'm sorry, not to send them home because I
13 don't know how much pretrial you have, but we can
14 probably pick first so that we can at least give
15 them some indication as to what they will need to
16 do, if that is all right.

17 MR. BAILEY: Yes, Your Honor. I'm sorry, if I
18 may approach, I will just give you a copy of our
19 pretrial motions.

20 THE COURT: Please do.

21 (Mr. Bailey complies.)

22 THE COURT: And let that be Court's Exhibit
23 Number 7. Thank you. I'm sorry --

24 MR. LUPTON: I believe that was 9.

25 THE COURT REPORTER: 9.

1 THE COURT: 9. Thank you.

2 (WHEREUPON, Court's Exhibit No. 9 was
3 marked for identification only.)

4 MR. LUPTON: Your Honor, my best guess on the
5 pretrial based on what we did last time is that we
6 might be able to at most get in openings after --
7 given the hour --

8 THE COURT: We could do openings in the
9 morning and make it fresh. We can go ahead and
10 pick the jury and release them and then we will
11 deal with everything y'all need to do.

12 MR. LUPTON: That would be my suggestion as to
13 the most efficient way of doing it.

14 THE COURT: Okay.

15 MR. LUPTON: Then that way they don't have to
16 sit around until 4:30.

17 THE COURT: Exactly.

18 MR. BAILEY: Yes, we would prefer to start
19 fresh with the evidence in the morning.

20 THE COURT: I agree, because I think the
21 openings should go right into testimony. It is
22 fair to everybody.

23 MR. LUPTON: And I think that based on -- my
24 estimate is that with that we will be able to
25 conclude the trial tomorrow if we start first thing

1 with the openings at 9:30.

2 THE COURT: Okay.

3 MR. BAILEY: That's my impression.

4 THE COURT: Okay. Let's try to get everything
5 done today so that when I step on the bench in the
6 morning we actually start the case.

7 Thank you all. We are in recess.

8 (Recess.)

9 (WHEREUPON, several State's Exhibits
10 were premarked.)

11 (WHEREUPON, the following takes place at
12 2:30 p.m. on February 24, 2009.)

13 THE COURT: Are you ready to proceed with the
14 matter of The State versus Steven Lecroy?

15 MR. LUPTON: The State is ready, Your Honor.

16 MR. BAILEY: Yes, Your Honor.

17 THE COURT: Is there anything we need to take
18 up prior to selecting the jury?

19 MR. LUPTON: Well, Your Honor, we have
20 pretrial. When would you like to do that?

21 THE COURT: I would prefer to go ahead and
22 select and then perhaps not swear them, you know, I
23 will assess that, and then I will do the pretrial
24 and then start in the morning fresh.

25 MR. COOPER: Yes, ma'am, that's fine.

1 MR. BAILEY: Yes, ma'am.

2 THE COURT: Okay. I just didn't know if there
3 was anything I needed to be aware of prior to jury
4 selection.

5 MR. COOPER: No, ma'am, I don't believe so.

6 MR. LUPTON: Your Honor, I don't know if the
7 Defense handed up requests for voir dire. I
8 believe I did, if I'm not mistaken. It should have
9 been handed up with a copy to Defense.

10 I want to emphasize that on Number 3 I'm not
11 asking for that, it is a separate charge, but I
12 would ask that that be included if the Court does,
13 is anybody here a member of a pro-law enforcement
14 group, I would just ask that it be asked sort of
15 together, pro-law enforcement.

16 THE COURT: Okay.

17 MR. BAILEY: Your Honor, we think -- we have
18 no problem with this one if it does accompany
19 either pro-law enforcement group or donating money
20 to Mothers Against Drunk Driving or Students
21 Against Drunk Driving. It seems that those things
22 balance.

23 THE COURT: Okay.

24 MR. LUPTON: Your Honor, like I said, I'm
25 certainly not asking for the charge. I'm just

1 asking for the first half of that then. I'm not
2 asking for the second.

3 MR. BAILEY: We don't ask for the other one if
4 Mr. Lupton is not asking for it.

5 THE COURT: That is kind of a standard
6 question about law enforcement or defense
7 organization, just to give y'all more information.

8 MR. BAILEY: We do want that. We're not
9 objecting to Mr. Lupton's, I'm sorry.

10 THE COURT: Okay. All right. We are ready to
11 proceed.

12 THE CLERK: Are you ready to call the jury,
13 Your Honor?

14 THE COURT: Yes.

15 (WHEREUPON, the jury panel came into
16 open court.)

17 THE COURT: Good morning. I'm Michelle
18 Childs. I'm a Circuit Court judge here in Richland
19 County. And I welcome you to our trial.

20 You all were qualified to actually be jurors
21 in potential cases this week. And we are about to
22 begin a criminal trial. So I will be determining
23 whether or not you are actually qualified to serve
24 on this particular case.

25 This is the matter of The State versus Steven

1 Lecroy. Mr. Lecroy has been indicted for
2 possession of a controlled substance, second
3 offense; trafficking in methamphetamine 10 to 28
4 grams, third offense; and drugs or possession --

5 MR. LUPTON: Your Honor, may we approach?

6 THE COURT: -- of marijuana, second offense.
7 Yes.

8 (WHEREUPON, a bench conference was held
9 in the presence of the jury but out of
10 the hearing of the jury.)

11 THE COURT: One moment. All right, Madam
12 Clerk?

13 (Clerk approaches the bench.)

14 THE COURT: Let me see the attorney's again
15 real quick.

16 (Attorneys return to the bench.)

17 THE COURT: I've been informed, members of
18 jury panel, we have an issue. So I am going to
19 have to ask y'all to excuse yourselves and go back
20 downstairs and we will straighten out the issue and
21 then we will direct our attention back to you in a
22 moment.

23 MR. LUPTON: Your Honor, may we approach real
24 quick?

25 THE COURT: Okay.

1 (WHEREUPON, a bench conference was held
2 in the presence of the jury but out of
3 the hearing of the jury.)

4 THE COURT: And then as you are going
5 downstairs, as we indicated, we're about to begin
6 the particular criminal trial, I need you to not
7 discuss amongst yourselves anything that was said
8 here.

9 Mind you, there is not much, but still you
10 just can't talk about the case at all, anything
11 that was said in here, nor can you discuss it
12 amongst people who are not part of this particular
13 panel that you all are here in this courtroom.

14 So we just need you to not say anything about
15 from the time that you came downstairs up and then
16 going back until we can straighten out the matter
17 that is before the Court at this time.

18 Thank you all.

19 (WHEREUPON, the jury panel returned to
20 the jury assembly room.)

21 THE COURT: Attorneys, we have been at it all
22 day with various matters. I just forgot about the
23 situation on the additional, and so I apologize for
24 putting us in this situation, but I think we are
25 going to be able to remedy it, but I need you all

1 to put it on the record.

2 MR. BAILEY: Yes. Mr. Cooper and myself, just
3 to make a complete record, requested that we have a
4 new panel, jury panel, because of the Court
5 accidentally mentioning the degree of the offense,
6 second, third offenses of Mr. Lecroy on the
7 indictments on those drug charges.

8 And the Solicitor, Mr. Lupton, seemed to be in
9 complete agreement on that, Judge Childs, and
10 said -- I mean, I don't know how to document it
11 properly -- said for Judge Childs to dismiss this
12 jury panel for this particular case. And I guess
13 now we'll have a new one coming in.

14 THE COURT: Yes. We will have the ability to
15 have a new panel. Earlier we had around 75 or so.
16 We split the panels between two judges. You all
17 agreed that that was sufficient since there were
18 five strikes each as opposed to being a murder
19 trial or a higher felony. And then now we can just
20 switch what panel that Judge Barber had and give
21 him what I just had, so that should take care of
22 that. None of those potential jurors would come
23 out again if we had to pull another panel. So we
24 wouldn't have to so carefully go in the computer
25 and deal with that, we would just switch panels,

1 because his panel would not have been a part of
2 this one, and vice versa, if that is okay to remedy
3 the situation.

4 MR. LUPTON: Your Honor, the State agrees that
5 that is appropriate under the circumstances. And I
6 will note that even Judge Westbrook made the same
7 mistake at least once when my wife was clerking for
8 him.

9 THE COURT: Okay. I appreciate that. When I
10 tell them of the offense, just to make sure that
11 there will be no problems, I will just say
12 possession of marijuana, trafficking in
13 methamphetamine 10 to 28 grams, and then possession
14 of controlled substance, and that is it. Because
15 the only reason that the number of offense is on
16 there is for purposes of enhancement anyway.

17 MR. COOPER: May I inquire of the Court what
18 the intention of the Court is, how the Court
19 intends to go about addressing Mr. Lecroy's
20 absence, before it may be an issue?

21 THE COURT: Okay. Wonderful. I appreciate
22 it. And that is what I should have dealt with
23 before we even pulled them up and maybe this would
24 have come up, so, again, I apologize.

25 I'm going to let everyone know that this case

1 has been called to trial, that Mr. Lecroy was duly
2 noticed to appear at the trial, that there have
3 been attempts to secure his presence at the trial
4 and the Court is comfortable with those attempts
5 made, but he has still not shown up for trial. So
6 the State has the ability, based on the Court's
7 ruling, to prosecute the case in his absence. They
8 are not to hold against him the fact that he is not
9 here. The State still has the burden of proof
10 beyond a reasonable doubt, and that the jury is
11 required to hold them to that proof with respect to
12 the charges that are against him, but that his
13 attorney's will represent him in his absence and we
14 will proceed to trial.

15 MR. COOPER: Okay. Well, Your Honor, the
16 Defense is going to go ahead and object to that
17 now.

18 THE COURT: Okay.

19 MR. COOPER: Based on case law, it is our
20 position that the Defendant's absence shouldn't be
21 mentioned at all, especially by the State, because
22 the Defendant's absence can be improperly
23 construed, despite instruction, as evidence of his
24 guilt.

25 There are some -- there is *McFadden v. State*

1 on that, there is State versus Jackson on that. So
2 we want to go ahead and put our objection on the
3 record that we do object to any mention of Mr.
4 Lecroy's absence.

5 THE COURT: They will know he is not here.

6 MR. COOPER: Yes, ma'am.

7 THE COURT: So I'm just trying to figure out a
8 way to make it fair to you to address that issue
9 because when I ask people to say, do you know the
10 Defendant, and then I'm asking the parties for the
11 State to stand up, including their lawyers and any
12 represented entities by the State, I always do that
13 for the Defense, who is a party to the case, and so
14 it is going to be known that he is not here.

15 MR. COOPER: Well, certainly, Your Honor, the
16 jurors have eyes.

17 THE COURT: Yes.

18 MR. COOPER: And that is not the problem we
19 have.

20 THE COURT: Right. But I'm just saying that I
21 wasn't trying to do it to target in on there, I'm
22 doing it in the form of an explanation. But if you
23 all don't deem the explanation appropriate, then we
24 can speak to that, but it was not to hurt him, but
25 just to give it insofar as an explanation.

1 MR. COOPER: Well, Your Honor, our position I
2 think would be, the jurors have eyes. Mr. Bailey
3 and I are introduced. It is apparent, you know,
4 we're not the Defendant. You can explain who we
5 are.

6 THE COURT: Okay.

7 MR. COOPER: But it is our position, and it is
8 going to be during the trial, that there should not
9 be mention of his absence because of the risk that
10 it could be improperly considered by the jury, you
11 know, even despite instruction. So that is going
12 to be kind of our ongoing objection.

13 If you choose to allow the State to mention
14 his absence and particularly why he is not here,
15 you know, I would go ahead and ask for a blanket
16 objection now every time they plan on doing it.

17 THE COURT: Okay. And insofar as that is
18 concerned, mind you, was with respect to just
19 introducing the parties and to explain why he was
20 not here.

21 I would need Mr. Lupton to explain to me why
22 it is relevant to the trial that he is not here in
23 terms of prosecuting his case.

24 MR. LUPTON: Your Honor, I think that case law
25 is very clear that flight to avoid prosecution is

1 evidence of guilt. I think that I would be
2 entitled to present evidence that he fled to avoid
3 prosecution. However, I do not intend to do that.

4 My concern is I think that if the Court
5 portends that the emperor has clothes on, it is
6 going to create a problem for the jury in that if
7 they see the Defendant not there and there is
8 nothing said about it, it invites speculation as to
9 what is going on.

10 I think that -- I think that in some way that
11 should be addressed, whether it is the Court
12 saying, as you indicated, you intend to say that
13 the State has called this case and the Defendant
14 has been properly notified and we're going to go
15 forward, and just leaving it at that, or --

16 MR. COOPER: And if I could go ahead. And
17 insofar as what your intentions are, what you
18 intend to remark to the jury, I think that a way to
19 sort of compromise on this would be if you were to
20 tell the jury -- because I understand, you know,
21 Mr. Lupton's point about the emperor -- if you were
22 to make a comment to the jury, Mr. Lecroy was
23 noticed for this trial, you know, what my concern
24 was, and perhaps I misunderstood you, my concern
25 was that you would go into, and he has fled the

1 jurisdiction.

2 THE COURT: No, no, no.

3 MR. COOPER: That is what we want to avoid.

4 THE COURT: Oh, no, I'm not going to say that.

5 That probably -- I mean, that is the inference for
6 them to take. My finding under South Carolina Rule
7 of Criminal Procedure 16 was just to say he had
8 notice of the trial and he was warned that if he
9 did not show up the trial would proceed in his
10 absence. That was the only finding that the Court
11 has to make for the trial to go forward.

12 MR. BAILEY: I will note that -- I mean, the
13 jury can't draw any inference from his absence.
14 McFadden v. State has made a clear distinction
15 between flight being used as evidence and then the
16 Defendant's failure to appear at trial and they
17 have ruled that the trial judge cannot admit any,
18 you know, State's presenting of the facts saying
19 flight is evidence.

20 It has been clearly distinguished, and I've
21 got a copy of the case, McFadden v. State. So we
22 feel any reference to flight at all, it is
23 impossible. I mean, we have got -- the case law is
24 very clear on that.

25 MR. LUPTON: I'm not --

1 THE COURT: You understand my comments were
2 not flight.

3 MR. BAILEY: No, no, I just wanted to get that
4 out on the record.

5 MR. LUPTON: I have absolutely no intention of
6 going into his flight.

7 THE COURT: Him not being here.

8 MR. COOPER: Why he is not here.

9 MR. LUPTON: I think the Court would be -- I
10 think it would probably be a good idea for the
11 Court to cover the record, protect the record, if
12 the Court made some sort of charge at some point
13 during the trial similar to, the fact that the
14 Defendant didn't take the stand cannot be
15 considered in any way at all, cannot even be
16 discussed. Perhaps a statement that the fact that
17 the Defendant is not present cannot be considered
18 in any way at all, cannot be discussed in the jury
19 room at all.

20 THE COURT: Right.

21 MR. BAILEY: Well, I mean, State versus
22 Jackson, it says trial Court should instruct the
23 jury that a Defendant's failure to appear may not
24 be construed as an admission of guilt. And we will
25 definitely present jury instructions to that.

1 THE COURT: Okay. I think we are all on the
2 same page. One is, you're okay with my initial
3 statement --

4 MR. COOPER: Yes, ma'am. Yes, ma'am.

5 THE COURT: -- just in the opening comments to
6 the jury. And then throughout the trial the State
7 would have to proceed cautiously, but I don't think
8 Mr. Lupton is going to put any evidence of flight.
9 I mean, he doesn't need to mess up his case, he
10 just needs to prosecute the drug case.

11 MR. COOPER: Sure. Sure. If we're clear now,
12 then, you know, Mr. Lupton doesn't plan on
13 mentioning it, doesn't plan -- none of his
14 witnesses plan on saying, look, he is not here or
15 he is not here because of this.

16 THE COURT: Right.

17 MR. COOPER: Or during opening if Mr. Lupton
18 doesn't plan on, look, he is not even here. If he
19 is going to go ahead and say he is not going to do
20 that, then we're fine.

21 MR. LUPTON: I'm not going to come within a
22 mile of that.

23 MR. COOPER: Okay.

24 THE COURT: Okay, good. And then we'll put in
25 those -- review those charges later, the same

1 thing, the Defendant not taking the stand, don't
2 consider it, and then his absence, don't consider
3 that as well.

4 MR. COOPER: Yes, ma'am.

5 THE COURT: Okay. We're fine on that. Let me
6 just address Judge Barber, and then you can bring
7 those other jurors in.

8 (Break.)

9 (WHEREUPON, the jury panel entered the
10 courtroom.)

11 THE BAILIFF: The jury is all present, Your
12 Honor.

13 THE COURT: I appreciate it. I'm Michelle
14 Childs, and I'm a Circuit Court judge here in
15 Richland County. And you all were duly qualified
16 on Monday to actually serve as a panel for various
17 trials.

18 The particular trial that we're about to do is
19 a criminal trial, so I will be asking you all
20 certain questions to determine if you are qualified
21 to serve in this case. And it is the matter of
22 State versus Steven Lecroy.

23 The Court has before it certain indictments
24 from which Mr. Lecroy is charged, dealing with
25 possession of marijuana, trafficking in

1 methamphetamine, as well as possession of a
2 controlled substance.

3 I will remind you throughout the trial, but
4 particularly now, that these are just indictments,
5 which is the formal instrument by which a case is
6 brought to trial. It is not evidence of guilt nor
7 innocence. That will be for you as the jurors who
8 actually will sit on this panel to make that
9 determination.

10 Madam Clerk, if you would please swear in the
11 jurors.

12 THE CLERK: Yes, Your Honor. Ladies and
13 gentlemen of the jury panel, if you will please
14 stand and raise your right hand to be sworn.

15 (Jury panel complies.)

16 THE CLERK: After this oath, please
17 acknowledge by answering: I do.

18 Do you swear or affirm that you shall true
19 answer make to all such questions that may be
20 directed to you by the Court or by order thereof,
21 you will speak the truth, the whole truth, and
22 nothing but the truth, so help you God?

23 JURY PANEL: "I do."

24 THE CLERK: Thank you. You may be seated.

25 (Jury panel complies.)

1 THE COURT: And as the Court proceeds with the
2 questioning of you during our selection of you as
3 panelists of this particular trial, if you have an
4 answer to any of the questions that I ask you, I
5 would ask that you please stand up from your seat,
6 state your name and your juror number.

7 I will remind you in advance that there will
8 be certain questions that you might deem to be a
9 little more personal and you don't want to state
10 your answers in front of your fellow jurors. That
11 will be perfectly okay. Just inform one of the
12 bailiffs or deputies that you prefer to come up and
13 talk with me, and then I will be happy to have you
14 speak to me outside the jurors.

15 There are certain questions I know in advance
16 might be a little personal, and so I will have
17 everyone just come up and speak on those particular
18 questions as well.

19 But thank you for your time and your service.
20 We think it is very important. And I will be glad
21 to invite you all to tune in right now as we go
22 forward with these questions.

23 Representing the State is Mr. Ted Lupton.

24 (Mr. Lupton stands.)

25 THE COURT: And he is standing before you. Do

1 any of you have any close, personal, social
2 relationship, related by blood or marriage to Mr.
3 Ted Lupton, who is with the Richland County
4 Solicitor's Office, or any of the Assistant
5 Solicitor's, as well as Solicitor Barney Giese? If
6 so, please stand.

7 (Mr. Lupton is seated.)

8 (Juror stands.)

9 THE COURT: Yes, sir?

10 JUROR 292: My name is Tommy Williamson. I
11 believe I know one of these members over here.

12 THE COURT: Okay. And who do you know?

13 JUROR 292: The investigator.

14 THE COURT: Okay. Which investigator is that?

15 JUROR 292: Right there.

16 THE COURT: Stand up, sir.

17 (Investigator stands.)

18 THE COURT: And what is your name?

19 INVESTIGATOR: Mike Poole.

20 THE COURT: Mike Poole.

21 (Investigator is seated.)

22 THE COURT: And how do you know Mr. Poole?

23 JUROR 292: Through mutual friends, also
24 investigator with Richland County.

25 THE COURT: Would that affect your ability to

1 be fair and impartial in this case?

2 JUROR 292: I believe so.

3 THE COURT: Okay. I would like you to
4 approach the bench. The parties are welcome to
5 come, attorneys.

6 (WHEREUPON, the following takes place at
7 the bench.)

8 JUROR 292: Yes, ma'am.

9 THE COURT: Be a little more specific about
10 how this affects your ability to proceed.

11 JUROR 292: Well, I've been in social avenues
12 with him and Scott Faust, who is one of my best
13 friends.

14 THE COURT: Okay.

15 JUROR 292: And we have been out in Five
16 Points before or just been in social situations,
17 and I just --

18 THE COURT: You feel like --

19 JUROR 292: I just don't know if I could be --

20 THE COURT: You feel like you know him more
21 than just kind of like office colleagues or
22 something like that?

23 JUROR 292: Yes. We have been to USC
24 basketball games and stuff before, football games.

25 THE COURT: And social avenues with him?

1 JUROR 292: Yes, ma'am.

2 THE COURT: Okay. All right.

3 (WHEREUPON, the bench conference was
4 concluded.)

5 THE COURT: Okay, I'm going to excuse
6 Mr. Tommy Williamson from the panel of this case.

7 JUROR 292: Okay. Just go back down --

8 THE BAILIFF: To the back of the room.

9 (WHEREUPON, Juror 292, Thomas H.
10 Williamson, IV, was excused from the
11 jury.)

12 THE COURT: Representing Mr. Steven Lecroy are
13 Rhodes Bailey and James Cooper.

14 (Mr. Bailey and Mr. Cooper stand.)

15 THE COURT: Does anyone have any close
16 personal or social relationship with Mr. Steven
17 Lecroy or his attorney's, Mr. Rhodes Bailey and
18 Mr. James Cooper?

19 (WHEREUPON, there was no response.)

20 (Mr. Bailey and Mr. Cooper are seated.)

21 THE COURT: Does anyone have any close
22 personal or social relationship with anyone in the
23 Richland County Public Defender's Office or have
24 any close family member or yourselves represented
25 by anyone in the Public Defender's Office? If so,

1 please stand.

2 (WHEREUPON, there was no response.)

3 THE COURT: Okay. All right, and then let's
4 go now with respect to the various witnesses who
5 might be testifying in this case.

6 With respect to the Solicitor's case, we have:

7 Investigator Anthony Branham, Richland County
8 Sheriff's Department. And he is standing.

9 Investigator John Lutz, Richland County
10 Sheriff's Department.

11 Sergeant Mike Poole, Richland County Sheriff's
12 Department. He is standing.

13 Investigator Damon Robertson, Richland County
14 Sheriff's Department.

15 Tena Goff, Richland County Sheriff's
16 Department, Evidence Technician.

17 Andy Farmer, Richland County Sheriff's
18 Department, Drug Lab.

19 And David Bell, Richland County Sheriff's
20 Department, Drug Lab.

21 Does anyone know any of those persons? If so,
22 please stand.

23 (WHEREUPON, there was no response.)

24 THE COURT: And then with respect to Defense
25 list -- I apologize, did you all send up a list?

1 MR. BAILEY: No, Your Honor.

2 THE COURT: Okay. So they may be utilizing
3 some of those same persons and there has been no
4 indication that the jury pool knows any of them.

5 All right. Now, with respect to the case and
6 the attorneys in the case as well, you heard the
7 various charges in the case.

8 Has anyone formed an express opinion or know
9 of any bias that they would have to trying a case
10 that involves drugs?

11 (WHEREUPON, there was no response.)

12 THE COURT: Okay, no members indicate that.

13 Is there any member of the jury panel or has
14 any close friend or relative that you are aware of
15 that belongs to any group or organization that has
16 as its core mission protecting law enforcement or
17 engaging in any type of rights with respect to law
18 enforcement? If so, please stand.

19 (Juror stands.)

20 THE COURT: Sir?

21 JUROR 153: Juror 153, Brian Lang. My brother
22 is a federal prosecutor in King County, Seattle.

23 THE COURT: Okay. And would that affect your
24 ability to proceed as a fair and impartial juror in
25 this case?

1 JUROR 153: I don't believe so, Your Honor.

2 THE COURT: Okay. Thank you.

3 (Juror seated.)

4 THE COURT: Is there any member of the jury
5 panel who belongs to any group who has as its
6 purpose the protection of victim rights or
7 citizens? And this would include but not be
8 limited to: MADD, SADD, CAVE, which is Citizens
9 Against Violent Crime. If so, please stand. And
10 that can be a member or a contributor to any such
11 group.

12 (WHEREUPON, there was no response.)

13 THE COURT: Is there any member of this jury
14 panel who was part of the Grand Jury which actually
15 issued the indictments for this case? If so,
16 please stand.

17 (WHEREUPON, there was no response.)

18 THE COURT: Is there any member of the jury
19 panel who believes that they would have any bias or
20 prejudice towards either the State or the Defendant
21 in this case? If so, please stand.

22 (WHEREUPON, there was no response.)

23 THE COURT: Has any member of the jury panel
24 themselves or any close or social relative or
25 friend who has been prosecuted by any arresting

1 agency, including the Richland County Sheriff's
2 Department or the Fifth Circuit Solicitor's Office?
3 If so, please stand.
4 (Jurors stand.)
5 THE COURT: Yes, sir, juror name and number.
6 JUROR 92: Number 92, Mark Friendly. In 1985
7 I was charged by an ABC agent, possessing alcohol
8 while under 21, and went to the Magistrate's Office
9 and paid a fine for that.
10 THE COURT: Okay. Would that affect your
11 ability to proceed as a fair and impartial juror in
12 this case?
13 JUROR 92: No, it would not.
14 (Juror seated.)
15 THE COURT: Okay?
16 JUROR 190: 109, Kevin Gross. My sister has
17 been in and out of trouble in Maryland for a couple
18 of years, but --
19 THE COURT: Okay. Would that affect your
20 ability to proceed --
21 JUROR 109: Not at all.
22 THE COURT: -- as a fair and impartial juror
23 in this case?
24 JUROR 109: No.
25 (Juror seated.)

1 THE COURT: Okay. Yes, ma'am? And if anybody
2 needs to speak with me privately, please do so.
3 But yes, ma'am?

4 JUROR 141: Juror 141, Lovice Johnson. A very
5 close friend served time for possession, sale of
6 drugs.

7 THE COURT: Okay. Would that affect your
8 ability to be a fair and impartial juror in this
9 case?

10 JUROR 141: No.

11 THE COURT: Thank you.

12 (Juror seated.)

13 JUROR 172: David McCraw, 172. My half
14 brother has been charged with possession of
15 marijuana.

16 THE COURT: Okay. Would that affect your
17 ability to be fair and impartial in this case?

18 JUROR 172: No.

19 THE COURT: Okay.

20 (Juror seated.)

21 THE COURT: Anyone else?

22 (WHEREUPON, there was no response.)

23 THE COURT: Okay, this is what I call the
24 speak now or forever hold your peace portion. Is
25 there any reason whatsoever that you believe that

1 you could not serve as a fair and impartial juror
2 in this case in addition to any of the reasons or
3 questions that I have asked you earlier or because
4 of anything that you might have on your mind: You
5 are having heart surgery tomorrow or you are having
6 back surgery tomorrow or you've got just anything
7 that is going to take your mind away from this
8 situation, you've got some appointments you've got,
9 just something that we need to make the attorneys
10 informed of. I'm not saying it is going to get you
11 out of serving, but we need to have full and fair
12 information so the attorneys can make good
13 decisions with respect to potential jurors in the
14 case.

15 (Juror stands.)

16 THE COURT: Yes, ma'am?

17 JUROR 35: Gwen Bright, Number 35. What I
18 have on my mind is that we have parole hearings all
19 day tomorrow.

20 THE COURT: Okay. And this is what agency you
21 are with?

22 JUROR 35: Department of Probation, Parole and
23 Pardon Services.

24 THE COURT: Okay. How are you involved?

25 JUROR 35: I provide technical assistance to

1 the board and my staff review the case summary of
2 all Defendants who are eligible for parole
3 consideration.

4 THE COURT: Okay. But the hearings will go
5 forward with or without you?

6 JUROR 35: They will go forward without me.

7 THE COURT: Okay. But thank you for that
8 information.

9 JUROR 35: I wanted to let you know.

10 THE COURT: Okay.

11 (Juror seated.)

12 (Juror stands.)

13 JUROR: May I step up?

14 THE COURT: Yes, you may.

15 (The following takes place at the bench.)

16 THE COURT: Juror name and number?

17 JUROR 16: I'm sorry, 16, Lavada Barnhill.

18 Right before we came in here, I just got a call
19 that my father-in-law just had a heart attack and
20 rushed over to Lexington Hospital.

21 MR. LUPTON: Yes, I would ask that she excused
22 for that.

23 THE COURT: I'm very sorry. We will excuse
24 you. I appreciate it.

25 JUROR 16: Thank you.

1 (Bench conference concluded.)

2 THE COURT: Juror Number 16 has been excused
3 from the trial of this case.

4 (WHEREUPON, Juror 16, Lavada Barnhill,
5 was excused.)

6 THE COURT: Counsel, are there any additional
7 questions that you wish for the Court to pose to
8 the jurors?

9 MR. BAILEY: None from the Defense, Your
10 Honor.

11 MR. LUPTON: None from the State, Your Honor.

12 THE COURT: Okay. And the Court did speak
13 with you all about certain statements I would make
14 in the presence of the jurors. Is there any need
15 to do that at this time or should we just wait
16 until we actually select the panel?

17 MR. COOPER: Your Honor, I think it will be
18 fine to wait until we select the panel.

19 MR. LUPTON: Yes, Your Honor.

20 THE COURT: Thank you. Okay. All right. Are
21 you all ready to proceed with jury selection?

22 MR. LUPTON: The State is ready, Your Honor.

23 MR. BAILEY: The Defense is ready, Your Honor.

24 THE COURT: Okay. Thank you. Madam Clerk.

25 THE CLERK: Ladies and gentlemen of the jury

1 panel, as I call your number, please come to the
2 microphone at the center of the courtroom bringing
3 any personal belongings with you and state your
4 number only and your occupation, please.

5 Number 79.

6 THE COURT: And before she asks, I am going to
7 make the voir dire and witness list of the State
8 the next set of Court's Exhibit.

9 (WHEREUPON, Court's Exhibit No. 10 was
10 marked for identification only.)

11 (WHEREUPON, Court's Exhibit No. 11 was
12 marked for identification only.)

13 JUROR 79: Marie Fadeley. I'm a nurse
14 practitioner at the University of South Carolina.

15 MR. LUPTON: Please present the juror.

16 THE CLERK: What says the Defense?

17 MR. BAILEY: Please excuse this juror.

18 THE CLERK: Please have a seat in back of
19 courtroom.

20 (WHEREUPON, Juror 79, Marie Fadeley, is
21 excused by the Defense.)

22 THE CLERK: Number 104.

23 JUROR 104: Michael Green, Number 104. I'm
24 unemployed.

25 THE CLERK: What says the State?

1 MR. LUPTON: Please excuse this juror.

2 THE CLERK: Please have a seat in the back of
3 the courtroom.

4 (WHEREUPON, Juror 104, Michael Green,
5 was excused by the State.)

6 THE CLERK: Number 148.

7 JUROR 148: Molesey Knox. And I am
8 self-employed at this time.

9 MR. LUPTON: Please present this juror.

10 THE CLERK: What says the Defense?

11 MR. BAILEY: Please seat this juror.

12 THE CLERK: Please have a seat in the jury
13 box.

14 (WHEREUPON, Juror 148, Molesey Knox, was
15 seated on the jury.)

16 THE CLERK: Number 92, Mark Friendly.

17 JUROR 92: My name is Mark Friendly. And I am
18 vice president of finances with a financial group
19 in Columbia.

20 THE CLERK: What says the State?

21 MR. LUPTON: Please present this juror.

22 THE CLERK: What says the Defense?

23 MR. BAILEY: Please seat this juror.

24 THE CLERK: Please have a seat in the jury
25 box.

1 (WHEREUPON, Juror 92, Mark Friendly, was
2 seated on the jury.)

3 THE CLERK: Number 109.

4 JUROR 109: Kevin Gross. Vice president of
5 Play it Again Sports.

6 THE CLERK: What says the State?

7 MR. LUPTON: Please present the juror.

8 THE CLERK: What says the Defense?

9 MR. BAILEY: Please seat this juror.

10 THE BAILIFF: Please have a seat in the jury
11 box.

12 (WHEREUPON, Juror 109, Kevin Gross, was
13 seated on the jury.)

14 THE CLERK: Number 151.

15 JUROR 151: George Kent Krell. Retired
16 journalist.

17 THE CLERK: What says the State?

18 MR. LUPTON: Please present this juror.

19 THE CLERK: What says the Defense?

20 MR. BAILEY: Please seat this juror.

21 THE CLERK: Please have a seat in the jury
22 box.

23 (WHEREUPON, Juror 151, George K. Krell,
24 was seated on the jury.)

25 THE CLERK: Number 225.

1 JUROR 225: Tina Rubenstein. Accountant with
2 State Credit Union.

3 THE CLERK: What says the State?

4 MR. LUPTON: Please present this juror.

5 THE CLERK: What says the Defense?

6 MR. BAILEY: Please excuse this juror.

7 THE CLERK: Please have a seat in the back of
8 the courtroom.

9 (WHEREUPON, Juror 225, Tina Rubenstein,
10 was excused by the Defense.)

11 THE CLERK: Number 127.

12 JUROR 127: Mary Hoskins. And I'm a court
13 reporter for the Garber Reporting Service.

14 THE CLERK: What says the State?

15 MR. LUPTON: Please present this juror.

16 THE CLERK: What says the Defense?

17 MR. BAILEY: Please excuse this juror.

18 THE CLERK: Please have a seat in the back of
19 the courtroom.

20 (WHEREUPON, Juror 127, Mary Hoskins, was
21 excused by the Defense.)

22 THE CLERK: Number 235.

23 JUROR 235: I'm Katherine Simmons. Program
24 manager with Junior Achievement.

25 THE CLERK: What says the State?

1 MR. LUPTON: Please present this juror.

2 THE CLERK: What says the Defense?

3 MR. BAILEY: Please seat this juror.

4 THE CLERK: Please have a seat in the jury
5 box.

6 (WHEREUPON, Juror 235, Katherine
7 Simmons, was seated on the jury.)

8 THE CLERK: Number 95.

9 JUROR 95: Robert Fulmore. Contract security
10 officer with IAP Worldwide Services.

11 THE CLERK: What says the State?

12 MR. LUPTON: Please present the juror.

13 THE CLERK: What says the Defense?

14 MR. BAILEY: Please seat this juror.

15 THE CLERK: Please have a seat in the jury
16 box.

17 (WHEREUPON, Juror 95, Robert Fulmore,
18 was seated on the jury.)

19 THE CLERK: Number 236.

20 JUROR 236: I'm Timothy Simon. I'm in retail
21 marketing.

22 THE CLERK: What says the State?

23 MR. LUPTON: Please excuse this juror.

24 THE CLERK: Please have a seat in the back of
25 the courtroom.

1 (WHEREUPON, Juror 236, Timothy Simon,
2 was excused by the State.)

3 THE CLERK: Number 166.

4 JUROR 166: My name is Ervin Marion. Retired
5 military. Instructor at Fort Jackson.

6 THE CLERK: What says the State?

7 MR. LUPTON: Please present this juror.

8 THE CLERK: What says the Defense?

9 MR. BAILEY: Please excuse this juror.

10 THE CLERK: Please have a seat in the back of
11 the courtroom.

12 (WHEREUPON, Juror 166, Ervin Marion, was
13 excused by the Defense.)

14 THE CLERK: The strike count is two for the
15 State, four for Defense.

16 Number 280.

17 JUROR 280: My name is Henry Weed. And I am a
18 program analyst.

19 THE CLERK: What says the State?

20 MR. LUPTON: Please present the juror.

21 THE CLERK: What says the Defense?

22 MR. BAILEY: Please seat this juror.

23 THE CLERK: Please have a seat in the jury
24 box.

25 (WHEREUPON, Juror 280, Henry Weed, is

1 seated on the jury.)

2 THE CLERK: Number 221.

3 JUROR 221: Tania Richardson. I'm a national
4 claim advocate for Aetna.

5 THE CLERK: What says the State?

6 MR. LUPTON: Please present the juror.

7 THE CLERK: What says the Defense?

8 MR. BAILEY: Please seat this juror.

9 THE CLERK: Please have a seat in the jury
10 box.

11 (WHEREUPON, Juror 221, Tania Richardson,
12 was seated on the jury.)

13 THE CLERK: Number 217.

14 JUROR 217: Janice Rhodes. Co-owner of a home
15 health company.

16 THE CLERK: What says the State?

17 MR. LUPTON: Please present the juror.

18 THE CLERK: What says the Defense?

19 MR. BAILEY: Please seat this juror.

20 THE CLERK: Please have a seat in the jury
21 box.

22 (WHEREUPON, Juror 217, Janice Rhodes,
23 was seated on the jury.)

24 THE CLERK: Number 128.

25 JUROR 128: I'm Zora Howard. Retired Blue

1 Cross Blue Shield.

2 THE CLERK: What says the State?

3 MR. LUPTON: Please present the juror.

4 THE CLERK: What says the Defense?

5 MR. BAILEY: Please seat this juror.

6 THE CLERK: Please have a seat in the jury
7 box.

8 (WHEREUPON, Juror 128, Zora Howard, was
9 seated on the jury.)

10 THE CLERK: Number 35.

11 JUROR 35: Gwen Bright. Director of Parole
12 Board Support Services, Department of Probation,
13 Parole and Pardon Services.

14 THE CLERK: What says the State?

15 MR. LUPTON: Please present this juror.

16 THE CLERK: What says the Defense?

17 THE BAILIFF: Please excuse this juror.

18 THE CLERK: Please have a seat in the back of
19 the courtroom.

20 (WHEREUPON, Juror 35, Gwen Bright, was
21 excused by the Defense.)

22 THE CLERK: Juror 186.

23 JUROR 186: Business owner. Rosa Montgomery.

24 THE CLERK: What says the State?

25 MR. LUPTON: Please present this juror.

1 THE CLERK: Does the Defense challenge for
2 cause?

3 MR. BAILEY: No.

4 THE CLERK: Please have a seat in the jury
5 box.

6 (WHEREUPON, Juror 186, Rosa Montgomery,
7 was seated on the jury.)

8 THE CLERK: Number 249.

9 JUROR 249: I am Andrew Stafford. I am an
10 unemployed sponsored skateboarder.

11 THE CLERK: What says the State?

12 MR. LUPTON: Please excuse the juror.

13 THE CLERK: Please have a seat in the back of
14 the courtroom.

15 (WHEREUPON, Juror 249, Andrew Stafford,
16 was excused by the State.)

17 THE CLERK: Number 120.

18 JUROR 120: Joe Heilig. Logistics
19 transportation consultant.

20 THE CLERK: What says the State?

21 MR. LUPTON: Please present the juror.

22 THE CLERK: Does the Defense challenge for
23 cause?

24 MR. BAILEY: No.

25 THE CLERK: Please have a seat in the jury

1 box.

2 (WHEREUPON, Juror 120, Joe Heilig, was
3 seated on the jury.)

4 THE COURT: One alternate.

5 THE CLERK: Number 153.

6 JUROR 153: Brian Lang. I work for a local
7 nonprofit church group.

8 THE CLERK: What says the State?

9 MR. LUPTON: Please present the juror.

10 THE CLERK: What says the Defense?

11 MR. BAILEY: Seat him, please.

12 THE CLERK: I'm sorry?

13 MR. BAILEY: Seat him, please.

14 THE CLERK: Please have a seat in the jury
15 box.

16 (WHEREUPON, Juror 153, Brian Lang, was
17 seated on the jury as the alternate.)

18 THE COURT: Okay, thank you all.

19 Ladies and gentlemen who did not make the
20 trial for jury selection for this particular case,
21 you all can be excused and then follow the bailiff
22 from the courtroom.

23 (WHEREUPON, the remaining jury panel was
24 excused.)

25 THE COURT: Ladies and gentlemen of this

1 particular jury panel, I welcome you again to your
2 service.

3 I am going to take up some pretrial matters
4 with these gentlemen with respect to this trial.
5 And so I am going to excuse you for this afternoon
6 and we will start fresh in the morning at 9:30.

7 I will remind you throughout the trial and
8 again at this time, do not discuss the case in any
9 shape, form or fashion.

10 And the reason is that so that we can be very
11 comfortable that the evidence and testimony and
12 other issues that you'll hear, you'll make any
13 decision regarding that based on only the
14 information that is presented here at trial.

15 So that means even at the dinner table tonight
16 or amongst your friends and family in casual
17 conversation, don't even mention the type of trial
18 that you are going to hear, because we know how
19 when people have opinions you can just mention a
20 subject matter and they will inject their opinions
21 to you, and I don't want you to consider anything
22 other than what is presented here so as to be fair
23 to both parties in this case.

24 Thank you all, and have a good night and a
25 safe night, and if you will report to your jury

1 room by 9:30 in the morning.

2 THE BAILIFF: Follow me, please.

3 (WHEREUPON, the jury is excused for the
4 day at 3:34 p.m.)

5 THE COURT: Are there any matters that we need
6 to take up with respect to jury selection?

7 MR. LUPTON: Not from the State, Your Honor.

8 MR. BAILEY: Not from us, Your Honor.

9 THE COURT: Okay. The Court is ready to
10 proceed with pretrial matters at this time.

11 MR. LUPTON: Your Honor, my understanding is
12 that the first matter is they want to move to
13 suppress the search warrant, suppress the drugs
14 found based on insufficiency of the trash pull.

15 MR. BAILEY: Well, we will have a motion, Your
16 Honor. First I would like to renew our Rule 5
17 motion, and then we'll speak to the warrant.

18 THE COURT: Okay.

19 MR. LUPTON: Your Honor --

20 MR. BAILEY: We'll also -- I'm sorry -- we
21 also have a motion to sequester witnesses and
22 motion to suppress the Defendant's statements based
23 on Jackson v. Denno, we will have to have a Denno
24 hearing, and we will take that in whatever order is
25 comfortable before the Court.

1 THE COURT: Okay.

2 MR. LUPTON: Your Honor, as far as Rule 5,
3 they have everything that I have. They -- we
4 have -- this case was mistried once before and they
5 got to see pretty much everything I had there as
6 well. So I don't think that there is anything that
7 I have or know that they don't. And we've got all
8 the evidence here in the courtroom if they want to
9 go through it again.

10 THE COURT: Okay. I assume that will be
11 satisfactory representation on the record?

12 MR. BAILEY: At this time, Your Honor.

13 THE COURT: Okay. One moment.

14 (Pause.)

15 THE COURT: All right, we can now move to the
16 motion to suppress evidence.

17 MR. LUPTON: Your Honor, briefly, with regards
18 to sequestration of witnesses, I don't have any
19 problem with that. I would ask of course that my
20 lead investigator be allowed to remain, as is
21 customary.

22 THE COURT: The State is entitled to have a
23 representative or representatives for its case.
24 Who are you designating as such?

25 MR. LUPTON: The lead investigator is Anthony

1 Branham, and obviously Sergeant Mike Poole is here
2 for the Denno hearing, and he will be our first
3 witness on that.

4 THE COURT: Okay. But for purpose of the
5 trial you will just have the lead investigator?

6 MR. LUPTON: Just the lead investigator. I
7 would ask that, since I do not anticipate much in
8 the way of a reply being necessary, I would ask
9 that the officers be allowed to remain in the
10 courtroom once they have testified.

11 MR. BAILEY: That's fine. No objection from
12 us.

13 THE COURT: Okay. All right, then you had a
14 motion to suppress evidence and for a Jackson v.
15 Denno. Are those two separate issues? Is there
16 other evidence being suppressed?

17 MR. BAILEY: Your Honor, the motion to
18 suppress the drug evidence is based on the
19 insufficiency of the search warrant. And then
20 separately the motion to suppress the Defendant's
21 statement based on the Denno case, which would
22 necessitate a Denno hearing. But those are just
23 two completely separate issues.

24 THE COURT: Okay. All right, you can proceed
25 in whichever order.

1 MR. LUPTON: Your Honor, as far as the search
2 warrant goes, I don't think that there is really
3 any testimony that needs to be taken. That is just
4 a question of the sufficiency of the affidavit and
5 whether or not it establishes probable cause. I
6 think we can take that up as a matter of law with
7 just allowing the Court to read the affidavit.

8 MR. BAILEY: Yes, Your Honor. If I can
9 approach with a copy of the affidavit.

10 THE COURT: Okay.

11 (Mr. Bailey complies.)

12 MR. LUPTON: Your Honor, once the Court has
13 had a chance to read it, if Mr. Bailey wants to
14 proceed with argument.

15 MR. BAILEY: Oh, would you like a chance to
16 read it first, Your Honor, before I proceed?

17 THE COURT: Yes, please. Thank you.

18 (Pause.)

19 THE COURT: You can proceed.

20 MR. BAILEY: Thank you, Your Honor. Our --
21 the Defense's motion to suppress the warrant based
22 on lack of probable cause presented to the
23 magistrate therefore violating the Fourth Amendment
24 is based on several what we find to be
25 insufficiencies with the warrant, Your Honor.

1 First I'd like to say that probable cause
2 could not have been met here as probable cause was
3 presented to the magistrate.

4 And this affidavit right here was presented,
5 and The State v. Bellamy says that on its face the
6 probable cause for a valid search must be on the
7 warrant itself.

8 There are several issues here. One is the
9 garbage pull. Now, they are issuing on the warrant
10 that there was one garbage pull which is sufficient
11 for a search warrant.

12 I would like to say that first, no one saw
13 Mr. Lecroy, my client, or someone from his house,
14 pull this garbage directly to the curb.

15 As you know, the police are free to search
16 garbage because it is public domain. But, you
17 know, the very same thing that allows police to
18 search garbage also speaks to its credibility. If
19 it is public domain, we can't establish that
20 Mr. Lecroy had control over the garbage. If there
21 is no evidence on the warrant that Mr. Lecroy
22 pulled it out, they saw somebody from the house
23 pull it out, we can't establish a chain there. We
24 can't establish -- there was no continuing
25 surveillance.

1 And if there was no continuing surveillance,
2 then one random trash pull is not enough to
3 establish a pattern of activity. Clearly a pattern
4 of activity might lend something to probable cause,
5 but one random pull of garbage can't -- is not
6 enough to establish probable cause for an arrest.

7 For instance, you know, an individual could
8 live at a house and may be a vegetarian, but once a
9 garbage can is brought to the street anybody can
10 throw garbage in it. Somebody could throw
11 McDonald's wrappers in the garbage can. That
12 doesn't mean that this person that lives in the
13 house who uses that garbage can ate at McDonald's.

14 So, again, even though this garbage, you know,
15 is public domain, and the police -- we don't
16 dispute the police have every right to search it,
17 but we can't search a man's house based on one
18 random search of garbage that is in the public
19 domain.

20 THE COURT: What was found in garbage?

21 MR. BAILEY: What was found in the garbage, as
22 mentioned on the affidavit, were substances they
23 found to be connected with what they suspected may
24 be drugs that were in the -- in Mr. Lecroy's
25 residence.

1 THE COURT: But your argument is based on that
2 what is in that particular trash on that one day
3 does not lead to a continuing pattern of activity,
4 but why is it that you believe that a continuing
5 pattern of activity is necessary as one of the
6 elements for the crimes charged?

7 MR. BAILEY: Well, basically because there is
8 no way to show -- there is no way to show a chain
9 in connection with Mr. Lecroy based on one
10 continuous pull.

11 If it were several pulls or if there was
12 actual constant surveillance, then they could
13 establish pattern of activity and they could be
14 more sure that it was probable that someone from
15 Mr. Lecroy's residence was actually putting it
16 there.

17 There is actually case law from Florida -- I
18 can present you with that case, Gesell v. State,
19 which is very firm about the fact that one random
20 trash pull isn't enough to establish probable cause
21 allowing for a search warrant.

22 Now, South Carolina has not taken a position
23 on the number of trash pulls that are necessary,
24 but we believe that as a secondary source other
25 states have clearly dealt with this and thought of

1 this.

2 So, again, we feel like that without any
3 surveillance, there is no way to connect him to
4 some random trash that is in the street and public
5 domain.

6 I can present you with that case, Your Honor,
7 and then I'll move forward to my next point.

8 THE COURT: Okay.

9 MR. BAILEY: This is -- if I may approach.

10 (Mr. Bailey complies.)

11 MR. BAILEY: Gesell v. Florida. I mean,
12 clearly the State has plenty of resources to do
13 surveillance. We have seen plenty of cases. And
14 we think that one random trash pull wouldn't
15 suffice.

16 Also in the warrant they mention as something
17 of probable cause, they mention prior drug
18 activities.

19 First of all, it has a few mentions of
20 marijuana usage like in 1988, 1994. That is not
21 meth. And crystal meth is the substance that they
22 say that they are specifically looking for in the
23 warrant, so how could a record for maybe a
24 marijuana offense at this, you know, at the time
25 almost 20 years before and then one in 1994 shows a

1 proclivity to have crystal meth. I mean, that
2 definitely doesn't add up. Not to mention that
3 previous drug use doesn't automatically lead to,
4 you know, being a drug dealer or trafficking meth.

5 So we feel like the mention of past drug
6 activities is purely speculative. There is no
7 connection between drug dealing and drug use, not
8 to mention that they don't mention any prior
9 convictions for meth. It is completely unrelated
10 drugs.

11 And then finally something else that was
12 mentioned, I guess my final and third point here,
13 is they say that they have an anonymous tipster.
14 This anonymous tipster is a family member of
15 someone that I believe suspected that their teen
16 was having a sexual relationship with Mr. Lecroy.

17 An anonymous tipster is hardly enough for the
18 police -- an anonymous tipster who is obviously an
19 angered family member, which you can't even
20 determine that from the affidavit itself, an angry
21 family member that is unhappy with their teenager's
22 sexual involvement with Mr. Lecroy. You know, they
23 say, here is this gay guy, he is messing around
24 with my teenager, he must be this drug dealer.

25 This is hardly a credible source. It is

1 hardly an impartial source. It is certainly not an
2 objective source. If we based all our search
3 warrants on something that an angry individual or
4 family member that had a personal beef because of a
5 family entanglement or a family grievance against
6 an individual, we, you know, we would be allowing
7 any kind of search warrant.

8 And so -- and I can certainly elaborate on
9 these. So in summation, one, a garbage pull is
10 clearly not enough to establish a pattern of
11 activity unless they actually saw Mr. Lecroy bring
12 the stuff to the garbage, unless they actually
13 tested the garbage several times instead of just
14 once, and if they did, it should have been in the
15 affidavit. *Gesell v. Florida* has spoken to this.

16 Number two, the prior drug activities for
17 probable cause clearly is not enough to establish
18 probable cause. The fact that somebody maybe used
19 marijuana decades before, that has absolutely
20 nothing to do with, you know, being a trafficker of
21 meth.

22 And the only mention of meth -- you know,
23 you'll look at this affidavit, and they will spend
24 a page and a half or half a page giving you a
25 science lesson, a health lesson on what GHB and

1 meth are, but they don't say anything about GHB and
2 meth and evidence relating to my client. They are
3 just using this to talk about what this drug is or
4 what it consists of.

5 The only mention of meth is that this angry
6 family member who thought their teenager was
7 sexually involved with Mr. Lecroy was in this house
8 and doing drugs.

9 Again, we stand by our earlier assertion that
10 this is not a credible source. That is not an
11 objective party. And it certainly isn't a
12 confidential informant. There are no staged buys
13 here. There are no actual sales to any individuals
14 established on this warrant.

15 So again, Your Honor, we believe that probable
16 cause has not been met as it was presented by the
17 magistrate on this search warrant. We feel that it
18 is woefully lacking. And therefore Mr. Lecroy's
19 Fourth Amendment rights have been violated by this
20 illegal search warrant, Your Honor.

21 THE COURT: Okay. Mr. Lupton?

22 MR. LUPTON: Your Honor, initially I would
23 start by saying that the State is not required to
24 prove a pattern of conduct in order to be entitled
25 to a search warrant, just that there is probable

1 cause to believe that the substance -- that some
2 evidence of a crime can be found whatever is being
3 sought in the search warrant.

4 So having said that, any arguments required of
5 the Defense requiring a pattern be established is
6 simply not the case law, it is simply not the law
7 of the State of South Carolina. The law of South
8 Carolina is very clear that the standard is whether
9 or not there is probable cause to believe that the
10 item sought would be found.

11 Having said that, the case law is clear that
12 in assessing credibility of information and
13 informants, that the source of the information
14 should be taken into account. Where the source of
15 information is identified as having a special
16 relationship to the subject in the search warrant,
17 that heightens credibility.

18 In this affidavit, the anonymous tipster
19 indicated a special relationship, a family member
20 of somebody who was directly involved with
21 Mr. Lecroy, which heightens credibility.

22 But regardless of that and aside from that,
23 the case law is very clear that a CI tip,
24 confidential informant tip, where coupled with --
25 excuse me, where the tip provides detailed

1 information and some of that information is
2 confirmed, that increases the reliability of
3 additional information that was provided.

4 And in this situation, the tip provided
5 information concerning the person who resided at
6 the house, that it was Steven Lecroy, provided
7 information concerning drug usage, naming a
8 specific drug.

9 The officers conducted investigation and
10 determined that Steven Lecroy did in fact live at
11 that location.

12 The tip indicated that the family member
13 believed that Mr. Lecroy was essentially using
14 drugs to hold or bind the person as described in
15 the tip as a 17-year-old family member, that they
16 are using drugs to essentially bind them into
17 staying at the location.

18 Further investigation revealed that there was
19 a similar allegation, similar conduct alleged at
20 some point in the past that was investigated
21 relating to a 19-year-old, and no action was taken.
22 I don't recall -- apparently the warrant says that
23 there were warrants found. I believe speaking
24 outside the record, the affidavit -- I will inform
25 the Court that no action was taken on that because

1 the individuals involved did not want to prosecute
2 and was an adult. I go outside the record of the
3 affidavit only because I want to make clear that
4 the State is prosecuting based on the facts of this
5 case.

6 There was mention by Defense of the
7 Defendant's orientation. That is irrelevant to the
8 case. Allegations of sexual misconduct are
9 irrelevant to the case. The State is proceeding on
10 the drugs alone and will not mention any of the
11 rest of that in front of the jury.

12 So you've got the allegations that were made
13 by the CI that were substantiated. The trash pull
14 was done and methamphetamine was found, further
15 verifying the tip that the anonymous source gave.
16 So once you've got all of that, it heightens the
17 reliability of the informant.

18 A case directly on point, State of South
19 Carolina versus William White Rutledge, an appeal
20 from -- a York County conviction. Judge Gregory
21 was the Circuit Court judge in that. It was cited
22 by the Court of Appeals in Opinion Number 4230.
23 And it was cited April of 2007. I'm afraid I don't
24 have the South Carolina or Southeast Second cite on
25 that. I have got the advance sheet copy of the

1 case.

2 But in that case, almost directly on point,
3 the officers in that case received a tip about
4 somebody selling marijuana. They verified the
5 person lived at the address and had power at the
6 address. They found a prior record on the
7 Defendant. And did a trash pull resulting in
8 marijuana being located. It is almost precisely on
9 point with this case.

10 And in that case, the Court of Appeals held
11 that that was sufficient for probable cause for a
12 search warrant.

13 That is South Carolina law, and therefore I
14 think that it is far more persuasive and it is in
15 fact binding rather than the Florida case.

16 The affidavit discusses paperwork bearing the
17 Defendant's name being found in the garbage,
18 paraphernalia of packaging and usage, specifically
19 empty baggies, broken pipes, all of which had
20 methamphetamine residue on it.

21 I think all that corroborates the tip and
22 provides -- makes that tip more reliable. And
23 taken with the tip, under the totality of the
24 circumstances, provides sufficient probable cause.
25 I think that it would be alone enough, but taken

1 with the tip especially, it provides probable
2 cause.

3 I would also cite State v. William Viard.

4 THE COURT: Spell that last name.

5 MR. LUPTON: V-I-A-R-D. That is at 276 S.E.2d
6 531. That case deals with a Circuit Court review
7 of magistrate issued search warrants and discusses
8 that essentially that the magistrate's probable
9 cause determination should be given great deference
10 and even in the close case, which I do not believe
11 this is, but in the close case where it is a
12 questionable call, the Court should err in favor of
13 upholding a search warrant issued by a magistrate.

14 So under the circumstances of this case, I
15 believe that the corroborated tip, plus the drugs
16 and drug paraphernalia found in the garbage, more
17 than meets the burden of probable cause.

18 And as far as briefly addressing the argument
19 of anybody could have put drug paraphernalia in the
20 garbage, obviously it is theoretically possible,
21 however unlikely, but that does not diminish the
22 fact that it is still a probable cause standard,
23 not a proof beyond a reasonable doubt standard.

24 And the fact that the items are in the garbage
25 mixed in with stuff identifying Mr. Lecroy as a

1 resident is enough for probable cause. And we're
2 not trying him for possession of that, so we don't
3 have to prove it beyond a reasonable doubt, just
4 that there is probable cause.

5 THE COURT: Okay.

6 MR. LUPTON: So we believe that that is met.

7 MR. BAILEY: Well, Your Honor, I mean, I
8 will -- there are several points to address here.
9 First, although I believe that this Florida case
10 has really articulated a solid principle, I'm not
11 asking this to make this decision based on what
12 Florida is saying. We might have a South Carolina
13 law that says a pattern doesn't have to be
14 established, but we do have South Carolina law that
15 says a link must be established. And it is through
16 a pattern we're going to find some kind of a link.

17 You know, I can tape a Superman comic book
18 under Mr. Lupton's chair when he doesn't know about
19 it and, you know, and, you know, we could go pull
20 it out from under his chair and say, oh, this is
21 Mr. Lupton's, there is all these other papers with
22 his name on it over here, all his work product. It
23 is public domain. And the garbage is even more,
24 especially garbage that has been pulled to the
25 street.

1 I will definitely, Judge Childs, like to refer
2 to the fact that Mr. Lupton, maybe accidentally,
3 said several times, CI or confidential informant.
4 This affidavit says an anonymous citizen complaint,
5 which sounds a lot more vague and a lot more random
6 than a confidential informant that is working in
7 conjunction with law enforcement.

8 An anonymous citizen complaint, I mean, if
9 that is the case, I'm assuming that maybe they
10 didn't know who this person was. They don't say
11 anything about a witness. They say some random
12 person has called them and said, my kid is hanging
13 around with this gay guy who is probably making
14 them do drugs.

15 Getting back to that, there is a reason why
16 Mr. Lecroy was never charged and certainly not
17 convicted with anything involving a 19-year-old or
18 a 17-year-old. And I think Mr. Lupton might have
19 inadvertently, and I don't blame him, confused one
20 case with the other one. But he was charged or
21 there was some investigation about his involvement
22 with a 19-year-old way back in 2000 -- November of
23 2005. He was never charged with anything like
24 that. Putting that on a search warrant is
25 absolutely ridiculous. It has nothing to do with

1 whether or not he is a drug dealer in this
2 residence.

3 Basically what we have got here is we have got
4 a few things that the State has strung together
5 along with something that has clearly made -- you
6 know, if we are not here to give a health lesson
7 about what GHB and crystal meth are, and then say,
8 oh, by the way, he hangs out with young teenagers
9 and, you know, and you have got an angry family
10 member who doesn't like that their kid is hanging
11 out with a man of a different lifestyle who they
12 just assume is making them do drugs.

13 Well, essentially what we have here is we have
14 several pretty poor excuses for probable cause that
15 are sort of thrown together. With all the State's
16 resources, I don't see why we couldn't have had an
17 affidavit here which has actual surveillance. I
18 mean, we are getting into -- we are talking all
19 about Mr. Lecroy's bedroom practices, but we can't
20 sit outside his house for, you know, long enough to
21 see when he pulls the garbage to the curb, you
22 know, we can't have police officers sit outside of
23 his house long enough for, you know, to establish
24 that there is a clear chain between him and this
25 garbage.

1 There is a reason why other states have looked
2 at it, because it is a compelling and interesting
3 issue involving our Fourth Amendment rights.

4 And I'd like to add for the record that South
5 Carolina, the State Constitution, Article 1,
6 Section 10, has an enumerated liberal right to
7 privacy. We have the higher standard of privacy
8 than 45 of the other states.

9 State v. Austin, written by Alex Sanders back
10 in the early 90's, we as South Carolinians enjoy a
11 greater right to privacy which enumerates on it and
12 elaborates off of the Fourth Amendment
13 Constitution's implied right to privacy.

14 Again, I don't think there is high enough
15 standard to push past my client's Fourth Amendment
16 right against illegal warrant and illegal search,
17 and certainly not our state's right, Article 1,
18 Section 10 of a liberal right to privacy.

19 And now I will speak to anything else you have
20 any questions about.

21 THE COURT: I'm fine.

22 MR. LUPTON: Your Honor, State versus Rutledge
23 that I cited deals with an anonymous tip that came
24 in through Crime Stoppers. It is far less
25 compelling than the tip received in this situation.

1 In this situation we have a tip that was
2 provided not by a named person, but by a person who
3 identified their relationship to the subject. And
4 that relationship corroborates an ability to know
5 information and the ability to have a source of
6 information which I think makes it more credible
7 than a call phoned in to Crime Stoppers.

8 Additionally, despite all the talk about angry
9 family members and them speculating and such as
10 that from the Defense, the affidavit itself, which
11 is what we are confined to in this hearing, states
12 very explicitly, an anonymous tipster also
13 indicated that a 17-year-old family member is
14 currently involved with Steven Lecroy subject and
15 that he gives the minor subject drugs, possibly
16 methamphetamine, and that they are involved in a
17 relationship which is founded solely on drug use.

18 That is not a kinda-sorta-maybe, that is a
19 definitive statement and the question is whether or
20 not the allegation in the tip that Steven Lecroy is
21 distributing drugs to another individual is
22 verified or substantiated by police observations.

23 And in doing that they confirm that Mr. Lecroy
24 lives there, they confirm information that they had
25 received that he had engaged in similar conduct in

1 the past, at least an allegation of that, and they
2 also confirm that there was evidence of the use, if
3 not distribution, the packaging material I think
4 would indicate distribution, but the use and/or
5 distribution of drugs at the residence. Under
6 South Carolina case law, that is what is required.

7 In regards to any privacy arguments, the
8 Defendant has already conceded that the trash pull
9 was lawful and constitutional, and had -- even if
10 they didn't, I think that both Greenwood,
11 California v. Greenwood and Rutledge would both
12 substantiate the legality under both federal and
13 state constitutions of a trash pull, as well as
14 arguments concerning abandonment and the like.

15 So I think that this is a clear case where
16 probable cause is met.

17 THE COURT: The Court would find that the
18 magistrate had probable cause.

19 MR. BAILEY: Thank you, Your Honor.

20 MR. LUPTON: Your Honor, with regards to the
21 Jackson v. Denno, the State would call Sergeant
22 Mike Poole to the stand.

23 THE BAILIFF: Place your left hand on the
24 Bible, raise your right, and face the clerk.

25 (Witness complies.)

1 THE CLERK: Do you swear or affirm that the
2 testimony you shall give in this case will be the
3 truth, the whole truth, and nothing but the truth,
4 so help you God?

5 THE WITNESS: I do.

6 THE CLERK: Please have a seat in the witness
7 stand, and please state your full name for the
8 record.

9 THE WITNESS: Michael A. Poole, Richland
10 County Sheriff's Department.

11 MICHAEL A. POOLE,
12 after being duly sworn, testified as follows:

13 DIRECT EXAMINATION

14 BY MR. LUPTON:

15 Q And is it fair to say you have been in narcotics
16 and in law enforcement for a long time?

17 A Yes, sir.

18 Q How long?

19 A Sheriff's Department since 1977, and narcotics
20 since 1984.

21 Q And jumping quickly to the matter at hand, the
22 Jackson v. Denno, were you involved in the
23 execution of a search warrant on Mr. Lecroy's
24 residence on January 25th, 2007?

25 A Yes, sir, I was.

MICHAEL A. POOLE -- DIRECT BY MR. LUPTON(JURY OUT)

89

1 Q In the process of that, did you take a statement
2 from him?

3 A Yes, I did.

4 Q Do you have a copy of that statement and the Advice
5 of Rights in your possession?

6 A Yes, I do.

7 Q Is that what has been marked State's Exhibit 18?

8 A Correct.

9 Q For Identification at this point.

10 MR. LUPTON: Your Honor, I will hand up my
11 copy for the Court's benefit so you can --

12 THE COURT: Thank you.

13 MR. LUPTON: -- so you can read it.

14 Q And could you tell the Court about the
15 circumstances under which you came to take that
16 statement?

17 A We obtained entry into the residence and secured
18 it. Mr. Lecroy was secured. We had brought
19 Mr. Lecroy into the den area. He was having some
20 problems with his leg, sciatic nerve issues. And
21 we had gotten him on the couch where he was
22 comfortable, and he was not in any kind of pain,
23 and he was laying on the couch for a few minutes
24 and Investigator Branham asked if I would take a
25 statement from him.

1 Q Prior to him coming to the couch, do you have
2 knowledge of whether or not he was tased?

3 A Yes, he was.

4 Q Can you explain briefly to the Court about that?
5 What happened and why?

6 A I wasn't the first one in the house, but when I
7 went into the -- I was like third or fourth by the
8 time I got into the bedroom. Mr. Lecroy was
9 resisting the officers' attempt. He refused to get
10 out of bed, I think he refused to show his hands,
11 he was under a blanket. They end up forcefully
12 removing him from the bed. He resisted that, and
13 before the fight got out of hand, he was tased.

14 Q All right. Do you know how many times he was
15 tased?

16 A I believe he was tased three times.

17 Q And there are -- can you explain what kind of tase
18 he received?

19 A We have a taser that you can -- it was called a
20 drive stun where it is pressed up against him, I
21 believe, and I think it is a five second tase, and
22 then it cuts off automatically after five seconds.

23 Q All right. The taser -- there are two ways you can
24 tase somebody, shooting them with the prongs and by
25 basically pushing the taser into them, is that

MICHAEL A. POOLE -- DIRECT BY MR. LUPTON (JURY OUT)

91

1 correct?

2 A Correct.

3 Q Which type did he get?

4 A I believe he was drive stun, pushing it into him.

5 Q Based on as far as you know?

6 A Correct. Yeah, I was kind of back, but I believe
7 that is what occurred.

8 Q And at the point where he was out at the couch, did
9 you have a chance to observe him?

10 A Yes, I did.

11 Q Did he seem to be suffering from any effects of the
12 tasing at that point?

13 A No, he didn't appear to be. And I asked him if he
14 was, and he said he wasn't.

15 Q Did he appear to be under the influence of any
16 drugs or alcohol or other substance that would
17 render him unable to understand what was going on?

18 A No, he didn't.

19 Q Did he appear to understand what was going on?

20 A He did understand, yes.

21 Q And was there anything to your knowledge that was
22 going on that would keep him from understanding
23 what was going on?

24 A No, there was not.

25 Q Did he appear to understand what was going on?

1 A Yes, he did.

2 Q All right. And at the time you gave him, or you
3 took a statement from him, did you advise him of
4 his rights?

5 A Yes, I did.

6 Q Did you do it in writing?

7 A Yes, I did.

8 Q And is that the first page of State's Exhibit 18?

9 A It is Interrogation and Rights -- Advice of Rights
10 form, yes, sir.

11 Q And could you -- first of all, the date on there?

12 A I put the 24th. I was just mistaken. It was the
13 25th.

14 Q Now, the Advice of Rights, did you -- how did you
15 advise him of his rights?

16 A Basically I began by asking him his level of
17 education. He stated he completed the 11th grade
18 at Richland Northeast High School.

19 I then asked him if he was able to read and
20 write. He stated he could read and write
21 proficiently.

22 Q All right. And there are notations in handwriting
23 in the upper right-hand corner.

24 A That's my handwriting. After I asked the questions
25 and he answered them, I jotted down what he said.

MICHAEL A. POOLE -- DIRECT BY MR. LUPTON(JURY OUT)

93

1 Q All right.

2 A R&W is read and write.

3 Q The -- and you filled out the name and is that --
4 is that correct, all that --

5 A That's all my handwriting, yes.

6 Q Did you -- where it says "Your Rights," what did
7 you do with that?

8 A Basically I read each sentence to him, and after I
9 finished each little sentence or a couple of
10 paragraphs, I said, do you understand that.

11 Q And what was his indication each time you asked him
12 if he understood?

13 A That he did understand.

14 Q Now, it gets down to the bottom of Your Rights.
15 There is a block that says Signed and two blocks
16 that say Witness. Could you explain those.

17 A Basically when I got through with all the rights
18 above, I asked him again, do you understand the
19 rights that I just -- that I just read to you. He
20 stated he did.

21 I said would you sign, I indicated to the
22 right here, indicating only that you understand
23 your rights. And he stated, yes, he would.

24 Q All right. And at that point was he handcuffed?

25 A Yes, he was in the front.

1 Q What was the reasons for that?

2 A When we brought him out, he had some -- I don't
3 really understand this, he had a sciatic nerve
4 problem that was making -- causing pain. And we
5 got him on the couch and we put the cuffs in front
6 of him. And he told me that he could get in a
7 certain position where he would feel no pain and it
8 was a common occurrence, and so we allowed him to
9 get in that position with his hand in front of him
10 so he would be comfortable and have no pain.

11 Q All right. And that that point did he sign?

12 A Yes, he did.

13 Q After -- and did he sign -- what did that signature
14 indicate?

15 A That he understood the rights that I just read to
16 him.

17 Q And there is a block below that that says Waiver of
18 Rights. Did you explain what is written there?

19 A I then read that to him. And the first sentence
20 initially said, I have read this statement of my
21 rights and understand what my rights are.

22 After I read that to him, I stopped and I
23 said, I'm going to change the word "I have read" to
24 "have been read," because the way he was on the
25 couch he was just -- I didn't want to have to make

MICHAEL A. POOLE -- DIRECT BY MR. LUPTON(JURY OUT)

95

1 him sit up to try to read it, so I changed it to
2 that since I was actually reading the rights to
3 him, he was not reading along with me.

4 And then I read the rest of it to him and
5 asked if he understood it, and he indicated he did.

6 Q All right. And there is an underline under the
7 word "coercion" and the word "yes" is written
8 beside that underneath that. Could you explain
9 that, please?

10 A I found over the years that when I read people
11 their rights, I will say, do you understand what I
12 read to you. They will say yes.

13 And I'll ask them, do you know what coercion
14 means. And most people say, I'm not really sure
15 what it means.

16 And so I explain to them what coercion means.
17 And occasionally somebody says, yes, I do know.
18 And they will explain to me what it means to
19 convince me sufficiently that they understand.

20 And Mr. Lecroy was that person that said, yes,
21 I know what it means, and he explained it to me to
22 satisfy me that he knew what it meant. So I wrote
23 the word "yes," that he did understand what it
24 meant.

25 Q Does that in any way indicate that he indicated to

1 you that he was answering under coercion?

2 A No, he was merely indicating that he understood
3 what the word meant.

4 Q When you wrote it down, is that what you meant when
5 you wrote that down?

6 A Yes.

7 Q Was there anything that you saw based on the
8 circumstances, based on anything he said or did,
9 how he acted, how anybody else acted, is there
10 anything at all that causes you to think that
11 perhaps he was feeling coerced?

12 A No. No, nothing at all.

13 Q Did he make any indication whatsoever of feeling
14 coerced?

15 A No, he did not.

16 Q There is some signatures at the bottom of the page
17 underneath Waiver of Rights. Could you explain
18 those?

19 A Yes. I would then ask him if he understood the
20 waiver I just read to him. And he said yes, he
21 said he knew what coercion meant.

22 I said, well, if you will sign down here
23 indicating that you understand your waiver and you
24 are willing to talk and answer questions at this
25 time. He said, yes, I'll sign it.

MICHAEL A. POOLE -- DIRECT BY MR. LUPTON(JURY OUT)

97

1 Q And, again, his understanding of his rights and the
2 Waiver of Rights, did he understand -- based on
3 your observations, did he appear to understand his
4 rights and did he waive them freely, knowingly and
5 voluntarily?

6 A Yes, he did.

7 Q Did you then take a statement from him?

8 A Yes, I did.

9 Q And is that the three pages that are attached to
10 State's Exhibit 18?

11 A Yes, it is.

12 MR. LUPTON: And, Your Honor, the Court has --
13 I handed up a copy of that that the Court can look
14 at. Unless the Court desires, I don't see any need
15 to have him read that out at this stage.

16 Q But I will ask, was everything that is written on
17 there -- who wrote it?

18 A I wrote it.

19 Q Did you read it to him?

20 A Yes, I did.

21 Q Did he indicate that he understood and agree with
22 what was written down?

23 A Yes, he did.

24 Q And how did he do that?

25 A Basically I would ask -- when I began, I said,

1 would you give me what happened this morning in
2 your words. And that is the first paragraph I
3 basically took down and I dictated -- he dictated
4 it to me.

5 After I had written it, I read it back to him
6 and said, is that accurate. And he said it was.

7 Then I asked him a series of questions, and
8 after each question he answered it. I would read
9 back what I wrote and say, does that reflect your
10 answer accurately, to make sure I didn't make a
11 mistake. And he would say yes on each statement --
12 each question.

13 And then when I was through, I asked him -- I
14 read the entire statement to him in one reading and
15 asked him to sign indicating that that was his
16 statement given voluntarily, and that was his words
17 that he did.

18 Q All right. Did he sign on each page?

19 A Yes, he did.

20 Q And the signature under the block that says Signed,
21 is that Mr. Lecroy's signature on each of the three
22 pages?

23 A Yes, it is.

24 Q And did you witness him signing that?

25 A Yes, I did.

MICHAEL A. POOLE -- CROSS BY MR. COOPER(JURY OUT)

99

1 Q And was there any inducements, any promise of
2 reward or threat of punishment given to make him
3 give that statement or sign the statement?

4 A No, he was freely talking, he had no problems.

5 Q Was he promised anything?

6 A No, he wasn't.

7 MR. LUPTON: Your Honor, I believe that is all
8 I have on this subject.

9 THE COURT: Okay.

10 MR. COOPER: Thank you, Your Honor. May it
11 please the Court?

12 CROSS-EXAMINATION

13 BY MR. COOPER:

14 Q Good afternoon, Officer.

15 A Hi.

16 Q How are you doing today?

17 A I'm fine. How are you?

18 Q Officer Poole, you consider yourself a veteran of
19 the Sheriff's Department, correct?

20 A Yes, sir.

21 Q And you've been there since '77, right?

22 A Yes, sir.

23 Q Okay. And before you began, you went through some
24 I'd say probably extensive training, right?

25 A Over the years, yes, sir.

1 Q And of course you've been I guess further trained,
2 if you will, by your considerable experience since
3 then?

4 A I would imagine, sir.

5 Q Okay. And I assume that part of that training that
6 you received concerned obtaining statements from
7 witnesses and suspects, is that correct?

8 A Yes, sir.

9 Q Okay. And, also, is it fair to say that when you
10 were trained, a stated goal of obtaining a
11 statement would be to ensure an accurate statement,
12 is that right?

13 A Yes, sir.

14 Q And that is important because a statement is a very
15 important part of any investigation, wouldn't you
16 agree?

17 A Yes, sir.

18 Q And so you want those statements to be as accurate
19 as possible, isn't that right?

20 A Correct.

21 Q Okay. And so you were trained in different methods
22 of obtaining the most accurate statement possible,
23 isn't that right?

24 A Yes, sir.

25 Q Okay. Now, when you arrived at the house at Mr.

MICHAEL A. POOLE -- CROSS BY MR. COOPER (JURY OUT)

101

1 Lecroy's, I believe isn't it is his mother's house?

2 A His mother lived there, I think.

3 Q His mother lived there. Okay. Well, y'all arrived
4 at the house at around 9:30, isn't that right?

5 A Right, yes, sir.

6 Q And how long would you say you had been in the
7 house before you saw Mr. Lecroy being tased?

8 A Two minutes or a minute.

9 Q Okay. And it was kind of unclear when you were
10 talking to Mr. Lupton, you didn't see every time
11 the taser was applied to Mr. Lecroy, did you?

12 A I was not the initial person in. I know he was
13 tased more than once, I believe it to be three
14 times. But I was kind of -- I didn't actually see
15 the application of the tase, but I knew it was
16 going on.

17 Q Okay. You knew what was happening, but you didn't
18 actually see them lay into him?

19 A No, I don't believe so.

20 Q Okay. But you knew what was happening because you
21 have prior experience with these devices, right?

22 A Yes, sir.

23 Q Okay. And you have used them yourself?

24 A Yes, sir.

25 Q You have probably even been tased before, right?

1 A Yes, I have.

2 Q Okay. Now, you -- I want to refer you back to the
3 statement that you and Mr. Lupton discussed.

4 You said that when, that the lead
5 investigator, Officer Branham, asked you to take a
6 statement, is that right?

7 A That's correct.

8 Q Okay. And y'all did that, y'all moved him into the
9 den of the house, isn't that right?

10 A Yes, sir.

11 Q Okay. And at that point you kind of moved him
12 around because you wanted him to feel comfortable,
13 right?

14 A Well, he moved himself around.

15 Q He moved himself around?

16 A And said he was comfortable.

17 Q Okay. And then at this point he was handcuffed,
18 isn't that right?

19 A Correct.

20 Q How many of y'all would you say were surrounding
21 him when you were asking him the questions?

22 A I don't think anybody was surrounding him.

23 Q Well, I mean, Investigator Branham wasn't in the
24 room?

25 A I believe -- I believe I was sitting on a chair

MICHAEL A. POOLE -- CROSS BY MR. COOPER (JURY OUT)

103

1 beside the couch, and I believe Investigator
2 Branham was sitting at a table adjacent to me, I
3 believe.

4 Q Okay. So there were two of you looking at him at
5 least.

6 A I think he was doing the warrant, and I think I was
7 talking to him kind of one-on-one, but he was
8 present.

9 Q All right. So it is fair to say he was right
10 there, he wasn't in another room?

11 A Yes. I mean, he wasn't mirroring over him or
12 anything.

13 Q Okay. Were both of y'all wearing your weapons?

14 A Yes, I imagine. I was.

15 Q All right. Now, let's go back to the -- let's talk
16 about the statement. You -- and you've got a copy
17 in front of you, right?

18 A Yes, sir.

19 Q Okay. On that first page on the timeline, you have
20 written 10:00 o'clock, isn't that right?

21 A Yes, sir.

22 Q Okay. So it would be fair to say that you began
23 questioning Mr. Lecroy approximately 30 minutes
24 after you and your team arrived at the house?

25 A I have 10:10 on the statement, and I think we

1 arrived actually a little before 9:30. I was
2 thinking it was closer to 45 minutes. In the last
3 trial the Defense attorney was saying it was a half
4 an hour, I think it was closer to 45 minutes.

5 Q Okay. So your report, Investigator Branham's
6 report is incorrect?

7 A I think that is just a random number, I don't know.

8 Q Okay.

9 A It was 45 or 30 minutes.

10 Q All right. Somewhere around in there, 45 or 30
11 minutes. But, anyway, after about 30 to 45 minutes
12 y'all have got Mr. Lecroy out of his room and on
13 the couch, isn't that right?

14 A Yes, sir.

15 Q And by that time you know he's got this sciatic
16 nerve condition or whatever it is, right?

17 A Correct.

18 Q All right. So you also understand that he is --
19 because I guess he has explained to you or it is
20 evident from his actions that he is in some level
21 of discomfort, isn't that correct?

22 A He was in no discomfort when I talked to him.

23 Q He was in no discomfort?

24 A I asked him at least three times.

25 Q You asked him if he was?

MICHAEL A. POOLE -- CROSS BY MR. COOPER(JURY OUT)

105

1 A I asked him repeatedly if he was okay.

2 Q All right.

3 A And he said he was in no pain.

4 Q All right. But you were cognizant of his
5 condition, is that right?

6 A I was aware he was in pain earlier until he got
7 situated on the couch, and then he was not in pain.

8 Q Well, y'all didn't arrest him that day, did you?

9 A I don't believe so. I believe he turned himself
10 in.

11 Q Okay. And y'all stated the reason for not
12 arresting him is because of this back condition,
13 isn't that right?

14 A I believe so, yes, sir.

15 Q All right. Let me go back and discuss this first
16 page of the statement with you. You are familiar
17 with this first sheet, right?

18 A Yes, sir.

19 Q This isn't the first time y'all used this sheet?

20 A The Advice of Rights you mean?

21 Q Yes, sir.

22 A Yes.

23 Q Because this sheet has been around for a while,
24 right?

25 A Yes, sir.

- 1 Q Okay. Or something similar?
- 2 A Since the 60's.
- 3 Q Sure, since the 60's. Before you were there,
- 4 right, this basic kind of sheet?
- 5 A Yes.
- 6 Q All right. So this wasn't your first time around
- 7 the block using this sheet?
- 8 A No.
- 9 Q Isn't that right? Okay. And if you look at this
- 10 sheet, it has got under Your Rights, it has got a
- 11 series of sentences and to the left of every
- 12 sentence there is a box, isn't there?
- 13 A Correct.
- 14 Q And those boxes are blank, aren't they?
- 15 A Correct.
- 16 Q Now, Investigator Poole, you stated that you were
- 17 familiar with a taser. You and Mr. Lupton
- 18 discussed that?
- 19 A Yes, sir.
- 20 Q Right? You have been tased yourself?
- 21 A Correct.
- 22 Q The point of a taser is to subdue a subject, a
- 23 person, right?
- 24 A No, it is to get compliance with commands.
- 25 Q Okay. Well, perhaps subdue his behavior to obtain

MICHAEL A. POOLE -- CROSS BY MR. COOPER(JURY OUT)

107

1 compliance, would that be a fair statement?

2 A I think it is to -- if you give someone a command
3 and they refuse to follow command, you use the
4 taser to get their compliance, not to subdue them.

5 Q The taser is an electrical shock device, isn't that
6 correct?

7 A Yes, sir.

8 Q And that means it affects one's nervous system,
9 isn't that correct?

10 A I couldn't -- I'm not a doctor. I know it hurts.

11 Q Well, it delivers a dose of electricity to
12 somebody, doesn't it?

13 A Correct.

14 Q And you began taking this statement from Mr. Lecroy
15 30 or 45 minutes after this electrical dose had
16 been delivered to his system, isn't that right?

17 A Yes, sir.

18 Q Now, did you arrive at Mr. Lecroy's home in a
19 police cruiser?

20 A No, I did not.

21 Q Did you ride with somebody else?

22 A Yes, I think we all rode together, most of us.

23 Q Y'all had several cruisers there?

24 A We were in a van vehicle.

25 Q Have you ever taken somebody's statement at the

1 Police Department before, Richland County Sheriff's
2 Department?

3 A Yes, sir.

4 Q Would it be fair to say you have taken a lot of
5 statements there?

6 A Over the years, yes, sir.

7 Q So I bet at Richland County you probably have a --
8 I mean, you are a veteran, you probably have your
9 own little booth to take statements, don't you?

10 A Sure don't.

11 Q You've got to share booths?

12 A We just use somebody else's.

13 Q But you have booths there that y'all use?

14 A Yes, sir.

15 Q Okay. And y'all do that quite often, right?

16 A Well, not as often as we take them on the scene,
17 no, but we do it quite often.

18 Q It is a practice that you employ, right?

19 A It depends on the particular situation.

20 Q Okay. Well, you have been involved in
21 investigations before where you put somebody in the
22 cruiser and took them back to the department,
23 right?

24 A Yes, sir.

25 Q And like you said, it depends on the circumstances

MICHAEL A. POOLE -- CROSS BY MR. COOPER(JURY OUT)

109

1 whether or not you do that, isn't that right?

2 A Yes, sir.

3 MR. COOPER: All right, Your Honor, I have
4 nothing further. Whenever you are ready for
5 argument.

6 THE COURT: Okay. Sure. Anything further,
7 Mr. Lupton?

8 MR. LUPTON: Nothing, Your Honor.

9 THE COURT: Okay. I'm ready.

10 MR. COOPER: Your Honor, the issue in this
11 hearing is the voluntariness of the statement. And
12 this is a custodial statement. We know that of
13 course Mr. Lecroy at the time certainly did not
14 feel free to leave. He had been tased. He was, if
15 not surrounded, in the presence of armed law
16 enforcement 30 minutes after they enter his home.

17 We know from Investigator Poole's testimony
18 that they entered the house. Thirty minutes --
19 Investigator Poole now says that might be wrong,
20 but 30 to 45 minutes within the time they got
21 there, within the time Mr. Lecroy had been
22 restrained, tased, put on the couch, they knew
23 about his condition. They obviously, from what
24 they are going to testify to, they saw drug
25 material in the area, and yet they had the ability

1 and the means to wait and take Mr. Lecroy back to
2 the Sheriff's Department where they knew the
3 chances of him being under any kind of outside
4 influence would be less. They knew that the
5 effects of the taser could have worn off. They
6 knew that the fact about getting away from his mom,
7 the house where his mother lived would be less.

8 They could have done this, but they didn't do
9 it because they know that if you can take a
10 statement from somebody under duress they are more
11 likely to talk.

12 And that is why I think that Mr. Lecroy --
13 there is a serious question about the voluntariness
14 of Mr. Lecroy's statement. We have got, you know,
15 I understand that mistakes are made, but 30 minutes
16 after you bust into the house, maybe that is why he
17 has got the wrong date on the statement, you know,
18 maybe that is why he didn't take the time to check
19 the boxes beside the rights, because they were in a
20 hurry because they were trying to get the statement
21 out of this guy.

22 And that raises serious concerns about whether
23 Mr. Lecroy voluntarily gave his statement. I mean,
24 he had just been administered a dose of electricity
25 by Investigator Poole's own admission. Why not

1 wait? You know, maybe they could have gotten this
2 right. But that was the point is that they were
3 afraid he wouldn't give a statement later. So they
4 had him cornered, they had him there, he had just
5 been tased, and they thought, we are going to get
6 this out of him now. And that is the point of
7 doing that. And that raises serious concerns about
8 the voluntariness of the statement.

9 Your Honor, so I would respectfully, move to
10 suppress the statement.

11 Thank you.

12 THE COURT: Mr. Lupton?

13 MR. LUPTON: Your Honor, I think the -- first
14 I would direct the Court's attention to State
15 versus Elbert Breeze, a Court of Appeals opinion
16 from 2008. Again, I apologize, I do not have the
17 South Carolina or Southeast Second cite, but it is
18 Opinion Number 4430. And that is State versus
19 Elbert Breeze.

20 And there the Defendant was sprayed with
21 pepper spray, if I remember correctly, after he
22 resisted arrest. And there he was decontaminated
23 and then questioned.

24 The Court of Appeals states that the fact that
25 he had been pepper sprayed did not make him any

1 less capable of understanding and waiving his
2 Miranda Rights.

3 I believe that in that case the officer
4 testified that the Defendant was able to understand
5 what was going on and that he was not suffering
6 from any effects at that point.

7 In this case, we have got a situation where
8 the Defendant was tased immediately upon entry.
9 Half an hour, 45 minutes later he was questioned.

10 Taser, I believe the Court can take judicial
11 notice that a taser works by administering
12 electricity, as was testified in this. Anybody who
13 has touched an electrical outlet or touched a bare
14 wire on an electric fence if you live out in the
15 country or you have dogs, there is an immediate
16 pain sensation, but as soon as you turn off the
17 electricity that pain sensation goes away.

18 So by the time, half an hour or 45 minutes has
19 gone, any effects would have worn off. I think
20 that is within the common knowledge of anyone.

21 MR. COOPER: Well, I mean, I have to just say,
22 you know, we wouldn't say that would be common
23 knowledge. I mean, I know there is no jury in
24 here, but --

25 THE COURT: Right. It is just argument, but I

1 will accept it as judicial notice.

2 MR. COOPER: Yes, Your Honor.

3 THE COURT: Okay.

4 MR. LUPTON: And, Your Honor, the testimony
5 was that Mr. Lecroy was questioned several times, I
6 believe three times was the testimony, and stated
7 that he was not in any pain. They allowed him to
8 situate himself on a couch, they changed the
9 position of the handcuffs, they took what steps
10 they reasonably could to make sure that he was
11 comfortable prior to taking the statement.

12 So the officer's testimony in that regard I
13 believe is credible. It is on point. And there
14 was no indication the Defendant was suffering from
15 any effects of the taser at the time he gave the
16 statement and gave consent to speak.

17 Additionally, I would also note that the
18 argument counsel is making is both counterintuitive
19 and counter to the case law that discusses the fact
20 in numerous cases that questioning somebody in
21 their own home, around their family members where
22 they have that support of having family members
23 close-by, it is their home where they have a
24 familiarity, a comfort level, reduces the coercive
25 effects of law enforcement questioning.

1 If they had taken him while he had had the
2 back problems that he was able to alleviate by his
3 positioning himself just right on the couch, if
4 they had taken him while he was in some level of
5 discomfort in handcuffs to a police station
6 surrounded by locked doors and dozens if not scores
7 of police officers throughout the building, I think
8 that that would be more coercive, not less.

9 I am not saying that I think that that would
10 have made it inadmissible, but I do think that what
11 they did by questioning him in a familiar
12 environment with family members present was the
13 least coercive option that they had available.

14 And just in conclusion, I think that the
15 testimony was clear. I asked repeatedly and the
16 answers repeatedly were very clear that the
17 Defendant's waiver was knowing, voluntarily and
18 intelligently made, not the product of any kind of
19 coercion or promise of reward of any kind.

20 And I believe that under the standards the
21 State has met its burden to show admissibility of
22 the statements.

23 THE COURT: At this juncture of the trial, the
24 only issue at the pretrial hearing is preponderance
25 of the evidence, and I will find that the State has

1 met the burden by a preponderance of the evidence.

2 Of course at the time of the jury, then it has
3 to be based on beyond a reasonable doubt. But at
4 this time you have met your burden of proof.

5 MR. LUPTON: Thank you, Your Honor.

6 THE COURT: Okay.

7 MR. BAILEY: Thank you, Your Honor.

8 THE COURT: Okay. You can step down.

9 (Witness steps down.)

10 THE COURT: Is that the issues?

11 MR. BAILEY: Your Honor, I think that is it
12 for our motions. We just want to renew our
13 objections to the admissions of the evidence
14 presented in the pretrial hearings.

15 THE COURT: Okay. And the Court has
16 considered the various arguments and will stand by
17 its rulings at this time.

18 Okay, anything else to be taken up at this
19 time?

20 MR. LUPTON: Your Honor, I think that covers
21 it.

22 THE COURT: Okay.

23 MR. BAILEY: We should be fine.

24 THE COURT: Okay. I'll be in my office early
25 in case anything comes up. Otherwise, we will

1 start the trial at 9:30.

2 MR. LUPTON: Thank you, Your Honor.

3 MR. BAILEY: Thank you, Your Honor.

4 (WHEREUPON, the trial adjourned for the day.)

5 FEBRUARY 25, 2009

6 MR. BAILEY: I have a matter to take up to
7 refresh the record and maybe just for some
8 clarification of some stuff we discussed yesterday.

9 THE COURT: Okay.

10 MR. BAILEY: Which the first thing is
11 Mr. Cooper and I would like to go ahead and have a
12 standing objection for all the evidence of -- drug
13 evidence that was obtained from what we find to be
14 an improper warrant. The standing objection would
15 allow us to not have to get up and object and
16 instruct the jury every time the evidence is
17 presented. We want to put on the record that we
18 have a standing objection to anything put into
19 evidence, drug evidence coming from the warrant.
20 And we'll certainly renew that given the proper
21 chance.

22 Another one, when I was speaking with
23 Mr. Cooper yesterday, it became clear that we might
24 not have been entirely clear on how you are going
25 to relate to this being a trial in the absence of

1 Mr. Lecroy to the jury. So I just wanted to get
2 those terms sort of resolved among all this.

3 THE COURT: Right.

4 MR. BAILEY: We certainly -- we think the most
5 proper thing to do would be for Your Honor to
6 relate to the jury the same thing you would give to
7 them in a jury charge which, under State versus
8 Jackson, is when the Defendant is tried in
9 absentia, the trial Court should instruct the jury
10 that the Defendant's failure to appear may not be
11 construed as an admission of guilt.

12 You know, that is the jury instruction we are
13 going to -- or jury charge we are going to ask for
14 later. We think it is only appropriate that we
15 limit what we say at the beginning to what you are
16 going to say at the end.

17 I know Mr. Lupton wanted to say something
18 about Mr. Lecroy, you know, getting notice to be
19 here. We actually think that that is outside the
20 purview of what should be said.

21 THE COURT: I thought about that. And I won't
22 be saying that he got notice or that he was warned
23 that he would be tried in his absence, because that
24 then comes into the law and that whole sequence of
25 having that stated, that hearing outside the

1 presence of the jury takes care of those issues and
2 they are not necessarily needing to -- for the jury
3 to hear that. I will just say that he will be
4 tried in his absence and that you cannot construe
5 his absence as an admission of guilt, nor the fact
6 that any Defendant does not testify, that cannot be
7 construed as admission of guilt, nor are you even
8 to consider it in deliberations.

9 MR. BAILEY: And that is perfect. That was
10 all I was going to say. We have no objection to
11 that. Thank you very much.

12 THE COURT: Okay.

13 MR. LUPTON: That's fine with me, Your Honor.

14 THE COURT: Okay. Anything further then?

15 MR. BAILEY: Not much.

16 THE COURT: Okay. And just as a preliminary
17 matter, there are two pleas that I will need to
18 deal with at some point today, so Mr. Lupton can
19 you kind of tell me about your case, how far you
20 think we will go this morning. And I would also
21 like to break about quarter till 12:00, because it
22 is Ash Wednesday --

23 MR. LUPTON: Well, that --

24 THE COURT: -- for the lunch break to come
25 around then.

1 MR. LUPTON: That would be -- I had my chain
2 witnesses scheduled for 11:30 and my chemist for
3 12:00. And of course it depends on what comes up,
4 but if things run relatively smoothly, I think that
5 we could -- on a normal day we could be done with
6 the evidence prior to lunch, but if you are going
7 to break at quarter to 12:00, then I think that
8 what we could do is do all the fact witnesses
9 before lunch and then the chain and chemist after
10 lunch.

11 THE COURT: At 1:30?

12 MR. BAILEY: We have no objection to that,
13 Your Honor.

14 THE COURT: Okay. And then let's say -- it is
15 9:30 -- let's say we'll push on to at least quarter
16 of 11:00, so, Ms. Garfield, I'll deal with your
17 plea then, about a quarter till 11:00.

18 MS. GARFIELD: Quarter of 11:00?

19 THE COURT: Yes. The first one. And then the
20 other one right at 1:30.

21 MS. GARFIELD: Great.

22 THE COURT: All right, are we ready to
23 proceed?

24 MR. LUPTON: Your Honor, inadvertently William
25 Cedarstaff was left off the list of potential

1 witnesses for the State. He is just a chain
2 witness. All he did was receive the drugs back
3 from the chemist. He is not in the chain prior to
4 the testing, so he would not be an essential
5 witness, but just for completeness we would include
6 him. If there is -- I don't think anybody is
7 likely to know him, but if the Defense wants I
8 would not object to the jury panel being asked if
9 anybody knows him prior to swearing.

10 MR. COOPER: Your Honor, why don't we just ask
11 just in case. No problem.

12 THE COURT: Okay. And what is the name again?

13 MR. LUPTON: William Cedarstaff. And I have
14 given the Defense copies --

15 THE COURT: Is he with SLED or with who?

16 MR. LUPTON: He is with Richland County
17 Sheriff's Department, Evidence Technician. And I
18 have given Defense copies of proposed verdict
19 forms, and I don't think they have any objection.
20 That will remove the necessity of sending the
21 indictments back to the jury, which would require
22 redacting mention of them being more than first.

23 THE COURT: Okay. The first form dealing with
24 traffic and methamphetamines, it includes the
25 lesser included ones?

1 MR. LUPTON: Your Honor, I believe that would
2 be required. There was methamphetamine in his
3 pocket. And there was methamphetamine in the room.
4 If the jury were to conclude that he had possession
5 of what was in his pocket but did not have
6 possession of what was in the room, then that
7 methamphetamine was over the inference weight for
8 distribution. Plus, of course, his statement,
9 which would make a charge on PWID appropriate. Of
10 course, they could disregard the inference and
11 statement and find him guilty of just possession.
12 So I'm assuming that the Defense would want to have
13 both PWID and the possession charge, so I wrote it
14 up as such.

15 THE COURT: Okay.

16 MR. BAILEY: Mr. Lupton seems to be correct.

17 THE COURT: Okay, that's fine. And then we
18 can, you know, if anything changes, we have time to
19 deal with that. Okay.

20 All right, if y'all are ready to proceed,
21 jurors, please.

22 MR. LUPTON: And, Your Honor, on the
23 sequestration, if there is no objection, I'll have
24 the officers leave after openings.

25 THE COURT: Okay.

1 MR. BAILEY: No objection, Your Honor.

2 THE COURT: Okay.

3 (WHEREUPON, the jury came into open
4 court at approximately 9:45 a.m.)

5 THE COURT: Good morning, ladies and gentlemen
6 of the jury panel. Before we proceed with the
7 trial of the case, we left off one particular
8 witness that may testify at this trial, so I wanted
9 to make sure that I asked you about that witness in
10 terms of any relationship, and that is a William
11 Cedarstaff, who is with the Richland County
12 Sheriff's Department and is employed as an evidence
13 technician.

14 Do any of you know this person, have any close
15 personal or social relationship with him? If so,
16 please stand and state your juror name and number.

17 (WHEREUPON, there was no response.)

18 THE COURT: And all jurors are indicating no.
19 Okay, then we will proceed.

20 I welcome you again to your jury service. It
21 is one of the highest callings of public service,
22 so we really do appreciate your time to hear this
23 very important matter.

24 The State has called the case of the State
25 versus Steven Lecroy. I will tell you at the

1 outset that Mr. Lecroy will not be present during
2 this trial, but you are not to construe that as any
3 admission of guilt. You are not to construe in any
4 case whether or not a Defendant testifies if they
5 choose not to do so. That is their constitutional
6 right to not do so as well, and that is not to be
7 considered by you in your deliberations at all, not
8 even to be brought up.

9 We are here on the case with the indictments
10 against Mr. Lecroy for possession of marijuana,
11 possession of a controlled substance, and
12 trafficking in methamphetamine.

13 These, as I indicated to you yesterday, are
14 indictments. They are strictly the formal
15 instrument by which a case is brought to trial.
16 They are not an admission of guilt at all. That
17 would be in your province to determine Mr. Lecroy's
18 guilt or innocence in this matter.

19 Now, before we begin the trial I just wanted
20 to give you some background on what you are about
21 to understand and be educated upon.

22 This is a trial of this particular case, and
23 it is a criminal trial. The State has the burden
24 of proof beyond a reasonable doubt, and they carry
25 that burden of proof with them throughout the

1 trial.

2 While I believe the trial will be very
3 educational and very informative, this is not like
4 TV, you have to pay attention to what is actually
5 going on here and make some serious consideration
6 and deliberations with respect to what is going on
7 in this courtroom. It is not for your
8 entertainment. These are very serious cases that
9 we handle in court and they affect people's lives
10 in terms of any decisions.

11 You are the sole fact finders in the case, so
12 you are very important to the case. As with any
13 case, you'll have varying versions of stories, and
14 things of that nature, and it must be you who have
15 to seek out the truth.

16 I am the judge of the law in the case. So you
17 will have to abide by whatever law that I tell you
18 that you should apply to this particular case. And
19 forget any notions of what people told you the law
20 ought to be or what you think the law ought to be,
21 it will be as I tell you during the trial of this
22 case.

23 We will first proceed with opening statements.
24 Both parties, the State and then as well as Defense
25 counsel, will have an opportunity to give you an

1 opening statement, which is just an overview of the
2 case and what they each intend to prove or show in
3 the case.

4 Then we'll proceed with the State, who has the
5 burden of proof throughout the trial; beginning
6 with any witnesses or other testimony or other
7 evidence that they will present to you.

8 Defense counsel then has an opportunity to
9 cross-examine any of the witnesses or other
10 evidence.

11 Once the State concludes its case, then the
12 Defense has an opportunity to put up a case if they
13 so choose, because I remind you again that the
14 burden of proof always remains with the State.

15 At the conclusion of the trial, then we will
16 have closing arguments where each party has the
17 opportunity to just refresh your memories about the
18 testimony throughout the trial and guide you toward
19 any inferences that you should make and of course
20 trying to persuade you to their side of the case.

21 During the trial you will hear the parties
22 potentially object to various evidence, and things
23 of that nature, coming in, and you'll need to
24 listen very carefully to my rulings as to whether
25 or not I'm allowing that evidence or testimony to

1 go forward or whether or not I'm requiring that it
2 be stricken from the record and not be for your
3 consideration.

4 I really thank you again for your service, and
5 I hope that you will find this trial very
6 educational and informative, but do give your total
7 time and attention to this matter throughout the
8 trial.

9 Thank you all.

10 And the State may proceed.

11 MR. LUPTON: Your Honor, we are prepared to
12 proceed once the jury is sworn.

13 THE COURT: Okay. Thank you.

14 THE CLERK: Ladies and gentlemen of the jury,
15 please stand and raise your right hand to be sworn.

16 (Jurors comply.)

17 THE CLERK: After this oath please acknowledge
18 by answering: I do.

19 Do you swear or affirm that you shall well and
20 truly try and true deliverance make between the
21 State of South Carolina and the Defendant at bar
22 whom you shall have in charge and a true verdict
23 give according to the law and evidence, so help you
24 God?

25 THE JURY: "I do."

1 THE CLERK: Thank you. You may be seated.

2 (Jury complies.)

3 MR. LUPTON: Thank you, Your Honor. May it
4 please the Court?

5 THE COURT: Yes.

6 OPENING STATEMENT

7 MR. LUPTON: Ladies and gentlemen, during the
8 course of this trial I'm going to prove to you
9 beyond any reasonable doubt that the Defendant,
10 Steven Michael Lecroy, is guilty of trafficking
11 methamphetamine and possession of a controlled
12 substance, and possession of marijuana.

13 The evidence is going to show that the
14 Defendant, here in Richland County, had more than
15 10 grams of methamphetamine in his possession. The
16 law is on trafficking that possession of more than
17 10 grams of methamphetamine is defined as
18 trafficking. That is trafficking.

19 You may have seen, some of you that are a
20 little bit older, may have seen Miami Vice, shows
21 like that, where trafficking was big, huge
22 shipments of drugs coming up from South America.

23 Well, that is trafficking as well, but in the
24 State of South Carolina trafficking is defined not
25 just as selling drugs, but as possession of more

1 than 10 grams. That is just a statutory
2 definition. They could have said possession of
3 10 grams or more. They called it trafficking.

4 Now, trafficking can be proven by possession
5 of more than 10 grams. It can also be proven by a
6 person that is selling or attempting to sell
7 methamphetamine with a weight of more than
8 10 grams. The evidence is going to show both in
9 this case.

10 The evidence is also going to show that he had
11 in his possession in his bedroom controlled
12 substances, pills, that were defined by law as
13 being illegally possessed without a prescription,
14 and he didn't have a prescription.

15 The evidence is also going to show that he had
16 marijuana, that he had that in his room as well.

17 The evidence is going to show that back on
18 July 25th that the Defendant was in his room when
19 officers of the Richland County Sheriff's
20 Department Narcotics Division served a search
21 warrant on his residence. They entered the
22 residence.

23 You are going to hear testimony how a house
24 that was his mother's house was clean, immaculate,
25 until they got into his room, which was a wreck.

1 That there was no evidence of drug use, drug sales,
2 drug activity anywhere in the house until they got
3 into his room.

4 And you will have evidence, see pictures, hear
5 testimony showing that there were drugs and drug
6 paraphernalia all throughout the room.

7 You are going to see the pictures, you'll have
8 them in evidence. You will have the drugs in
9 evidence. You will see some of the paraphernalia
10 will be in evidence. You'll hear the testimony on
11 that.

12 You will hear the Defendant initially resisted
13 arrest and he was subdued by the officers, that
14 they had to cuff him, they had to fight him to get
15 him cuffed and that they used a taser on him during
16 the course of that, that they did that not for any
17 reason but to get him to show his hands so they
18 would be able to handcuff him so they would know he
19 didn't have anything dangerous in his hands. But
20 once they got him cuffed, they did their best to
21 make him comfortable.

22 Now, it turned out that he had a sciatic nerve
23 problem that created pain issues for him. And they
24 dealt with that as best they could under the
25 circumstances. They did everything they could to

1 make him comfortable. And that once they did
2 everything they could and he was comfortable, one
3 of the officers then talked to him, told him his
4 constitutional right to remain silent, had him sign
5 a piece of paper explaining his rights to remain
6 silent. And he understood those rights, gave those
7 rights up, and gave a statement. And you will have
8 that statement in evidence and you'll be able to
9 see what the Defendant said where he admitted
10 possession of the drugs, he admitted selling the
11 drugs.

12 Ladies and gentlemen, I anticipate this to be
13 a short case. I anticipate the evidence will be
14 very clear. But this case is no less important for
15 its brevity. I ask you to pay close attention and
16 at the end of the case, after you have heard
17 everything, I'm going to come back to you and I'm
18 going to ask you to render a just verdict based on
19 that evidence and under the law.

20 Thank you.

21 THE COURT: Thank you. Defense counsel?

22 MR. COOPER: May it please the Court?

23 OPENING STATEMENT

24 MR. COOPER: Ladies and gentlemen, on
25 January 25th, 2007, when the police officers went

1 into Mr. Steven Lecroy's mother's home, they went
2 back to his bedroom and they found a 39-year-old
3 man tethered to a bed in a leash and a dog collar.
4 He had a dog collar around his neck, wearing a
5 leash, tied to a bed.

6 Now, why do I tell you that right off the bat?
7 I tell you that because I want you to know right
8 off the bat that this is not the normal cut and dry
9 case that Mr. Lupton would have you believe. This
10 is a pretty weird case. This isn't Miami Vice.
11 This is stranger than anything I ever saw on Miami
12 Vice.

13 And I want you to know that because it is
14 Mr. Lupton's job to present the case as very
15 simple, it is cut and dry, we got our guy, that's
16 it.

17 But that ain't the way it was. This was a
18 really weird case, starting with the cops -- the
19 police officers finding a guy wearing a dog collar
20 in his room.

21 And as we go through this trial, I hope that
22 you will use your judgment and you listen to what
23 you hear and read between the lines.

24 And as you listen to the police officers
25 testify, I want you to think about what -- how they

1 approached this investigation when they bust into a
2 house and found a guy looking like that.

3 Well, we know what they eventually did --
4 excuse me -- we know what they eventually did, is
5 they threw the book at the guy. So when you listen
6 to this, read between the lines and think about
7 what those officers were thinking and why they did
8 what they did.

9 Now, ladies and gentlemen, in addition to you
10 evaluating what you will see, it is very important
11 in any case because as the judge has instructed you
12 the State has the burden of proof in this case. It
13 is their job to prove to you Steven Lecroy's guilt.

14 And so when you evaluate what they do put up
15 and what testimony you will hear, we want you to
16 think about what you are not hearing. We also want
17 you to look at what they are not showing you.

18 And we believe that as you see the evidence,
19 you are not going to hear from one person who
20 bought drugs from Steven Lecroy. You're not going
21 to see one video of Steven Lecroy selling anybody
22 any drugs. You are not going to hear from one
23 person who sold Steven Lecroy any drugs. Because,
24 ladies and gentlemen, it is our view of the
25 evidence that you will hear that what happened on

1 January 25th is the police officers walked into a
2 house right after a party. This was a party in his
3 mom's house that got crazy, obviously. But they
4 walked into the aftermath of a party. That is what
5 it was. And we want you to see that, because it is
6 not this simple cut and dry case that the State
7 would have you believe. You've got to look at the
8 circumstances around what happened when they found
9 Mr. Lecroy that way. And you've got to look at how
10 they treated him when they found him and how they
11 talked to him, how long they were in there, and
12 what they actually did, and why they did what they
13 did. And if you can do that, then we believe you
14 will fully be doing your job today, and we
15 appreciate that.

16 Now, there is one other thing that I want to
17 address with you, and that is that when I first got
18 out of law school and I had my first trial coming
19 up, I had a mentor who talked to me a lot. He was
20 very important to me. He was a very good lawyer,
21 passed away now, but he told me, he said, you know,
22 Jay, when you go into that courtroom, you have to
23 act like you own the courtroom. You've got to act
24 like it belongs to you, you've got to take control
25 of it, and it has got to be yours.

1 And I have really listened to that and I
2 believe that. This guy had 40 years of experience,
3 why wouldn't I? But, you know, in my first trial
4 it took me about ten seconds standing in front of a
5 group of people like you to realize that that man
6 was absolutely wrong. He was dead wrong. Nice
7 guy, he was just wrong. Because what I realized
8 after about ten seconds up here, this courtroom
9 doesn't belong to me. Respectfully, it doesn't
10 even really belong to the judge or the prosecutor,
11 in the big picture. This courtroom belongs to
12 y'all. And y'all need to realize this.

13 I know it is a big strange place that y'all
14 aren't normally in and I know it can be kind of
15 intimidating. And I know you kind of walked around
16 and you don't know your way around and you are
17 thinking, am I doing what I am supposed to be
18 doing. This courtroom belongs to you. And treat
19 it that way. Everything we do in here is for you.
20 So keep that attitude. And when they put evidence
21 up here, look at it, don't take it for granted.
22 Use your life experience and evaluate it. And I
23 think when you do, when you see the big picture, we
24 believe that you will return verdicts of not
25 guilty.

1 Thank you very much.

2 THE COURT: Thank you. State, you may proceed
3 with your witnesses.

4 MR. LUPTON: Your Honor, pursuant to the
5 sequestration order, I'm asking that the officers
6 leave the courtroom.

7 THE COURT: Okay. Thank you.

8 (Officers comply.)

9 MR. LUPTON: And the State would call
10 Investigator Anthony Branham.

11 THE BAILIFF: Place your left hand on the
12 Bible, raise your right hand, and face the clerk.

13 (Witness complies.)

14 THE CLERK: Do you swear or affirm the
15 testimony you shall give in this case will be the
16 truth, the whole truth, and nothing but the truth,
17 so help you God?

18 THE WITNESS: I do.

19 THE CLERK: Thank you. Please be seated on
20 the witness stand, and please state your full name
21 for the record.

22 THE WITNESS: Anthony Branham, B-R-A-N-H-A-M.

23 ANTHONY BRANHAM,

24 after being duly sworn, testified as follows:

25 DIRECT EXAMINATION

1 BY MR. LUPTON:

2 Q Investigator Branham, could you tell the jury where
3 it is you are employed?

4 A I currently work with the Richland County Sheriff's
5 Department.

6 Q How long have you been in law enforcement?

7 A Since June of 1996.

8 Q And in that I guess 13 years almost --

9 A Yes, sir.

10 Q -- of time, could you tell the jury briefly what
11 kinds of training and responsibilities you've had?

12 A After graduating from the South Carolina Criminal
13 Justice Academy, I became a road officer where I
14 took reports, answered calls, domestic calls, alarm
15 calls, and that sort of thing.

16 From there I was promoted and got on our
17 Community Action Team where I was certified to
18 teach and instruct members of the community on how
19 to I guess promote security in the neighborhoods,
20 how to form crime watch organizations.

21 After that I was promoted to investigator
22 where I returned to the Criminal Justice Academy
23 where I took the basic detective courses and was
24 subsequently placed into the narcotic division
25 where I have also gone through training at the Drug

1 Enforcement Administration and the Criminal Justice
2 Academy also for instruction on how to conduct drug
3 investigation.

4 Q All right. And during all this, where were you
5 employed, what capacity back in July of 2007?

6 A July?

7 Q I'm sorry, not July, excuse me, January of 2007?

8 A January of 2007 I was assigned to the narcotics
9 division of our criminal investigation division.

10 Q And in the course of being employed with the
11 narcotics division, did you have occasion to obtain
12 search warrants for a location here in Richland
13 County on -- to be served on July 25th?

14 A January 25th?

15 Q Excuse me, I don't know why I keep saying July. I
16 apologize. January?

17 A Yes, sir, I did.

18 Q And could you tell the jury what you did that day
19 preparing, you and the other officers, preparing to
20 serve the search warrants, briefly.

21 A I had a search warrant for a residence here in
22 Richland County on Highview Drive. And we gathered
23 together at our headquarters, and I gave a briefing
24 and gave assignments to everyone.

25 Normally with drug search warrants, we do

1 dynamic entry, which means we use a battering ram.
2 We take out the front door, whichever door we think
3 is the safest way to enter a residence. And give
4 people assignments of what to do when inside the
5 residence.

6 Q Why is it that you use what you call dynamic entry?

7 A Dynamic entry? It is for two reasons. The most
8 important reason is for officer safety and for the
9 safety of the persons inside. It is kind of the
10 sense of surprise to catch them off-guard so they
11 cannot harm officers.

12 And the other thing is also to secure in
13 the -- I guess avoiding destruction of evidence
14 that may be inside the residence.

15 Q And the search warrant for January 25th, what house
16 was that? Whose house was that?

17 A It was . And it was the Lecroy
18 residence.

19 Q And do you know from your investigation whose house
20 that was primarily?

21 A Yes, it was a gentleman by the name of Steven
22 Lecroy, a young lady by the name of Elfried or
23 Elfried Lecroy.

24 Q When you say young lady, young is a relative term.
25 What was her relationship to the Defendant?

1 A The mother of Mr. Lecroy. She was probably close
2 to mid 70's, 80 years old.

3 Q And did you in fact serve that search warrant?

4 A Yes, I did.

5 Q And could you tell the jury about that, please.

6 A Okay. We forced entry through the front door to
7 the residence. There was a couch there. The house
8 wasn't fortified, there was just a couch was in
9 front of the front door.

10 We get through the front door. Everyone makes
11 safe entry into the residence. Then we pan out
12 throughout the residence to secure it, detain
13 anyone that may be inside the residence, and begin
14 our search.

15 Q Could you describe the condition of the house?

16 A It was absolutely immaculate. When we went inside
17 it was -- I was surprised because most of the
18 houses that we go into for drug search warrants
19 aren't as clean as this one. And it was, for lack
20 of better terms, it was old lady clean. It was
21 like my grandmother's house.

22 Q And could you elaborate on that? Was there
23 anything -- for example, was there anything -- the
24 floors?

25 A Yes. The person that resides there had gone to the

1 extent of putting the carpet protectors down on the
2 floor so that when you walk from the front door to
3 the hallway or wherever you are going to maneuver
4 inside the house it is -- you don't mess up the
5 carpet or soil the carpet.

6 Q Now, was the whole house in that condition?

7 A The entire residence except for what I found out to
8 be Mr. Lecroy's bedroom, Steven Lecroy's bedroom.

9 Q And you say Steven Lecroy's bedroom. How do you
10 know it was his bedroom?

11 A There was paperwork. There is a certificate
12 hanging on the wall with his name on it. Other
13 mailings and paperwork with his name on it also was
14 in the bedroom. Also his mom identified that
15 bedroom as being his.

16 Q And without going into anything the mother said,
17 did anybody else identify it as being his bedroom?

18 A Mr. Lecroy did.

19 Q And who was located there?

20 A Mr. Lecroy.

21 Q And what kind of room was it?

22 A It was a standard kind of small bedroom.

23 Q And was there indications that he slept there?

24 A Yes, there were.

25 Q Was there anyone -- did anyone's personal items

1 occupy the room?

2 A Yes, all the items in there were Mr. Lecroy's.

3 Q And was there any -- can you comment on the volume
4 of personal items as to whether or not it indicated
5 somebody living there or just being present
6 briefly?

7 A There was, you know, clothing, changes of clothes,
8 the mailings with his name on it, computers he
9 identified as being his, and just other items that
10 would -- normally someone would have in their room.

11 Q Is it fair to say that it appeared to be a room
12 that he occupied as a permanent place to sleep?

13 A Yes. He identified that residence as his permanent
14 address and that bedroom as being his and
15 containing his belongings.

16 Q Now, once you got into his room, where was the
17 Defendant?

18 A When I initially got into Mr. Lecroy's bedroom, he
19 was fighting several officers who were trying to
20 place handcuffs on him.

21 Q And could you describe how he was acting at that
22 point?

23 A He was screaming. He was spitting, kicking at the
24 officers, and had his hands underneath his body,
25 which could mean several things: He was just being

1 resistant or he was trying to hide a weapon under
2 his body. So I utilized my taser to give him three
3 short couple-of-second bursts of -- stunning him,
4 and he was finally -- he finally was compliant to
5 our verbal commands and we were able to handcuff
6 him.

7 Q Now, you talk about the taser. Can you explain
8 that a little bit more to the jury, please?

9 A A taser is a -- basically a stun gun that you can
10 use in two ways. The first way is you can place a
11 cartridge on the end of the stun gun and deploy two
12 prongs that will shoot out approximately 25 feet,
13 25 to 30 feet. And once those prongs either make
14 contact with your skin or your clothing, it will
15 exact about a 50,000 volt charge. If allowed to go
16 through one cycle with the taser, it will last for
17 five seconds. However, we do have a shutoff switch
18 on the taser.

19 The other way you can use the taser is to take
20 and remove the cartridge and actually use it as a
21 stun gun and do a drive stun call where you
22 actually apply the taser directly to the person's
23 body or skin or clothing, and then you apply the --
24 turn it on, pull the trigger and give the short
25 bursts. If you pull the trigger when it is doing a

1 drive stun, it will also last for five seconds,
2 however, you can control that amount of time by
3 turning it off.

4 Q And which way did you use the taser in this case?

5 A I removed the cartridge and actually applied it to
6 the back of Mr. Lecroy.

7 Q And is there anything you do prior to using a taser
8 on a suspect?

9 A We have to give a loud -- we have to shout loudly
10 three times, "taser, taser, taser," to let the
11 other officers know there is a taser going to be
12 applied to a defiant or a noncompliant person. And
13 I gave that at the -- I yelled loudly three times,
14 "taser, taser, taser," applied the taser to the
15 back of Mr. Lecroy and turned it on.

16 Q Was there any effort made to get him to stop
17 resisting, stop fighting prior to tasing him?

18 A Yes. I pulled the taser out and I -- we told him,
19 "We have a taser. We are going to use it. Just
20 please give us your hands."

21 Q And did he?

22 A He did not.

23 Q At that point you say you shouted "taser, taser
24 taser"?

25 A Yes.

1 Q And how long did you use the taser for?

2 A The first time was -- each subsequent time was
3 probably one, maybe two seconds.

4 Q Did you do the full five?

5 A I did not.

6 Q Now, after the third time, did he finally quit
7 resisting?

8 A He did. He gave his hands up, put them behind his
9 back, and we were able to handcuff him and secure
10 him.

11 Q Now, have you ever been tased?

12 A I have.

13 Q Is that part of training?

14 A It is.

15 Q When a person is tased, what kind of effects does
16 it have longterm?

17 A None. Once -- it affects the muscles of the body,
18 and once the taser is turned off, all the effects
19 are -- they go away.

20 Q Have you ever seen those electric fences, the bare
21 wire electric fences?

22 A I'm from the country, yes, sir, I have touched a
23 few of them.

24 Q And would it be comparable to touching one of those
25 bare wires?

1 A Actually, the cattle wire is a lot more potent than
2 the taser. It is not as bad, but it is comparable,
3 yes.

4 Q Okay. So you say you did that three times then
5 gave -- he was cuffed?

6 A Yes, sir.

7 Q At that point what happened to him?

8 A We escorted Mr. Lecroy out of the bedroom into the
9 living room area of the house and we set him on the
10 couch.

11 After we sat him on the couch, he began to
12 complain about back pain and he indicated that he
13 had a sciatic nerve problem resulting from a wreck
14 that he was involved in some years prior.

15 And he was -- he was noticeably in pain, so we
16 took the cuffs from around the back and put them
17 around to the front. And he was able to get
18 himself in a position on the couch that he was
19 comfortable in.

20 So we allowed him to sit there laid over on
21 the couch during the time that we were conducting
22 the search.

23 Q Was anybody called to check him out?

24 A Yes. But our policy is any time anyone is exposed
25 to or tasered, they have to be checked out by

1 paramedics, so we called for Richland County EMS.
2 They came out, checked out Mr. Lecroy, and that was
3 it. They left.

4 Q And how long a period -- well, first of all, was
5 there anything going on while all of the getting
6 Mr. Lecroy comfortable, having EMS check him out,
7 and that sort of stuff, was there anything going on
8 at the same time as that was being done?

9 A We had -- we were kind of organizing inside the
10 house. One officer was setting up a table to start
11 doing paperwork. I was kind of going through the
12 house checking things out and kind of waiting till
13 the EMS came and cleared the residence so we could
14 get our K-9 officer to come in and check out the
15 house.

16 Q So is it fair to say that things were going on
17 simultaneous?

18 A Right.

19 Q And during the whole process, about how long did
20 that last?

21 A We were there, let's see here, within a minute and
22 a half, two minutes of us being there, he was
23 tased. EMS probably took about ten minutes to
24 arrive. They watched him for several minutes. So
25 that all took 30 to 35 minutes total probably.

1 Q And was he questioned at any time prior to EMS
2 checking him out and leaving?

3 A We were talking to him, but other than that, not
4 taking official statement, no, sir.

5 Q And while that was going on, you said -- you talked
6 about the house being searched?

7 A Right.

8 Q Let's go back to that. What was the search?

9 A We generally start with a -- have a K-9 come into
10 the residence and let them check the house out for
11 us so we can pinpoint the areas that we need to
12 concentrate on in our hand search of the residence.

13 And I believe it was Deputy Newman at the
14 time, Chad Newman, he and his K-9 companion came
15 into the residence and began a walk-through of the
16 residence.

17 Q And did they alter or change the scene in any way?

18 A The K-9 officer?

19 Q Right?

20 A No, sir.

21 Q And were you securing the area to make sure of
22 that?

23 A Yes, sir, I -- we normally do a walk-through prior
24 to the K-9 coming in just to make sure there is no
25 objects that will hurt the K-9 or any other -- if

1 there happens to be any drugs laying out, the dog
2 won't get into them or, you know, hurt themselves.

3 Q And after the K-9 walk-through, did you conduct a
4 search?

5 A We did.

6 Q And could you tell the jury about that.

7 A The search -- I focused on Mr. Lecroy's room. And
8 in that room we found several items of interest to
9 us.

10 When you walk into his bedroom from the
11 hallway -- I'll kind of give you a picture of it --
12 there is a bed off to the right in that far corner.
13 Right here next to you is a dresser. And on the
14 left-hand side behind where the door when it is
15 open is a closet area.

16 And most of the closet -- well, the portion of
17 the closet closest to the doorway still maintained
18 a status as a closet, but the other half I guess
19 reached from the midway point on towards the front
20 of the residence had been converted into like a
21 computer desk area.

22 Q And I'll show you what has been marked as State's
23 Exhibit 5 For Identification. Do you recognize
24 that?

25 A Yes, that is the computer desk area.

ANTHONY BRANHAM -- DIRECT BY MR. LUPTON

149

1 MR. LUPTON: Your Honor, I ask that this be
2 admitted as State's Exhibit 5.

3 THE COURT: Any objection?

4 MR. BAILEY: No objections, Your Honor.

5 THE COURT: Thank you. The exhibit is so
6 admitted.

7 (WHEREUPON, State's Exhibit No. 5 was
8 marked for identification and received
9 into evidence.)

10 Q And describe what you found at the computer desk.

11 A There was a flat screen monitor, a keyboard, a PC
12 tower. And laying around the computer there was a
13 bottle, unmarked medicine bottle that contained a
14 viscous or kind of a thick fluid, a little bit
15 thicker than water.

16 Q All right, I show you what has been marked State's
17 Exhibit 8.

18 A Yes, sir, that is a close-up of the medicine
19 bottle, unmarked one, along with a digital scale
20 that was lying next to it.

21 MR. LUPTON: Your Honor, I would ask that
22 State's Exhibit 8 be admitted as evidence.

23 THE COURT: Any objection?

24 MR. BAILEY: No objection, Your Honor.

25 THE COURT: Okay, admitted.

1 (WHEREUPON, State's Exhibit No. 8 was
2 marked for identification and received
3 into evidence.)

4 Q And did you know what the bottle contained at that
5 point?

6 A I did not. Several minutes later after looking at
7 it I asked Mr. Lecroy about the contents of it, and
8 he indicated that was phosphoric acid that was used
9 to clean out his pipes.

10 Q And did you have any reason to believe that that
11 was not the case?

12 A I did. And the reason for that is through my
13 training -- there was a white powder substance that
14 was found next to the computer that had later field
15 tested positive for the presence of
16 methamphetamine. And through my training I know
17 there is a connection between the use of
18 methamphetamine and GHB. And from the training
19 that I have received through the DEA, one test that
20 they tell us to do is hold the bottle of liquid up,
21 shake it, and if bubbles form and then rise slowly
22 to the top of that liquid, then it possibly could
23 be GHB.

24 Q And did you do that in this case?

25 A I did.

1 Q And what was the result?

2 A As soon as I -- I shook it vigorously and then the
3 bubbles started to form and slowly rose to the top.

4 Q And did you do anything to further that?

5 A I did. I looked to see if I had a GHB field test
6 kit. I did not, so I called one of the chemists to
7 the scene to actually test it for me.

8 Q Who was that?

9 A James Andrew Farmer.

10 Q Andy Farmer?

11 A Andy Farmer.

12 Q And continue on with what you found.

13 A Going back to the right of the keyboard, I found a
14 couple of pipes and an open silver metallic tin.
15 Inside of the tin there was a white powdery
16 substance.

17 Q And I'll show you State's Exhibit 6. Can you
18 identify that?

19 A Yes, sir, that is the tin I was referring to. And
20 then close-up next to it is a smoking device, glass
21 smoking device with a yellow liquid inside of the
22 pipe.

23 MR. LUPTON: Your Honor, I ask that that be
24 admitted as evidence, State's Exhibits 6.

25 THE COURT: Any objection?

1 THE BAILIFF: No objection.

2 THE COURT: Thank you. That will be admitted.

3 (WHEREUPON, State's Exhibit No. 6 was
4 marked for identification and received
5 into evidence.)

6 Q The yellow liquid -- did you find anything else,
7 any other yellow liquids?

8 A There was. There was two bottles inside of -- down
9 next to -- on the floor next to the computer desk.
10 And there were glass bottles that had some type of
11 rubber gasket tops on them, and one of them
12 contained a yellow liquid.

13 Q I show you State's Exhibit 7.

14 A Yes, these are the two bottles that were lying on
15 the floor or sitting on the floor next to or in
16 front of the computer table.

17 MR. LUPTON: Your Honor, I ask that State's
18 Exhibit 7 be admitted as evidence.

19 THE BAILIFF: No objection, Your Honor.

20 THE COURT: Thank you. Admitted.

21 (WHEREUPON, State's Exhibit No. 7 was
22 marked for identification and received
23 into evidence.)

24 Q And the bottles, did you determine what they
25 contained?

1 A They contained some type of German sparkling
2 limonade.

3 Q And --

4 A One was traditional flavor and the other was an
5 orange flavor.

6 Q And did you determine what the purpose of those
7 bottles were, that liquid?

8 A Yes. Me being curious, I asked Mr. Lecroy what was
9 in the pipe, the yellow liquid. He indicated that
10 he put the limonade in there to give the smoke
11 flavor when he smoked.

12 Q Now, you also -- State's Exhibit 8 showed the pill
13 bottle. I'll show you State's Exhibit 9. Do you
14 recognize that?

15 A Yes, sir, that is the pill bottle that was found on
16 the computer table.

17 MR. LUPTON: Your Honor, ask that State's
18 Exhibit 9 be admitted into evidence.

19 MR. BAILEY: We are going to object to that,
20 Your Honor.

21 THE COURT: Okay.

22 MR. BAILEY: The chain of custody has not been
23 established with the physical evidence.

24 THE COURT: Okay.

25 MR. BAILEY: He can mark it as an exhibit

1 right now.

2 MR. LUPTON: That's fine. I'll show -- I'll
3 admit it through the chemist.

4 THE COURT: It can be admitted for ID only at
5 this point.

6 Q I show you State's Exhibit 10. Do you recognize
7 that?

8 A Yes, that is the scale from in front of the
9 computer desk.

10 MR. LUPTON: Your Honor, I would ask that
11 State's Exhibit 10 be admitted as evidence.

12 MR. BAILEY: I would object for the same
13 reasons, Your Honor.

14 MR. LUPTON: Your Honor, the scale is unique
15 and identified. It is not subject to chain.

16 THE COURT: Okay. And this is something that
17 this particular witness has observed?

18 MR. LUPTON: I'll further establish
19 foundation, Your Honor.

20 THE COURT: Thank you.

21 Q Is that scale marked in any way to make it unique?

22 A Yes, sir, there are unique markings on the scale
23 where there was some handwritten notes. I'm not
24 exactly sure what the writing is, but they are
25 exactly the same as they were the day it was

1 recovered out of the bedroom.

2 Q All right. And based on observing that set of
3 scales, can you say that that is the same set of
4 scales that you recovered from the bedroom that
5 day?

6 A Yes, sir.

7 MR. LUPTON: Your Honor, at this point I ask
8 that State's Exhibit 10 be admitted as evidence.

9 MR. BAILEY: I am still going to object to
10 this, Your Honor.

11 THE COURT: Okay. I will overrule. Go ahead.
12 (WHEREUPON, State's Exhibit No. 10 was
13 marked for identification and received
14 into evidence.)

15 Q And did you continue searching?

16 A Yes, sir, I did. On the upper portion of the shelf
17 above the computer monitor we located a paper towel
18 that contained a green plant-like material.

19 Q I'm show you what has been marked as State's
20 Exhibits 11. Do you recognize that?

21 A Yes, sir.

22 Q And is that the substance you are referring to?

23 A Yes, sir, it is.

24 MR. LUPTON: Your Honor, I ask that State's
25 Exhibit 11 be admitted into evidence.

1 MR. BAILEY: Objection, Your Honor.

2 THE COURT: Okay. Basis?

3 MR. BAILEY: Chain, Your Honor. Chain of
4 custody.

5 MR. LUPTON: Your Honor, this is just a
6 picture.

7 THE COURT: And he has observed that picture
8 as well?

9 MR. BAILEY: I'm sorry, we won't object to the
10 picture.

11 THE COURT: Okay. Thank you.

12 (WHEREUPON, State's Exhibit No. 11 was
13 marked for identification and received
14 into evidence.)

15 Q And did you recover the green plant-like material?

16 A Yes, sir, I did.

17 Q And based on your law enforcement training and
18 experience, did you have a belief as to what it
19 was?

20 A At that time, through my training and law
21 enforcement, drug enforcement experience, I
22 believed the substance to be marijuana.

23 Q And I'll show you what has been marked as State's
24 Exhibit 14. Do you recognize that?

25 A Yes, sir, that is the green plant-like material

ANTHONY BRANHAM -- DIRECT BY MR. LUPTON

157

1 that was recovered from atop the computer table.

2 Q And I believe the white item that is inside there?

3 A Yes, sir, is the wrapper that was wrapped around
4 the marijuana as shown in the picture.

5 Q As shown in the picture?

6 A Yes, sir.

7 MR. LUPTON: Your Honor, I ask that this be
8 marked -- this is marked as State's Exhibit 14 For
9 Identification. We'll go ahead and admit that
10 through the chemist after testing to establish --

11 THE COURT: Okay.

12 Q And did you continue searching?

13 A Yes, sir, right in front of the suspected marijuana
14 we found a pink metallic tin that had the words
15 "drama queen" on the front.

16 Q I show you what is marked State's Exhibit 12.

17 A Yes, sir, the "drama queen" breath mints.

18 MR. LUPTON: Your Honor, I ask that State's
19 Exhibit 12 be admitted as evidence.

20 THE COURT: Any objection?

21 MR. BAILEY: No objection to the picture.

22 (WHEREUPON, State's Exhibit No. 12 was
23 marked for identification and received
24 into evidence.)

25 Q Did you open up the tin to see what was inside?

1 A I did. I opened up the tin and found several
2 baggies that contained a white, almost crystalline
3 substance.

4 Q And I show you what is marked State's Exhibit 13
5 For Identification. Do you recognize that?

6 A Yes, sir, that is the contents as I found them
7 inside the breath mint tin.

8 MR. LUPTON: Your Honor, I ask that State's
9 Exhibit 13 be admitted as evidence.

10 THE BAILIFF: No objection to this picture,
11 Your Honor.

12 THE COURT: Thank you.

13 (WHEREUPON, State's Exhibit No. 13 was
14 marked for identification and received
15 into evidence.)

16 Q I'll show you what has been mark as State's Exhibit
17 15 For Identification. Do you recognize that?

18 A Yes, sir, those are consistent with the baggies
19 that were found inside the breath mint tin.

20 Q And can you identify these as the baggies you
21 recovered?

22 A Yes, sir, those are the same ones.

23 MR. LUPTON: Your Honor, at this point 15 is
24 marked for identification. We will admit that
25 through the chemist once the chain has been

1 established.

2 THE COURT: All right.

3 Q And did you continue searching after that?

4 A Yes, sir, I did. On the -- also on the top shelf
5 there was another, I believe it was an Altoids
6 breath mint tin that contained I believe several
7 baggies inside of it.

8 Q I'll show you what has been marked State's Exhibit
9 19.

10 A Yes, sir. That is the Altoid tin that contained
11 the empty baggies.

12 MR. LUPTON: Your Honor, I ask that State's 19
13 be admitted as evidence.

14 MR. BAILEY: No objection to this picture,
15 Your Honor.

16 THE COURT: Thank you.

17 (WHEREUPON, State's Exhibit No. 19 was
18 marked for identification and received
19 into evidence.)

20 Q And did you continue searching from there?

21 A We did. To the left -- I guess if you are seated
22 at the computer table, down on the left-hand side
23 there was a set of storage drawers. And from there
24 we recovered the baggies with several pills in it.

25 Q All right. Now I'll show you what has been marked

1 as State's Exhibit 23 For Identification.

2 A Yes, sir.

3 Q Do you recognize that?

4 A Yes, sir, that is the pills that were recovered
5 from the storage drawer that was to the left of the
6 computer desk.

7 MR. LUPTON: Your Honor, I ask that State's
8 Exhibit 23 be admitted as evidence.

9 THE BAILIFF: No objection to this picture,
10 Your Honor.

11 THE COURT: Okay.

12 (WHEREUPON, State's Exhibit No. 23 was
13 marked for identification and received
14 into evidence.)

15 Q I show you what is marked State's Exhibits 24
16 marked For Identification. Do you recognize those?

17 A Yes, sir, those are the pills that we found.

18 MR. LUPTON: Your Honor, at this time, having
19 identified those marked for identification, we will
20 admit them after chain and chemist.

21 THE COURT: Okay.

22 Q Based on your law enforcement training and
23 experience, those pills, did you have belief as to
24 what those pills were?

25 A One of the pills that stuck out to me was a --

1 MR. BAILEY: Objection, Your Honor.

2 THE COURT: Okay. Basis?

3 MR. BAILEY: This is speculation at this
4 point, Your Honor.

5 MR. LUPTON: Your Honor, I believe he is
6 entitled to testify what he believed it to be based
7 on his law enforcement training and experience.
8 Obviously we will have the chemist identify them
9 for certain, but I think he's entitled to say what
10 his training and experience tells him.

11 MR. BAILEY: If Mr. Lupton wants to present a
12 chemist to identify them, that is what he should
13 do. To make a chemical determination by sight we
14 say is complete speculation. Your Honor, we ask
15 that speculation not be allowed.

16 MR. LUPTON: Your Honor, the State does not
17 offer it as proof of what the substance is, but
18 what he believed them to be.

19 THE COURT: Okay.

20 MR. LUPTON: Based on his training.

21 THE COURT: Objection is sustained.

22 Q Based on your law enforcement training and
23 experience, did you have reason to believe that
24 finding those pills provided probable cause to
25 believe that a controlled substance violation had

1 occurred?

2 A I did.

3 MR. BAILEY: Objection, Your Honor. This is
4 the exact same thing. Same grounds.

5 THE COURT: You all approach the bench,
6 please.

7 (WHEREUPON, a bench conference was held
8 in the presence of the jury but out of
9 the hearing of the jury.)

10 THE COURT: Objection sustained.

11 Q Officer, after observing the pills, what conclusion
12 did you form based upon your law enforcement
13 training and experience?

14 A That I needed to check further to find out what the
15 pills were and determine what they are classified
16 as, what they were, and identify them.

17 Q And as to whether or not you had probable cause to
18 make an arrest at that point, did you form an
19 opinion?

20 A Yes, sir, I did.

21 Q And what was that opinion?

22 A That they were a controlled substance.

23 MR. BAILEY: Objection, Your Honor. Same
24 ground. We ask that be stricken from the record.

25 THE COURT: I would agree.

1 Q Without saying what you believe them to be, did you
2 form an opinion as to whether or not you had
3 probable cause to make an arrest?

4 A Yes, sir, I did.

5 Q Now, did you continue searching?

6 A Yes, sir, I did.

7 Q And please continue.

8 A Looking back over, found several pipes there on the
9 desk area, computer desk area.

10 Q I show you what has been marked State's Exhibit 16
11 For Identification. Do you recognize that?

12 A Yes, sir, those are the pipes that were located
13 next to the computer keyboard.

14 MR. LUPTON: Your Honor, I ask that that be
15 marked -- admitted as State's Exhibit 16.

16 MR. BAILEY: No objection, Your Honor.

17 THE COURT: Okay. Thank you.

18 (WHEREUPON, State's Exhibit No. 16 was
19 marked for identification and received
20 into evidence.)

21 Q And what are those -- based on your law enforcement
22 training and experience, what are those used for?
23 What are those indicative of?

24 A Drug usage.

25 Q And did you continue searching the desk area?

1 A I did.

2 Q And what else did you find, if anything?

3 A I remember finding a hand-rolled cigarette, but I
4 can't see it in the picture.

5 Q All right. And I'll show you what has been marked
6 as State's Exhibit 17. Do you recognize that?

7 A Yes, sir. Yes, okay.

8 Q Is that what you are referring to?

9 A That is -- that is the hand-rolled cigarette that
10 was right in front of the computer keyboard that
11 was covered up by a piece of paper.

12 MR. LUPTON: And I'd ask that State's Exhibit
13 17 be admitted as evidence.

14 THE BAILIFF: No objection, Your Honor.

15 THE COURT: Thank you.

16 (WHEREUPON, State's Exhibit No. 17 was
17 marked for identification and received
18 into evidence.)

19 Q Now, based on your law enforcement training and
20 experience -- well, first of all, did you -- where
21 was it on the desk?

22 A It was in front of the keyboard, or actually to the
23 left of the keyboard covered by a piece of paper
24 next to a pack of Marlboro cigarettes.

25 Q And this object in the bottom right-hand corner,

1 can you explain what that is?

2 A That is my hands.

3 Q And the white object?

4 A That is the piece of paper that was covering the --
5 partially covering the pack of cigarettes and
6 covering the marijuana cigarette.

7 Q And did that appear to be a Marlboro to you?

8 A No, sir, it did not.

9 Q Based on your law enforcement training and
10 experience, what did it appear to be?

11 A Well, actually I picked it up and smelled it, and
12 it smelled like marijuana, burnt marijuana.

13 Q And as you continued searching, did you find
14 anything else?

15 A There was I believe another scale that was located
16 to the rear of the computer area.

17 Q Did you find any more baggies?

18 A I remember finding baggies from a desk area, but I
19 can't remember where they were, looking at the
20 picture.

21 Q All right. Do you recall finding more baggies?

22 A Yes, sir, I do.

23 Q I'll show you State's Exhibit 25 For Identification
24 and see if you can identify that.

25 A Okay, yes, sir, that is the baggies that were --

1 another set of baggies that were found inside the
2 bedroom area.

3 MR. LUPTON: Your Honor, I ask that State's
4 Exhibit 25 be admitted as evidence.

5 MR. BAILEY: No objection, Your Honor.

6 THE COURT: Thank you.

7 (WHEREUPON, State's Exhibit No. 25 was
8 marked for identification and received
9 into evidence.)

10 Q And I'll show you what has been marked State's
11 Exhibit 26 For Identification. Do you recognize
12 those?

13 A Yes, sir, those are baggies and assorted other bags
14 that we found on the computer desk in the bedroom
15 area.

16 MR. LUPTON: Your Honor, I ask that State's
17 Exhibits 26 be admitted as evidence.

18 THE BAILIFF: No objection.

19 THE COURT: Thank you.

20 (WHEREUPON, State's Exhibit No. 26 was
21 marked for identification and received
22 into evidence.)

23 Q And as you searched off of the computer desk, did
24 you find anything by the computer desk or anywhere
25 else in the room?

ANTHONY BRANHAM -- DIRECT BY MR. LUPTON

167

1 A There was an item off to the side of the computer
2 desk that I recall that contained a white chalky
3 substance, but I can't remember if it was a scale
4 or a mirror.

5 Q All right. I will show you what has been marked as
6 State's Exhibit 20 For Identification. Do you
7 recognize that?

8 A Yes, sir. That is the mirror that was found
9 containing the chalky substance.

10 MR. LUPTON: And, Your Honor, at this point I
11 would ask that this be admitted as State's Exhibits
12 20.

13 MR. BAILEY: No objection.

14 THE COURT: Okay.

15 (WHEREUPON, State's Exhibit No. 20 was
16 marked for identification and received
17 into evidence.)

18 Q And what does that mirror with the powder substance
19 indicate to you based on your law enforcement
20 training and experience?

21 A Several things. It could be used to prepare drugs,
22 it could be used -- or to prepare them to be
23 packaged.

24 Q So fair to say either way it is an indicator of
25 drug usage or drug activity of some sort?

1 A The mirror alone would not be, but with the marks
2 on the mirror along with the chalky residue, it
3 does.

4 Q And did you find anything else?

5 A Down the left side of the computer desk there was a
6 wooden cigar container where there was some other
7 paraphernalia located.

8 Q I'll show you what has been marked State's Exhibits
9 21. Do you recognize that?

10 A Yes, sir, that is the Macanudo cigar container.

11 Q I show you what has been marked State's Exhibit 22.

12 A Yes, sir, that is the inside view of the cigar box.

13 MR. LUPTON: Your Honor, at this point I ask
14 that State's Exhibit 21 and 22 be admitted as
15 evidence.

16 MR. BAILEY: No objection, Your Honor.

17 THE COURT: Thank you.

18 (WHEREUPON, State's Exhibit No. 21 was
19 marked for identification and received
20 into evidence.)

21 (WHEREUPON, State's Exhibit No. 22 was
22 marked for identification and received
23 into evidence.)

24 Q Now, was all of this -- where was all of this
25 found?

ANTHONY BRANHAM -- DIRECT BY MR. LUPTON

169

1 A In Mr. Steven Lecroy's bedroom.

2 Q Now, based on all of this, did -- was any
3 additional investigation done by any other
4 officers? We'll let them talk about that.

5 A Yes, sir.

6 Q Did you make a determination as to whether or not
7 you had probable cause to make any arrest?

8 A Yes, sir, I did.

9 Q And what was that determination?

10 A Based upon the total weight of all the
11 methamphetamine or suspected methamphetamine
12 located in the house -- you want the charges,
13 correct?

14 Q Yes.

15 A Given that it was in excess of 10 grams but less
16 than 28 grams, we were charging him with
17 trafficking methamphetamine; the suspected pills of
18 being controlled substance, charging him with
19 possession of controlled substance; and also with
20 the possession of the suspected marijuana.

21 Q Now, it is normally the practice that when you make
22 a determination such as that during a search
23 warrant that you would normally transport a suspect
24 to jail?

25 A Yes, sir.

1 Q And did you do that in this case?

2 A No, sir, I did not.

3 Q Why is that?

4 A Due to Mr. Lecroy's condition at the time, he was
5 still complaining of, you know -- once he got out
6 of his comfortable position, he indicated that his
7 back was still hurting and spasming. He tried to
8 get up, put clothes on so we could transport him to
9 jail. He immediately went into some type of back
10 spasm, and I know from experience that our jail
11 will not take him in that condition. So I talked
12 to him, asked him if he would go see his doctor and
13 get himself squared away and turn himself in later
14 on, and he agreed to do that.

15 Q Now, you said after he had gotten up from this
16 comfortable position?

17 A Right.

18 Q Can you explain what you mean by that?

19 A When we brought him into the living room and put
20 the handcuffs around front, he was able to lay over
21 on his left side on the couch in the living room
22 area and get his back into a position where he said
23 he was comfortable and felt no pain.

24 And then after we finished all the paperwork
25 and were advising him we probably needed to go

1 ahead and get him dressed and take him to jail, he
2 stood up and he started spasming again and
3 screaming saying that his back was hurting him.

4 And there was no use taking him down to the
5 jail because they were going to reject him at the
6 door.

7 Q So just to be clear, it was after he got up?

8 A Yes. He got up. He was up for a minute or so, and
9 we brought him some clothes to put on so he could
10 be a little bit warmer down at the jail.

11 And as he started to put his clothes on, that
12 is when he went into yelling and saying that his
13 back was hurting.

14 Q I apologize, I was just making sure I had all the
15 exhibits in.

16 So you did not take him to jail immediately
17 but let him turn himself in later?

18 A Yes, sir.

19 Q And did he do that?

20 A He did. I went by the house a few days later and
21 picked him up.

22 Q And what county did all this occur in?

23 A Here in Richland County.

24 Q And when I referred to additional investigation,
25 without going into what anybody else told you, did

1 that include another officer having to take a
2 statement from the Defendant?

3 A Yes, sir, it did.

4 Q And were you familiar with the contents of that
5 statement at the time you made the charges?

6 A Yes, sir, I was.

7 MR. LUPTON: Nothing further, Your Honor.

8 MR. BAILEY: Thank you, Your Honor. May it
9 please the Court?

10 CROSS-EXAMINATION

11 BY MR. BAILEY:

12 Q Investigator Branham, you arrived at the Lecroy
13 house about 9:30 in the morning, right?

14 A That's correct.

15 Q 9:30. And there was a forced entry?

16 A Yes, sir.

17 Q You and three other officers?

18 A There were --

19 Q Multiple officers?

20 A It was probably more like six.

21 Q Okay. So there is a forced entry?

22 A Yes, sir.

23 Q Six officers?

24 A (Nods affirmatively.)

25 Q And y'all rammed open the door?

- 1 A Right.
- 2 Q There was shouting?
- 3 A Right.
- 4 Q A lot of shouting, a lot going on. So you
5 approached Mr. Lecroy's bedroom?
- 6 A I didn't personally at first, no, sir.
- 7 Q Okay. Well, y'all went into Lecroy's bedroom?
- 8 A Right.
- 9 Q Mr. Lecroy was in bed?
- 10 A Right.
- 11 Q His clothes were barely hanging on?
- 12 A Right.
- 13 Q Sheets are thrown all over the place?
- 14 A (Nods affirmatively.)
- 15 Q Okay. The room is in disarray?
- 16 A Like he had slept pretty rough.
- 17 Q The room is in disarray, right, and he has a dog
18 collar on his neck?
- 19 A Right.
- 20 Q A leash attached to the dog collar?
- 21 A Right.
- 22 Q Kind of unusual?
- 23 A Right.
- 24 Q You say that with these other officers in there
25 there was spitting?

- 1 A Right.
- 2 Q There was kicking?
- 3 A Right.
- 4 Q You say Mr. Lecroy was out of control?
- 5 A I would say that he was angry.
- 6 Q Okay. A lot of screaming?
- 7 A Right.
- 8 Q So he seemed out of control?
- 9 A (Nods affirmatively.)
- 10 Q Y'all had to use the taser?
- 11 A Right.
- 12 Q You drive stun him?
- 13 A Right.
- 14 Q I think you said earlier in the back?
- 15 A In the back, yes, sir.
- 16 Q Tased him three times?
- 17 A Three times.
- 18 Q Now, you were talking about being tased earlier.
- 19 You've been tased before?
- 20 A Yes, sir, I have.
- 21 Q And, I mean, it hurts?
- 22 A It is not pleasant, but luckily once it cuts off,
- 23 that is it, you don't feel anything else.
- 24 Q But it hurts when you get tased?
- 25 A Right. It does.

ANTHONY BRANHAM -- CROSS BY MR. BAILEY

175

1 Q And I think you had talked about touching bare wire
2 earlier?

3 A Right.

4 Q When you touch bare wire, I'm assuming you were not
5 being held down at the time?

6 A No, sir.

7 Q Now, when Mr. Lecroy was tased you were able to
8 determine there is nothing -- there was nothing in
9 his hands?

10 A After we -- he relinquished them to be handcuffed,
11 right.

12 Q There was nothing in his hands?

13 A Right.

14 Q Y'all did call EMS?

15 A Yes.

16 Q About Mr. Lecroy?

17 A (Nods affirmatively.)

18 Q I want to talk about the statement you mentioned
19 earlier. Investigator -- I believe Investigator
20 Poole took a statement?

21 A Yes, sir.

22 Q From Mr. Lecroy. What were you doing while
23 Mr. Poole was taking the statement?

24 A I was in between giving evidence to the officer
25 that was logging in the items in Mr. Lecroy's

1 bedroom.

2 And during that time, Sergeant -- or
3 Investigator Poole would ask me, you know, if I
4 want to ask him this or ask him that. And we would
5 confer, and I was kind of in and out of the room.

6 Q Okay. But you were in the room at the time or for
7 part of the time?

8 A Yes.

9 Q And you were wearing your gun?

10 A Oh, always, yes.

11 Q And I assume Investigator Poole was probably
12 wearing his gun too?

13 A Yes, sir.

14 Q And this was about less than 30 minutes after
15 Mr. Lecroy was tased?

16 A It was probably 30 -- it was probably after -- it
17 took awhile for EMS to check him out and I sat
18 there and watched him for awhile, so it was
19 probably well -- well over 30 minutes.

20 Q Well over 30 minutes?

21 A Well over 30 minutes.

22 Q It wasn't 10:00 o'clock?

23 A It was probably -- I don't remember exactly what
24 time Sergeant Poole started taking the statements,
25 but it was probably about 10:00 o'clock, yes, sir.

ANTHONY BRANHAM -- REDIRECT BY MR. LUPTON

177

1 Q And you said later when he was turned in -- or
2 because of his back situation --

3 A Right.

4 Q -- you allowed him to turn himself in later?

5 A Yes, sir.

6 Q Getting back to what else was going in the house,
7 you said that when you entered everyone was
8 detained, is that correct?

9 A Right. Well, mom, we initially had her handcuffed
10 in the front, but then we took the handcuffs off.

11 Q But she was initially detained?

12 A Right.

13 Q She was initially handcuffed?

14 A Right.

15 Q And on your report, Elfrieda Lecroy --

16 A Right.

17 Q -- Mr. Lecroy's mom, is mentioned as Subject Number
18 2?

19 A Right. We are required to put everyone that is
20 inside of the house or car, if we stop a car, into
21 our report so they can be identified.

22 Q She is marked as Subject Number 2?

23 A Right.

24 MR. BAILEY: No further questions.

25 REDIRECT EXAMINATION

1 BY MR. LUPTON:

2 Q The -- the mother, at the time the statement was
3 taken, was she being treated as a suspect or
4 potential Defendant?

5 A No, sir, we were just actually trying to calm her
6 down. She was -- she was upset about the
7 situation. And we were talking to her. She was
8 from Germany and she was giving us a pretty good
9 history lesson, but she was not being treated as a
10 suspect, no.

11 Q So y'all were talking to her, but she wasn't in
12 handcuffs?

13 A No.

14 Q Where was she?

15 A She was in the kitchen area. She was -- she was a
16 chain smoker and we were just trying to keep her
17 away from the rest of us because none of us like
18 smoking. But it is her house.

19 MR. LUPTON: Nothing further, Your Honor.

20 MR. BAILEY: Just brief recross, Your Honor.

21 RECROSS-EXAMINATION

22 BY MR. BAILEY:

23 Q Investigator Branham, you did say that Elfrieda
24 Lecroy was handcuffed initially, right?

25 A She was.

1 Q She was handcuffed? She was detained?

2 A Just for a brief -- probably two minutes maybe.

3 Q She was handcuffed?

4 A Right. She was.

5 Q All right.

6 MR. BAILEY: Thank you, Your Honor. No
7 further questions.

8 MR. LUPTON: Your Honor, the State would
9 call --

10 THE COURT: You can step down.

11 THE WITNESS: Thank you.

12 (Witness steps down.)

13 MR. LUPTON: Your Honor, the State would call
14 Investigator John Lutz.

15 THE COURT: Let's take a short recess. One
16 moment. Ms. Garfield, are you ready?

17 MS. GARFIELD: Yes, ma'am.

18 THE COURT: We are going to take a brief
19 recess. I am going to ask you and remind you not
20 to discuss the case in any shape, form or fashion,
21 but I am going to give you an assignment as well.
22 I want you to get together and select a foreperson.
23 This person will be in charge of just guiding you
24 with your deliberations. He has no greater vote
25 than any of you when you actually deliberate.

1 You'll need to give it to the bailiff with the
2 person's name and juror number on there. We'll be
3 back with you shortly.

4 One thing, though, is that the foreperson
5 cannot be the alternate person because the
6 alternate is not part of the jury panel that would
7 actually deliberate at this time unless one of you
8 got ill or sick or couldn't be here for some reason
9 and the Court excused you, so it just cannot be
10 alternate.

11 Thank you. We will be with y'all shortly.

12 (WHEREUPON, the jury retires to the jury
13 room at 10:51 a.m.)

14 (Break.)

15 MR. COOPER: Your Honor, before the jury comes
16 back, it came to my attention right before we broke
17 that apparently one of the jurors is taking pretty
18 copious notes.

19 THE COURT: I'm going to address that because
20 they quite frankly sent a note back to me asking
21 could they take notes, and I am going to tell them
22 none of them can take notes.

23 MR. COOPER: Well, at this point, because
24 he -- because this one juror has been taking such
25 notes and the other jurors didn't have an

1 opportunity to or perhaps didn't know or didn't do
2 it, I mean, we would request that he be excused and
3 the alternate come on.

4 I mean, at this point he's got in
5 deliberations, I think even if they stop now, his
6 influence might be greater than the other jurors.

7 THE COURT: Well, the alternative is take the
8 notes from him.

9 MR. COOPER: Yes, ma'am. Yes, ma'am. But the
10 fact that he is taking notes up to now, I think
11 there is a chance or even a chance of the
12 appearance that he might wield greater influence in
13 the jury room. And I think -- we think that an
14 easy solution to that is to put the alternate on.

15 THE COURT: Okay. And I generally in my
16 instructions -- and I haven't ruled, Mr. Lupton --
17 my instructions generally are to let them know one
18 way or the other, but I just didn't think they
19 would here, but apparently that didn't occur, so --

20 MR. LUPTON: Your Honor, I don't think that
21 removing him from the jury just for taking his job
22 seriously enough to want to take notes is warranted
23 at this stage.

24 What I would ask is that the Court reserve,
25 take the notes, tell everybody not to take notes,

1 and reserve the decision as to whether or not to
2 remove him until the conclusion of the case. If
3 something happened and we lost a different juror,
4 then we could be in a position where we had to make
5 that decision. If at the close of the case it
6 appears that there is no problems with anybody and
7 they want to renew that, I doubt I would object
8 just to avoid appellate issue, but I would rather
9 not put us in a bind unnecessarily when we can make
10 that decision at the end of the case.

11 We should not be too much longer and certainly
12 if we don't have any other problems with any other
13 jury members, I'm not going to oppose swapping out
14 the alternate, I don't have any preference between
15 either of the 13, but I just don't want to be in a
16 bind later because of a decision made unnecessarily
17 at this stage.

18 MR. COOPER: Well, as long as it is clear,
19 Judge, we are moving at this point to remove that
20 juror.

21 THE COURT: Okay. But right now all they can
22 do is listen, so it is not as if --

23 MR. COOPER: Right. I just want to make it
24 clear on the record that at this point we are
25 making that motion.

1 THE COURT: Okay, that's fine. And I will
2 take up Mr. Lupton's suggestion for now, just
3 because we would only be left with one alternate.

4 MR. BAILEY: And that sounds fair, Your Honor.
5 We would ask, though, that while he remains if the
6 Court would take his notes.

7 THE COURT: I am.

8 MR. BAILEY: Okay.

9 THE COURT: Yes. No doubt. Bring them in.

10 MR. LUPTON: Thank you, Your Honor.

11 MR. COOPER: Thank you, Your Honor.

12 (WHEREUPON, Court's Exhibit No. 12 was
13 marked for identification only.)

14 (WHEREUPON, the jury came into open
15 court at approximately 11:15 a.m.)

16 THE BAILIFF: The jury is all present.

17 THE COURT: Ladies and gentlemen of the jury,
18 I did receive a note from you all with a note
19 stating: Can we take notes? If so, please provide
20 pencil and paper.

21 Generally speaking, there is nothing wrong
22 with jurors taking notes one way or the other, but
23 on a short case I tend to not have you take notes
24 because I feel like the case is not going to be
25 that extensive in terms of your attention span.

1 I have been informed that one of the jurors
2 was taking notes. I'm going to have to ask that
3 juror to hand the notes over because I need all
4 jurors to take notes or none of the jurors to take
5 notes.

6 You have done nothing wrong, sir, and I
7 appreciate you taking your responsibility very
8 serious, but I'm going to require that since we
9 didn't start out with notes with everybody at the
10 beginning of the trial then no one will take notes.

11 But I have a learning experience now that
12 maybe on the shorter trials I will allow the jurors
13 just to take the notes at the onset.

14 We'll continue on with the case. And I thank
15 Mr. Joe Heilig, Juror Number 120, for serving as
16 the chairperson, then. Thank you. Foreperson.

17 Is the State ready to proceed?

18 MR. LUPTON: The State is ready, Your Honor.

19 THE COURT: Okay.

20 MR. LUPTON: Your Honor, the State calls
21 Investigator John Lutz to the stand.

22 THE BAILIFF: Place your left hand on the
23 Bible, raise your right hand, and face the clerk.

24 (Witness complies.)

25 THE CLERK: Do you swear or affirm the

JOHN LUTZ -- DIRECT BY MR. LUPTON

185

1 testimony you shall give in this case will be the
2 truth, the whole truth, and nothing but the truth,
3 so help you God?

4 THE WITNESS: Yes, ma'am.

5 THE CLERK: Thank you. Please be seated on
6 the witness stand, and state your full name for the
7 record.

8 JOHN LUTZ,
9 after being duly sworn, testified as follows:

10 DIRECT EXAMINATION

11 BY MR. LUPTON:

12 Q State your name for the record.

13 A John Lutz.

14 Q Investigator Lutz, can you please tell the jury
15 where it is you work, in what capacity?

16 A I'm with the Richland County Sheriff's Department.
17 I'm assigned to the narcotics division. And I have
18 been there for just over 13 years.

19 Q Could you tell them about your law enforcement
20 training and experience briefly, please?

21 A Yes. I had eight years of Military Police
22 experience, United States Army. And then I have
23 been with the Sheriff's Department since 1995. I
24 have been to the Criminal Justice Academy in
25 numerous narcotic-related schools during my

1 employment.

2 Q And were you employed as a narcotics officer in
3 January of 2007?

4 A Yes, I was.

5 Q And in the course of your employment, did you have
6 occasion to go on a search warrant with
7 Investigator Branham on January 25th, 2007?

8 A Yes, I did.

9 Q And could you tell the jury about that, please.

10 A Prior to the actual search warrant, we met at the
11 Sheriff's Department. Agent Branham gave us a
12 briefing, told us where we were going, the address,
13 and gave an assignment to each person.

14 Q And when you entered the residence what did you do?

15 A Went through the residence clearing several rooms,
16 and then ended up in the back left bedroom.

17 Q What was the appearance of the house?

18 A The whole house pretty much was pretty well kept
19 with the exception of one room.

20 Q And which room was that?

21 A That is the room where we found the Defendant.

22 Q And what was -- at the time you entered that
23 bedroom, what was going on?

24 A Other agents were trying to get Mr. Lecroy
25 detained, and he was struggling and resisting with

JOHN LUTZ -- DIRECT BY MR. LUPTON

187

1 them.

2 Q And did you observe him being tased?

3 A Yes, I did.

4 Q Do you recall how many times?

5 A I don't recall how many times. Maybe two.

6 Q And after that did he stop resisting?

7 A Eventually we were able to get him in handcuffs,
8 detain him, and the struggle was over.

9 Q And did you do anything with the Defendant at that
10 point?

11 A Yes. Once we got him secure, I escorted him to the
12 living room, and his back was causing him pain, so
13 I had him lay on the couch.

14 Q And did you conduct a search of the Defendant at
15 any point during all that?

16 A Yes. Once we got him to the living room, I had
17 asked one of the other agents to handcuff him.
18 They did a search. They said he had not. And I
19 searched him. He had pajama pants on.

20 Q And I will show you what has been marked as State's
21 Exhibit 1 and 2 and ask if you recognize those.

22 A Yes, I do.

23 Q All right. When you searched the Defendant did you
24 find anything?

25 A Yes, I did.

1 Q And what did you find?

2 A In his front left pocket I found a plastic ziplock
3 bag that had a white crystal-like substance in it.

4 Q And what did you find -- what else did you find?

5 A In his front right pocket I found a red in color
6 straw, it had like a little part on the end that
7 looked like a scooper.

8 Q I show you what has been marked State's Exhibit 1.

9 A These are items that I recovered from Mr. Lecroy.

10 Q I show you State's Exhibit 2.

11 A That is just another picture of one of the items,
12 the actual crystal substance, and the ziplock bag.

13 MR. LUPTON: Your Honor, at this point I ask
14 that State's Exhibit 1 and 2 be admitted into
15 evidence.

16 MR. BAILEY: No objection, Your Honor.

17 THE COURT: Thank you.

18 (WHEREUPON, State's Exhibit No. 1 was
19 marked for identification and received
20 into evidence.)

21 (WHEREUPON, State's Exhibit No. 2 was
22 marked for identification and received
23 into evidence.)

24 Q I show you State's Exhibits 3 and State's Exhibit 4
25 and ask if you recognize those.

JOHN LUTZ -- DIRECT BY MR. LUPTON

189

1 A Yes, I do. These are the items that I just
2 mentioned.

3 Q And those are the items you recovered from his
4 pockets?

5 A Yes, sir.

6 Q And could you explain what Exhibit 3 appears to be?

7 A A ziplock bag with white crystal-like substance
8 inside.

9 Q And based on your law enforcement training and
10 experience did you form any opinions as to what
11 that was?

12 A Immediately I recognized this to be
13 methamphetamine.

14 MR. BAILEY: Objection, Your Honor.

15 THE COURT: Okay.

16 Q Did you form an opinion as to whether or not you
17 had probable cause after finding this?

18 A Yes.

19 MR. LUPTON: Your Honor, at this point State's
20 Exhibit 3 is marked For Identification and subject
21 to chain and chemist.

22 THE COURT: Certainly.

23 Q State's Exhibit 4, can you identify what that is?

24 A That is the red color straw-like thing. It has got
25 a little scoop on this side of it.

1 MR. LUPTON: Your Honor, I ask that State's
2 Exhibit 4 be admitted into evidence.

3 THE COURT: Any objection?

4 THE BAILIFF: No objection, Your Honor.

5 THE COURT: Thank you.

6 (WHEREUPON, State's Exhibit No. 4 was
7 marked for identification and received
8 into evidence.)

9 Q Now, with regards to what you found, who did you
10 give it to?

11 A I placed it in a bag and gave it to Agent
12 Robertson.

13 Q Did you seal it?

14 A I did not seal it because it had not been field
15 tested at that point.

16 Q Do you know who field tested it?

17 A One of the other agents, either Branham or Andy
18 Farmer.

19 Q And at that point had it been tampered with?

20 A No, it had not.

21 MR. LUPTON: Nothing further from this
22 witness, Your Honor.

23 THE COURT: You may proceed.

24 MR. BAILEY: Thank you, Your Honor. Court's
25 indulgence.

JOHN LUTZ -- CROSS BY MR. BAILEY

191

1 (Pause.)

2 MR. BAILEY: Thank you, Your Honor. May it
3 please the Court?

4 THE COURT: Okay.

5 CROSS-EXAMINATION

6 BY MR. BAILEY:

7 Q Investigator Lutz, Mr. Lecroy was tased three
8 times, is that right?

9 A If you say so. I only remember about two.

10 Q Okay.

11 A There was a lot of yelling going on. We were
12 yelling verbal commands at him to stop resisting.

13 Q You don't know how many times he was tased?

14 A I didn't tase him myself, no.

15 Q So you're not sure.

16 MR. BAILEY: Thank you, Your Honor. No
17 further questions.

18 THE COURT: Okay. Anything?

19 MR. LUPTON: Your Honor, I ask that this
20 witness be excused.

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

22 (Witness steps down.)

23 MR. LUPTON: Your Honor, the State calls
24 Investigator Damon Robertson.

25 (Witness enters courtroom.)

1 THE BAILIFF: Place your left hand on the
2 Bible, raise your right hand, and face the clerk.

3 (Witness complies.)

4 THE CLERK: Do you swear or affirm the
5 testimony you shall give in this case will be the
6 truth, the whole truth, and nothing but the truth,
7 so help you God?

8 THE WITNESS: I do.

9 THE CLERK: Thank you. Please be seated on
10 the witness stand, and please state your full name
11 for the record.

12 THE WITNESS: Investigator Damon Robertson.

13 DAMON ROBERTSON,
14 after being duly sworn, testified as follows:

15 DIRECT EXAMINATION

16 BY MR. LUPTON:

17 Q And could you please tell the jury where it is you
18 work and in what capacity?

19 A I work with Richland County Sheriff's Department.
20 I am currently assigned to the narcotics division.

21 Q And could you tell the jury about your law
22 enforcement training and experience, please.

23 A I began in '94 and basically worked my way up
24 through the ranks. I've had 14 years -- about 14
25 years' worth of experience and taken numerous

DAMON ROBERTSON -- DIRECT BY MR. LUPTON

193

1 classes and things related to drugs and other
2 investigations, but I became an investigator
3 probably in, I think it was in 2000.

4 Q And how long have you been in narcotics?

5 A At least four years. I think it has been five, but
6 I think it might be four.

7 Q And were you working in narcotics on January 25th,
8 2007?

9 A Yes.

10 Q And did you have an occasion to go on a search
11 warrant with Investigator Branham on that day?

12 A Yes.

13 Q And in the process of that, what was your duties?

14 A At that particular time I was the -- referred to it
15 as the tool man, which I was the man holding the
16 door ram to open up the front door, and I made
17 entry. And once we got there and secured
18 everything, I actually was the person that took an
19 inventory.

20 Whenever we do a warrant, anything that we
21 remove from the residence I write down on a piece
22 of paper and I basically give that to the person so
23 they know what we removed from the residence.

24 Q And would that be what is called a scribe?

25 A Yes.

1 Q And in the capacity as a scribe, were you inside
2 the residence?

3 A Yes. I was at the, I guess it would be the dining
4 room table.

5 Q All right. Can you tell the jury briefly what
6 occurred once you entered the residence?

7 A We made entry. We went down the hallway, it was
8 the last bedroom on the left, and encountered
9 Mr. Lecroy in his bedroom.

10 Q And what -- where was he in the room?

11 A He was laying on -- on top of the bed.

12 Q And did you attempt to detain him at that point?

13 A Yes. He was -- we believed he was sleeping, and he
14 was not doing anything. We were telling him to
15 stand up so we could handcuff him, and he wouldn't
16 let us do any of that. And he began screaming
17 horrendously. And, you know, I wasn't aware that
18 he had some type of problem, but I thought he was
19 being really uncooperative with us, but even after
20 we got him -- well, I don't even think we had one
21 handcuff on him, he started trying to bite, I think
22 it was John Lutz that he was trying to bite. He
23 was trying to bite somebody in the room, and he was
24 like really, you know, acting crazy.

25 Q Was he fighting back?

DAMON ROBERTSON -- DIRECT BY MR. LUPTON

195

1 A Yes.

2 Q And did he do anything else? You described biting.

3 A Yes. We basically just got him down on the floor
4 and were trying to get his arms behind his back.
5 And at that point I believe it was Anthony, Anthony
6 Branham, that came in and -- we have a taser gun
7 that we use for pain compliance where you press it
8 onto a person where it gives you like a second of
9 shock where it is enough to make someone want to --
10 when you are giving a verbal command, they are
11 going to definitely do what you want to do.

12 Q And getting back to the resisting, was he doing
13 anything other than the biting?

14 A As far as like him struggling with us with the --
15 trying to get handcuffs on him?

16 Q Right. Describe that.

17 A Yes. Basically as we were trying to handcuff him,
18 we were having to fight him to get his arms behind
19 his back and --

20 Q Where was he trying to put them?

21 A He was trying to get up. When we got him on the
22 floor he was trying to get up.

23 Q Where were his hands in relation to his body?

24 A Not behind his back. They were like -- I think one
25 was one way and one was the other. It was kind of

1 like a mild wrestling match, if you would.

2 Q And did he do anything to you?

3 A I -- he did not bite me, but, I mean, he came close
4 to biting me. But I think John Lutz was the one he
5 got closer to actually making the contact with.

6 Q And you talked about he was tased.

7 A Yes.

8 Q And did he ultimately stop resisting at that point?

9 A Yes.

10 Q And at some point after that did -- what did you do
11 between there and being at the dining room table,
12 if anything?

13 A After we got him in handcuffs, we always call an
14 ambulance to come check the person out for their
15 vitals, and everything like that, and he had to get
16 in a position, I guess he had --

17 Q Hold on. When you say you always call an
18 ambulance --

19 A It is a policy.

20 Q After -- as relates to what?

21 A Any time we use our taser gun --

22 Q Okay.

23 A -- we have to use -- we have to call an ambulance
24 to have them checked out for their vitals.

25 Q All right. So after the -- because of the taser is

DAMON ROBERTSON -- DIRECT BY MR. LUPTON

197

1 why?

2 A Yes, sir.

3 Q So what did you do?

4 A At that point I began getting my paperwork together
5 where I could -- and I was talking with his mother
6 that was present and explaining her to the
7 warrants, it was her home. And basically
8 Mr. Lecroy was -- had -- he explained to us that he
9 had some kind of a sciatic nerve problem, and he
10 said the pain was somewhere in his back, I don't
11 know exactly where, but he had to get in some
12 position on the couch to where he finally got
13 calmed down and was -- I guess he was in a position
14 where he was okay and he quit screaming and, you
15 know, screaming out like he was in pain.

16 Q And at that point did you observe him?

17 A Yes.

18 Q And did he appear to be comfortable?

19 A Yes. After -- it was only -- it only took about
20 probably, you know, ten minutes after everything
21 kind of settled down, he did settle down and, you
22 know, basically just lay there on the couch.

23 Q And was that prior to his statements being taken?

24 A Yes.

25 Q Now, you talked about setting up at the dining room

1 table and your duties as scribe. I would like to
2 go into a little more detail on that. Can you
3 please explain what the scribe does, precisely?

4 A Basically I would sit at the table and I do an
5 inventory of all the items that are seized from the
6 residence. And when any officer that is searching
7 within the home finds something, they bring it in a
8 sealed bag to me, and then I put where it was found
9 on the warrant and then what it is.

10 And then basically I take all these items
11 when -- collectively after they are done, I give
12 the person that is either arrested or the homeowner
13 a copy of the whole warrant to include whatever I
14 have written down, and I take all this evidence
15 back to our headquarters to put in a secure locker
16 or turn it over to the evidence technicians.

17 Q All right. And in the process of collecting all
18 this evidence, are you the one -- let me rephrase
19 that. Is anything done with the evidence to
20 prevent tampering prior to you receiving it?

21 A Yes. The bags that I was basically describing are
22 tamperproof bags to where -- they are plastic, but
23 if you pull the seal open, you would see that it
24 was tampered with.

25 Q And I show you -- is this the bag -- kind of bag

DAMON ROBERTSON -- DIRECT BY MR. LUPTON

199

1 you are talking about?

2 A Yes, that is the type of bag. And there is a --
3 this one obviously has been opened, but this seal
4 can't be opened without obviously someone having to
5 tear into it.

6 Q Now, in the process of your duties as scribe, you
7 say that all evidence comes to you and is sealed?

8 A Yes, sir.

9 Q By the person giving it to you?

10 A Yes, sir.

11 Q And in this case who was that person?

12 A Anthony Branham.

13 Q All right. And in this case, I guess in any case,
14 would you accept the items unsealed?

15 A No, sir.

16 Q And in this case were the items sealed by Anthony
17 Branham in your presence?

18 A Yes.

19 Q So you received all these items in sealed
20 condition?

21 A Yes, sir.

22 Q And once that happened, you said you logged them
23 in, is that correct?

24 A That's correct.

25 Q And what did you do with them once you received the

1 sealed evidence and logged it, that you logged in?

2 A We -- as soon as we left the location, we went back
3 directly to our headquarters. And I would have to
4 see one of the evidence bags. I can't recall if I
5 actually turned it over to someone or -- I had it
6 written on the bag or all the evidence. Sometimes
7 I'll put it in a locker if there is no one there
8 to -- a secure locker where only evidence
9 technicians have access to. And sometimes -- this
10 was during the day so I suspect it was probably an
11 evidence technician there.

12 Q All right. I'll show you one of these bags and see
13 if that refreshes your recollection.

14 A Yes. It is person to person, which would mean I
15 turned it over to an actual evidence technician.

16 Q I'll show you what has been marked for
17 identification as State's Exhibits 9, 3, 14, 15,
18 and 24. Do you recognize those items?

19 A I do.

20 Q What are those items?

21 A These were the -- I think some of these are
22 prescription -- yes, these are prescription drugs.

23 Q Without going into the identification --

24 A Okay.

25 Q -- of each individual item, when -- what do you

DAMON ROBERTSON -- DIRECT BY MR. LUPTON

201

1 _ recognize them as being in relation to this case?

2 A These are the items that we had in the sealed
3 envelopes that we had.

4 Q All right. So those are the items of evidence that
5 were turned in to you?

6 A Yes, sir.

7 Q And they were turned in to you and sealed?

8 A That's correct.

9 Q Initialed? And you talked about the bags being
10 tamperproof.

11 A Yes.

12 Q Would it have been possible for you to tamper with
13 them once they were turned in to you?

14 A No, because, I mean, you would be able to
15 physically see that.

16 Q And would you or anyone else tamper with any of the
17 evidence in any event?

18 A No, sir.

19 Q Now, you testified you turned it in to the evidence
20 room, is that correct?

21 A That's correct.

22 Q And at that point did you have any other connection
23 other than testifying today with these drugs?

24 A No, that's it.

25 MR. LUPTON: Beg the Court's indulgence.

1 (Pause.)

2 MR. LUPTON: Nothing further from this
3 witness, Your Honor.

4 THE COURT: Thank you.

5 MR. BAILEY: Thank you very much, Your Honor.
6 May it please the Court?

7 CROSS-EXAMINATION

8 BY MR. BAILEY:

9 Q Investigator Robinson?

10 A Yes, sir.

11 Q I'm sorry, Robertson. I didn't mean to say
12 Robinson.

13 A That's all right.

14 Q I want to talk about policy with drug evidence for
15 a second.

16 A Yes, sir.

17 Q When somebody collects drug evidence, is it a
18 policy to seal the evidence as soon as you collect
19 it?

20 A You basically -- you can seal it at any point. The
21 person that actually collects the evidence needs to
22 seal the bag.

23 Q Okay.

24 A Or I have to be present to witness this. You know,
25 I don't have to watch them do it every single time,

1 but if they bring me something and put it on the
2 table and walk away from it, they need to have it
3 sealed before they do so.

4 Q Okay. They want to do it as quickly as possible?

5 A If it is possible, yes.

6 Q Okay. And why is it so important to seal these
7 bags?

8 A That way there is no confusion with anything
9 because particularly each bag we put the location
10 everything is found, and it is usually photographs
11 in place where it was, and that is the primary
12 reason.

13 Q Okay. And you do this every time?

14 A Yes.

15 Q Okay. I want to take you back to the scene for a
16 second. When you first entered, it was you,
17 Investigator Lutz, Investigator Branham, when you
18 first entered Mr. Lecroy's bedroom. Who else is
19 with you?

20 A I think -- we have an officer, an investigator that
21 is in the military, he has been activated, but it
22 was James Abraham.

23 Q So there were four of y'all or five of y'all at
24 this time?

25 A Probably at least five.

1 Q Okay. All right. And you got there, I mean,
2 Mr. Lecroy he seemed out of control?

3 A Yes.

4 Q He was kicking, he was --

5 A Pretty much.

6 Q -- he was biting, or you thought he was going to
7 bite you?

8 A Yes.

9 Q A lot of screaming?

10 A Yes.

11 Q And here is this guy, it sounds like he was half
12 naked?

13 A Well, he had like pajama pants on.

14 Q So he was half clothed?

15 A Yes.

16 Q And he had a dog collar on?

17 A Yes, I believe that is what it was.

18 Q And he had a leash attached to the dog collar?

19 A Yes, sir.

20 Q And you said that y'all had to tase him?

21 A Yes.

22 Q Okay. Now, I just want to -- what you said
23 earlier, you said tased, you say that when you tase
24 somebody, when you feel like you have to tase them,
25 that they will definitely do what you want them to

1 do, is that right?

2 A Most of the time.

3 Q That was your testimony earlier?

4 A Yes. But there are occasions where it doesn't --

5 it is not as effective on some people as it could

6 be on others. There is various reasons for that.

7 Q Okay. So when you tase a suspect, they will

8 definitely do what you want them to do?

9 A No.

10 Q No. Well, that is what you just said, you think

11 that --

12 A Well, the majority of the time people comply with

13 us, but there are certain times where people don't.

14 It is a pain compliance thing that some people have

15 a higher threshold of pain obviously than others

16 would.

17 Q But you said earlier that typically they will

18 definitely do what you want them to do when you

19 tase them. That was your testimony earlier.

20 A The majority of the time, yes.

21 Q Okay. And it was also your testimony when

22 Mr. Lupton was asking you about tases, you said

23 that you -- y'all have to call an ambulance after

24 you tase somebody?

25 A Yes.

1 Q That is standard policy, any time you tase somebody
2 you have to call an ambulance?

3 A Yes, sir.

4 Q All right.

5 MR. BAILEY: No further questions.

6 THE WITNESS: Thank you.

7 THE COURT: All right.

8 MR. LUPTON: Your Honor, I would ask that this
9 witness be excused.

10 THE COURT: Yes, that will be fine. You may
11 step down.

12 (Witness steps down.)

13 MR. LUPTON: Your Honor, the State would call
14 Sergeant Mike Poole.

15 THE BAILIFF: Place your left hand on the
16 Bible, raise your right hand, and face the clerk.

17 (Witness complies.)

18 THE CLERK: Do you swear or affirm the
19 testimony you shall give in this case will be the
20 truth, the whole truth, and nothing but the truth,
21 so help you God?

22 THE WITNESS: Yes, I do.

23 THE CLERK: Thank you. Please have a seat on
24 the witness stand, and state your full name for the
25 record.

MICHAEL A. POOLE -- DIRECT BY MR. LUPTON

207

1 THE WITNESS: Michael A. Poole.

2 MICHAEL A. POOLE,
3 after being duly sworn, testified as follows:

4 DIRECT EXAMINATION

5 BY MR. LUPTON:

6 Q And Sergeant Poole, could you tell the jury where
7 it is that you are employed and in what capacity.

8 A I'm employed as a sergeant in narcotics at the
9 Richland County Sheriff's Department.

10 Q And if you can tell them about your law enforcement
11 training and experience, please.

12 A I was hired in 1977 and worked uniform and was
13 promoted to narcotics in 1984 and worked there ever
14 since.

15 Q And have you had training in narcotics?

16 A Yes, I have been to the Criminal Justice Academy
17 and numerous schools put on by the academy and by
18 DEA and the FBI and other agencies in narcotics
19 investigations.

20 Q And is that in addition to on-the-job experience
21 and training?

22 A Yes.

23 Q Now, were you in narcotics on January 25th, 2007?

24 A Yes, I was.

25 Q And were you involved in executing a search

1 warrants --

2 A Yes.

3 Q -- with Anthony Branham that day?

4 A Yes, I was.

5 Q And in capacity of that, did you come in contact
6 with the Defendant, Steven Lecroy?

7 A I did.

8 Q I show you what has been marked For Identification
9 as State's Exhibit 18. Do you recognize that
10 document?

11 A Yes, I do.

12 Q Now, when you were taking part in the search
13 warrant, can you tell the jury about what you did
14 upon entry into the house?

15 A When we entered the residence, I was not the
16 initial first person. I was probably three or four
17 people back. And some people were in different
18 parts of the house. I went down the hallway
19 towards the bedroom, and I was probably the second
20 or third person in line whenever the bedroom was
21 entered.

22 Q And so did you observe the Defendant at that point?

23 A Yes, the Defendant was in bed, and he was given the
24 command repeatedly to, you know, show his hands
25 from under the blanket -- sheets, or whatever, and

1 get out of bed. And he refused, just refused to do
2 it.

3 Q Was he ultimately detained and brought into the
4 living room?

5 A Yes, he was.

6 Q And what occurred there?

7 A I became aware at some point before I came in the
8 living room he had a problem with his sciatic
9 nerve, I think in his leg, I'm not very familiar
10 with it, and it was causing some pain.

11 So when I got to the den I put the
12 handcuffs -- we put the handcuffs in front of him
13 because he explained that when his sciatic nerve
14 was acting up he could get on the couch or the bed
15 in a very particular position and he would
16 experience no pain. When he moved, if he moved
17 slightly he would experience pain. So we allowed
18 him to get on the couch. We spent a few minutes
19 finding the position. When we found it we just
20 left him there.

21 Q Did you have to do that?

22 A No, sir.

23 Q And because of the tasing, was anything done as
24 part of policy as a result of that?

25 A Any time anyone is tased we request EMS, just our

1 policy, not because the person is injured, and we
2 requested EMS.

3 Q So you had to do that part?

4 A Yes, just in case.

5 Q But you did allow him to position himself on the
6 couch and moved the cuffs, is that your testimony?

7 A Yes, sir.

8 Q And based on your observations, anything that he
9 may have said to you, do you have an opinion as to
10 whether or not he was able to make himself
11 comfortable?

12 A He was comfortable. I asked him at least three
13 times, possibly more, over a period of time, you
14 know, are you still okay. And he would say, yes,
15 I'm fine.

16 I would ask him two, three, five minutes
17 later, are you still okay. He would go, yes,
18 everything is fine.

19 Q Now, you are aware that he was tased, correct?

20 A Yes, sir.

21 Q How -- you talked about -- you took a statement
22 from him?

23 A Yes, sir.

24 Q How long from the time that he was tased until the
25 time you took the statement?

1 A At least 30 minutes.

2 Q And in that time was the EMS there prior to the
3 statement or after?

4 A I believe they came prior.

5 Q And at the time you took the statement, did you
6 have a chance to observe him?

7 A Yes.

8 Q Did he still appear to be under the effects of the
9 tasing?

10 A Well, I mean, there are really no effects of
11 tasing, so no.

12 Q And the statement, did it come before or after he
13 was able to get himself comfortable?

14 A It was long after he had been comfortable for a
15 period of time.

16 Q Now, I'd like to talk about the statement itself
17 and the process of how you took it. What was
18 the -- first of all, why did you attempt to take a
19 statement?

20 A Investigator Branham requested that I talk with
21 him. I had talked with him for a short period of
22 time making him comfortable and we kind of
23 developed a rapport where he would talk with me
24 freely. And so he asked if I would take the
25 statement because I had been dealing with getting

1 him comfortable, and things like that.

2 Q That brings up an issue. Investigator Branham,
3 what was his role in this -- executing the search
4 warrant?

5 A The search warrant was his search warrant. His
6 role was planning it, telling people, saying what
7 people do, and not so much -- you know, supervising
8 it to make sure everybody did what they were
9 supposed to do and everything got done.

10 Q So is that common that the individual investigators
11 would have search warrants that they execute?

12 A Yes, he would be the most knowledgeable on the facts
13 of the warrant.

14 Q And does that person typically -- is that person
15 typically in charge of what goes on at that search
16 warrant?

17 A Yes.

18 Q So as the case officer, he asked you to take a
19 statement, is that correct?

20 A That's accurate.

21 Q Now, in the process of taking the statement, what
22 did you do? How did you start?

23 A The first thing I did was I told him I was going to
24 advise him of his rights, which I did.

25 Q And you have State's Exhibit 18 up there?

MICHAEL A. POOLE -- DIRECT BY MR. LUPTON

213

1 A Correct.

2 Q What is the top page of that?

3 A The top page is a Interrogation/Advice of Rights
4 form that I filled out, because that is my
5 handwriting, except for the signatures.

6 MR. LUPTON: Your Honor, at this time I would
7 like to move to admit State's Exhibits 18.

8 THE COURT: Any objection?

9 MR. BAILEY: No objection, Your Honor.

10 THE COURT: Okay.

11 (WHEREUPON, State's Exhibit No. 18 was
12 marked for identification and received
13 into evidence.)

14 Q Now, as you went through this, could you go through
15 for the jury the way you went through it with
16 Mr. Lecroy and explain the circumstances of what
17 you did and why and how.

18 A First I sat down and filled the top part out, his
19 name, the location, the time. And then I wanted to
20 get a feel for him, so I asked him if he was
21 feeling okay, if he was in pain. Then I asked him
22 his educational level because I wanted to determine
23 if he could understand what I was talking about.
24 He told me he completed the 11th grade at Richland
25 Northeast High School.

1 Q I hate to interrupt, but is this a blow-up of the
2 front page that we are talking about?

3 A Yes, it is.

4 MR. LUPTON: Your Honor, for demonstrative
5 purposes only, I would like to put this up for the
6 jury to be able to see what he is describing.

7 MR. COOPER: I have no objection to that, Your
8 Honor.

9 THE COURT: Okay.

10 Q And please continue.

11 A After he told me that, I jotted down in the top
12 right-hand corner, 11th, RNHS.

13 I then asked him if he could read and write
14 proficiently, and he stated he could, so I wrote
15 RW, which means he can read and write.

16 And I began to read each line of the rights
17 form to him out loud.

18 Q And can you read that for the record?

19 A Basically --

20 Q First of all, let me back up a second. You have
21 got the date on there.

22 A Correct. I have the incorrect date on there. That
23 was just an oversight. I put the prior -- the day
24 before's date on it.

25 Q All right. But what date was the statement

1 actually taken?

2 A Twenty-fifth.

3 Q You didn't go there the day before the search
4 warrant and take a statement from him?

5 A No, sir.

6 Q And what rights did you read and how did you do it?

7 A I would say, Mr. Lecroy, before we ask you any
8 questions you must understand your rights.

9 And I would say, do you understand that? He
10 would say yes. He responded yes to each question.

11 You have the right to remain silent. Do you
12 understand that?

13 You also -- anything you say can be used
14 against you in court. Do you understand that?

15 You have the right to talk to a lawyer for
16 advice before we ask you any questions and have a
17 lawyer with you during questioning. Do you
18 understand that?

19 If you cannot afford a lawyer, one will be
20 appointed before any questions if you wish. Do you
21 understand that?

22 And if you decide to answer questions now
23 without an attorney present, you will still have
24 the right to stop answering questions at any time.
25 You will also have the right to stop answering

1 questions at any time until you have talked to a
2 lawyer. Do you understand that?

3 Which he indicated he did.

4 Q All right.

5 A After each question.

6 Then I asked, I said, would you sign in the
7 first signature block on the right indicating that
8 you understand that I have read -- the rights I
9 have read to you.

10 Q All right. And is that his signature there?

11 A Yes.

12 Q Where it says "Sign"?

13 A Yes, it is.

14 Q Now, you said you asked him if -- as you were
15 reading these if he understood each right. And
16 what was his indication?

17 A That he did.

18 Q Now, what was his position at this time?

19 A He was still laying on the couch in kind of an
20 awkward position, but he was comfortable. He
21 wasn't just laid out flat, he just kind of made
22 himself comfortable.

23 Q And I think you testified earlier, but make sure it
24 is clear, did you say anything as to what would
25 happen if he moved?

1 A If he moved in any little amount, the pain would
2 return. And he was -- he had got himself in a
3 position where he really couldn't move without
4 hurting, and when he was in that position he was in
5 no pain at all. It was a position he was aware of
6 because he had this problem for years.

7 Q So I'd like to point out the little blocks on the
8 left-hand side. What do you normally do with those
9 blocks?

10 A There is several almost identical rights forms.
11 The one that I commonly use doesn't have those
12 blocks on it, and I was kind of using those just as
13 bullets. Some people check them, but the rights
14 form that I have in my evidence kit don't have
15 those blocks.

16 Q And in this case they aren't checked, is that
17 correct?

18 A That's correct.

19 Q Does that indicate anything?

20 A Just that I didn't check them because the form I
21 have doesn't have them.

22 Q Now, once you advise the Defendant of those rights,
23 you say he claimed -- that he said he understood
24 them?

25 A Correct.

1 Q Based on your observations, did you form any
2 opinion as to whether or not you believed he
3 understood his rights?

4 A I believed he understood them.

5 Q And did you continue on with the form?

6 A I then told him I was going to read him his Waiver
7 of Rights, and he indicated it was okay.

8 Q And could you explain how you did that to the jury,
9 please?

10 A I started by reading the first sentence and I read,
11 I have read the statement of my rights, and I
12 stopped, and I said, I'm going to change the word
13 "read" to "have been read," because he was on the
14 couch in a position where I wasn't -- he couldn't
15 look over my shoulder or be beside me to read it,
16 so I was actually reading it to him, he was not
17 reading along with me. So I changed the words of
18 that.

19 Then I read the sentence again, I have been
20 read this statement of my rights and I understand
21 what my rights are. I am willing to talk and
22 answer questions. I understand and know what I am
23 doing. No promises have been made to me and no
24 pressure or coercion of any kind has been used
25 against me.

1 I then asked him if he understood that, and he
2 said he did.

3 And then I asked him if he understood the word
4 "coercion." I have found over the years of working
5 at the Sheriff's Department a lot of people don't
6 know exactly what coercion means. And if you ask
7 them, they will say, no, I don't understand. And
8 when I asked him, he said, yes, I understand. And
9 he gave me an example. I don't recall what it was,
10 but he convinced me that he understood the meaning
11 of the word, so I underlined coercion and wrote yes
12 next to it to indicate that he did, in fact,
13 understand what coercion meant.

14 Q Whose handwriting is that notation, "yes"?

15 A That is my handwriting.

16 Q And the purpose was what?

17 A So I would recall, since most people say no, I just
18 indicate that people say yes, because most people
19 just say no and I explain that to them.

20 Q When you say "most people," do you have an estimate
21 as to what percentage?

22 A Ninety something percent. The majority of people
23 don't know exactly what it means.

24 Q Did Mr. Lecroy in any way indicate to you that he
25 was feeling coerced into giving you the statement?

1 A No, he did not.

2 Q After you read that Waiver of Rights, did he
3 indicate whether or not he was willing to waive
4 those rights and give a statement?

5 A He indicated he was willing to waive his rights and
6 give a statement, at which time I asked him to sign
7 his name. And I explained that indicated that he
8 understood his rights, but that wasn't a confession
9 or anything, he was merely signing that he
10 understood his rights and was willing to waive
11 them.

12 Q And there are witness blocks on both Your Rights
13 and Waiver of Rights?

14 A Correct.

15 Q Whose signatures are those?

16 A That is mine. I think that has got Abraham. I
17 think.

18 Q And where is James Abraham?

19 A He is currently activated in the military. I think
20 he is in Georgia, I'm not sure.

21 Q Now, once you advised him of his rights, you asked
22 him if he would waive his rights, and you testified
23 that he agreed to?

24 A Correct.

25 Q And at that time did you, based on your

1 observations, based on what he was telling you, did
2 you form an opinion as to whether or not he was
3 freely, voluntarily, knowingly and intelligently
4 waiving those rights after understanding what his
5 rights were?

6 A Yes, I felt he was. I mean, he was clear that he
7 understood them and he was willing to talk.

8 Q Is there anything that would cause you to doubt
9 that he knew what he was doing or that he was
10 feeling coerced or threatened into talking?

11 A Nothing whatsoever.

12 Q Was he promised anything in exchange for talking?

13 A No, he wasn't.

14 Q Was he threatened in any way to make him talk?

15 A No, he wasn't.

16 Q Now, once you got the Waiver of Rights, did you
17 proceed to take the statement?

18 A Yes. I explained to him that I was going to take a
19 written statement, and I told him I would like to
20 use the format where if he would just dictate to me
21 what had occurred that morning, and when he got
22 through dictating it, that if it was not sufficient
23 I would then ask him some questions to get the
24 answers and I would write the answers down.

25 Q And in the process of that -- can you turn to Page

1 2 --

2 A I have it.

3 Q -- of State's Exhibit 18. And is this a fair and
4 accurate enlargement of that page?

5 A Yes, it is.

6 MR. LUPTON: Your Honor, I'll use this for
7 demonstrative purposes only.

8 THE COURT: Okay.

9 Q And what happened at that point?

10 A He then dictated the first paragraph to me.

11 Q First of all, there is some stuff at the top of the
12 page. Can you explain what that is?

13 A I put his name and his address and the incorrect
14 date and time, correct time in the presence of Mike
15 Poole and Jay Abraham, who is James Abraham.

16 And then there is another section of his
17 rights where it says, I, Steve Lecroy, and the
18 rights. I did not read them to him, but I said,
19 when I took the statement, I said this is the same
20 rights right here, it is just indicating that you
21 understood them before you give the statement.

22 Q So you reminded him of those rights?

23 A Correct.

24 Q Now, what did he tell you at that point?

25 A He then dictated the first paragraph. He said, on

1 Thursday about 9:30 I was woke up by the Sheriff's
2 Department. They searched my room and found my
3 meth and my pot. They found my pot and meth on my
4 desk. I also had some meth in my pocket. My mom
5 has nothing to do with this.

6 Q Then you say that is what he dictated to you?

7 A I didn't ask -- I basically said, I'd like
8 something like a certain date and time, tell me
9 what happened. That is all I -- I formulated the
10 format, and all the other words came out of his
11 mouth. I did not put them in his mouth.

12 Q Now, below that can you explain what is underneath?

13 A I then told him I wanted to ask him some questions
14 of some things I didn't think we quite covered.
15 And he said that is fine. I asked him questions
16 and he responded.

17 Q What questions did you ask him?

18 A I asked him, do you sell drugs. And he said yes,
19 just to my friends. I only sell meth and smoke the
20 pot.

21 Q All right. And did you proceed to the next page?

22 A Yes. And after each question or after the first
23 paragraph, I read each one of them back to him. I
24 said, is that accurate. You know, the first
25 paragraph, and after each question I wrote the

1 answer down and I would read his answer down as I
2 wrote it, and say, is that accurate, to make sure I
3 hadn't made a mistake. And I do that on each
4 question. Then I went to the next page.

5 Q Throughout the whole 3-page statement?

6 A Yes.

7 Q And is this an accurate copy of -- enlargement of
8 Page 3 of --

9 A Page 2, yes.

10 Q Page 2 of the statement, Page 3 of State's Exhibit
11 18?

12 A Correct. Correct.

13 MR. LUPTON: And, again, for demonstrative
14 purposes only, Your Honor.

15 Q And what else did you ask him?

16 A There was some money recovered during the search
17 warrant, and I asked him where did the money come
18 from. And he said, selling meth.

19 Q What else?

20 A Then I asked him, how long since you worked. He
21 said, I do tech work for Bell South. I have
22 unemployed since July, 2006.

23 Q And what else?

24 A How long has your leg and nerve been messed up?

25 I had surgery in March of '98. I was in a car

1 accident in 1994. That is the cause of the pain.

2 I asked him what was causing his leg to hurt
3 that day.

4 Q And then the next page, is this an accurate
5 enlargement?

6 A Yes, it is.

7 Q And what else did you ask him?

8 A Investigator Branham came in. He was sitting next
9 to me. Actually he had some tablets he held up and
10 said, what are these. He asked if I knew what they
11 were.

12 So I asked him to look at the tablets
13 Investigator Branham said, and I asked him, I said
14 what are those. And he said -- I can't really
15 pronounce it -- Flexeril, and stuff my friends
16 brought over.

17 Q That --

18 A And then I asked him where the meth came from.

19 Q Hold on. And the second one he indicated,
20 Flexeril, comma what?

21 A Valium. I'm sorry, I can't read my writing.
22 Flexeril, Valium, and some stuff my friends brought
23 over.

24 Q And what was the last question?

25 A Where did the meth come from?

1 He said, a friend brought it from Atlanta.

2 Q Now, at the bottom of each page of the statement,
3 can you explain what it is at the bottom?

4 A Basically he signed each page indicating, swearing
5 the truthfulness of it and indicating it is
6 accurate what he said, and each page is signed by
7 myself.

8 Q And could you read that?

9 A I have made the foregoing statement freely and
10 voluntarily, without fear, threat, promise or
11 reward or hope of reward of any kind.

12 Q And did he sign each of the three pages?

13 A Yes, he did.

14 Q Now, did he at any point indicate any prescriptions
15 for any of that material?

16 A No, he didn't.

17 Q And was there anything done to coerce him into
18 making this statement?

19 A No, there wasn't.

20 MR. LUPTON: Beg the Court's indulgence.

21 (Pause.)

22 Q When you advised him of his rights, you state that
23 he understood those rights?

24 A Correct.

25 Q Is that correct?

MICHAEL A. POOLE -- CROSS BY MR. COOPER

227

1 A Yes.

2 Q And did he, based on your observations, did he
3 freely give up those rights?

4 A Yes, he did.

5 MR. LUPTON: Nothing further.

6 MR. COOPER: May it please the Court, Your
7 Honor?

8 THE COURT: You may proceed.

9 MR. COOPER: Thank you, Your Honor.

10 CROSS-EXAMINATION

11 BY MR. COOPER:

12 Q Good afternoon, Sergeant Poole.

13 A Good afternoon.

14 Q It is just after 12:00 now. You testified that you
15 were the second or third person to enter
16 Mr. Lecroy's bedroom, is that right?

17 A That's correct.

18 Q Okay. So you did not see the struggle begin, it is
19 fair to say?

20 A Well, it didn't begin immediately. I mean, there
21 was a verbal exchange. I think I was probably
22 there when the struggle began because there was a
23 verbal exchange first, and when he refused to obey
24 the command, it turned into a struggle.

25 Q Okay. Well, and you said you were the third person

1 in there, so, I mean, did y'all basically rush in
2 there one, two, three, or was it one person went in
3 and then, you know, a couple of minutes later the
4 second person in, or did y'all just kind of bust in
5 there at the same time?

6 A We were one, two, three, behind each other.

7 Q Okay. So it was kind of like a, I guess sort of
8 like a single file line, y'all just went right in
9 there?

10 A We came down the hallway and went in the room.

11 Q Okay. So when you said you were the third person
12 to enter, it was pretty soon after the first person
13 got in there, right?

14 A Yes, sir.

15 Q And by the time you entered, you already saw
16 officers engaging Mr. Lecroy, right?

17 A Correct.

18 Q Okay. And you, I think you testified that you
19 witnessed at least two tases?

20 A At least two. I think it was three.

21 Q All right. And you are familiar with what a taser
22 is, obviously, right?

23 A Yes, sir.

24 Q How long -- you've been a police officer since
25 1977, correct?

1 A Yes, sir.

2 Q And you started out as uniform, and I believe you
3 said in 1984 you became a narcotics officer?

4 A Correct.

5 Q How long has your department employed tasers?

6 A I think three years, maybe. Maybe four.

7 Q Three years? So before this, before three years
8 ago, y'all would have had to just go in there and
9 just kind of hold him down, no taser, right?

10 A We had -- I have had mace issued to me since I have
11 begun working there, different kinds of mace, but
12 other than that, yes.

13 Q Okay. So for three years y'all have been using
14 this device, this electrical device, rather than
15 other methods, is that right?

16 A That's correct.

17 Q And you are familiar with the two methods, what
18 they call the drive stun, you're familiar with
19 that?

20 A Yes, sir.

21 Q And is that -- is a drive stun, is that the type of
22 stun that you witnessed being inflicted on
23 Mr. Lecroy?

24 A Yes, sir.

25 Q All right. And isn't it fair to say that the first

1 drive stun took place within two minutes of y'all's
2 entry into the home?

3 A Probably within two minutes to enter the bedroom at
4 least.

5 Q Who is the very first person you encountered when
6 y'all entered the home?

7 A I think it was him. His mom was there, but I think
8 she might have been in a bedroom. I don't recall.

9 Q She was in another room?

10 A I'm thinking. I don't really recall. I went
11 straight to the bedroom.

12 Q All right. Are you the one that took Ms. Lecroy
13 into custody?

14 A I don't recall taking her into custody. She wasn't
15 taken into custody.

16 Q Nobody handcuffed her or anything?

17 A She might have been handcuffed. I don't recall
18 whether I did or not.

19 Q All right. Mr. Lupton addressed the fact that you
20 were not the lead investigator on this particular
21 investigation, is that right?

22 A That's correct.

23 Q Have you had occasion to be lead investigator on
24 other drug investigations?

25 A Yes, sir.

MICHAEL A. POOLE -- CROSS BY MR. COOPER

231

1 Q So you were familiar with the types of decisions
2 and protocols that Investigator Branham had to
3 follow that day?

4 A Yes, sir.

5 Q Okay. Now, you said you became aware of a problem
6 that Mr. Lecroy had with his sciatic nerve. Do you
7 remember -- is that somebody he told you?

8 A Yes. He was in obvious pain, and he was in -- I
9 believe he was still in the bedroom. And we had --
10 somebody, either I or somebody asked him. He said
11 he had see a sciatic nerve flare-up or something.

12 Q Okay. And when you -- you mentioned that you have
13 been to the Criminal Justice Academy?

14 A Yes, sir.

15 Q So you have probably taken, I would imagine,
16 courses on just how to take statements from
17 witnesses and Defendants, right?

18 A Yes, sir.

19 Q All right. And included in those courses I would
20 imagine that they try to teach you how to obtain
21 the most accurate statement possible, right?

22 A Yes, sir.

23 Q Because you want -- the reason you want to obtain
24 an accurate statement is, it is important, you
25 know, accuracy is important to the right result of

1 an investigation, correct?

2 A That's correct.

3 Q So it is fair to say that everything you do from
4 the time you begin taking the statement to the time
5 you end taking the statement, your main objective
6 is to get the most accurate information possible,
7 is that right?

8 A That's correct.

9 Q All right. So, and you've been doing that, just in
10 narcotics you've been taking statements about
11 narcotics since 1984, right?

12 A Yes, sir.

13 Q Now, in this case you had been in Mr. Lecroy's home
14 and Mr. Lecroy's mother's home for about 30 minutes
15 when you began to take the statement, right?

16 A Approximately, yes, sir.

17 Q Okay. I mean, if you would refer to the first page
18 of State's I think 18, the statement, there is a
19 line that says time, and you've got written on
20 there 10:00 o'clock, right?

21 A That's correct.

22 Q And y'all made entry into the house at 9:30, right?

23 A Roughly, yes, sir.

24 Q Okay. So 30 minutes after you had -- had you ever
25 been in this house before?

1 A Not that I know of.

2 Q Are you aware, were there any officers that had
3 ever been in this house before?

4 A Not that I know of.

5 Q So 30 minutes after y'all enter a house, brand new
6 home, detain and taser an individual, you are
7 starting to take a statement, right?

8 A That's correct.

9 Q Okay. And, now, you have already testified that
10 Mr. Lecroy was in obvious pain. At that point you
11 made the decision to move him over to a couch,
12 right?

13 A I'm not sure I made -- I'm not sure I made a
14 decision to move him to the couch, but I arranged
15 him on the couch. I think we brought him in the
16 den just as protocol so we could search the
17 bedroom.

18 Q Okay. So you didn't bring him into the -- you
19 didn't bring him into the den for the express
20 purposes of taking a statement?

21 A No, he was in the den already. We brought him in
22 there just to --

23 Q So you decide -- I'm just trying to get the order
24 this must have happened in because I know you told
25 Mr. Lupton that Investigator Branham asked you to

1 take the statement.

2 A Correct.

3 Q And you thought that was reasonable, right?

4 A Still do.

5 Q Okay. I mean, when he asked you to take the
6 statement, you didn't think, whoa, you know, better
7 not do this, you thought, kind of what I would do
8 too, right?

9 A Correct.

10 Q So he is already in the den. Investigator Branham
11 says, you know, Mike, I guess, would you take a
12 statement from this guy. And so that is when you
13 began?

14 A Correct.

15 Q And when you first put him on the couch, are you in
16 a chair right in front of the couch, or where are
17 you at?

18 A I think I was to the right of the couch facing the
19 couch. He was on the couch with like his head
20 toward the right side, and I think I was on a chair
21 right beside it.

22 Q Okay. So only a distance of two or three feet
23 perhaps was between y'all?

24 A Roughly, yes.

25 Q And you have still got your side arm on at this

1 point, right?

2 A Yes.

3 Q And you know where his mom is at this time?

4 A I think it was like a formal dining room area, I
5 don't know whether they call it a formal dining
6 room, but it was off to the right side of the
7 house, I think she was in there.

8 Q Could Mr. Lecroy see his mom at this point?

9 A Not where he was laying, I don't think he could.

10 Q All right. And when he first got on the couch, it
11 was obvious that he was in some discomfort, right?

12 A Yes, sir.

13 Q And so y'all kind of moved him around or he moved
14 himself around until you thought the pain had gone
15 away?

16 A Not what I thought, it is what he thought.

17 Q Okay. Well, and so he told you, hey, it is better?

18 A Correct.

19 Q All right. So he is kind of moving around. And
20 you testified that if he moved one way or the other
21 he would be back in pain so we had to kind of keep
22 that same position, right?

23 A Correct.

24 Q All right. And then this is when you present him
25 with this sheet, Your Rights?

- 1 A Correct.
- 2 Q But this is not the sheet that you normally use,
3 right?
- 4 A It is pretty much identical except for those little
5 boxes.
- 6 Q Okay. Well, these boxes, before this had you ever
7 used a sheet with those boxes on it?
- 8 A I have used it and seen it, yes.
- 9 Q I mean, you would agree that the boxes are there to
10 be checked, right?
- 11 A I don't check them. I mean, I was never told to.
- 12 Q Okay. You don't -- but you don't agree that is why
13 they are there?
- 14 A I looked at it like bullets, like you know, an
15 outline, is the way I was looking at it.
- 16 Q All right. But you don't ever -- when you go over
17 these rights with people, you don't check them on
18 the sheet of paper and show them to the person?
- 19 A When I read someone their rights I read every line
20 every time, and checking them when you are done
21 because I read every line every time to make
22 sure -- and ask them every time if they understand
23 them.
- 24 Q Okay. Well, checking them would be redundant. All
25 right, so he's on the couch. And now, he's -- is

1 he handcuffed in front of him like this?

2 A In front, yes.

3 Q Okay. But he's in kind of a weird position. I
4 mean, what I'm getting at is, how was he holding
5 the pen?

6 A Well, when it came time to sign it, I asked him to
7 sign it, I would bring the paper over to him and he
8 would sign it in a way that didn't hurt. I mean, I
9 didn't make him sit up or anything. I brought the
10 paper to him and he signed it.

11 Q Okay. So he couldn't -- you brought the paper over
12 to him. So when you were going over this paper
13 with him he couldn't see it?

14 A No, I was sitting in a chair, he was laying on the
15 couch.

16 Q All right. Well, could he see the paper or not?

17 A I mean, he could see it. He couldn't read it. He
18 could see it, but he couldn't read it. I mean, he
19 wasn't reading along with me. He could see me and
20 he could see the paper. We were sitting right
21 beside each other.

22 Q Okay. Now let's go to the statement. I guess it
23 would be the first page of the statement or the
24 second page of the State's evidence. I want you to
25 read along with me and if I read something

1 incorrect bring it to my attention.

2 There is a line where Mr. Lecroy says, my mom
3 has nothing to do with this. Is that right? That
4 is the last line of the first paragraph.

5 A That's correct.

6 Q And then your next question is, do you sell drugs.
7 And his response is, yes, just to my friends. I
8 only sell meth and smoke the pot. Isn't that
9 right?

10 A That's correct.

11 Q Another thing about Mr. Lecroy's condition, would
12 you say that everybody reacts to being tased in the
13 same manner?

14 A To be honest with you, I haven't seen enough people
15 tased to make that conclusion.

16 Q Okay. I mean, so would you -- would it be fair to
17 say that your reaction to a taser depends on
18 perhaps your threshold for pain?

19 A I don't know. I think it would be more your
20 attitude and your brain.

21 Q Your attitude?

22 A I mean, if someone just doesn't want to comply and
23 they are insistent, they will let you tase them
24 more than once.

25 Q Okay.

1 A I mean, the pain might have something to do with
2 it, but I think it is more your overall attitude.

3 Q Would it be fair to say attitude and circumstances
4 at the time?

5 A Yes.

6 Q Okay. You have taken statements from -- well,
7 first of all, let's do this. Y'all didn't actually
8 arrest Mr. Lecroy that day, did you?

9 A He was allowed to stay at the house due to his
10 nerve condition, and he was going to turn himself
11 in on another day when his nerve was not acting up
12 so it would be easier to go through the booking
13 process and bond hearing and not be in pain.

14 Q Okay. When Mr. Lecroy turned himself in or when he
15 was picked up eventually, did you take another
16 written statement from him?

17 A I don't believe so.

18 Q Okay. The only statement that you took from him
19 was there that day 30 minutes after y'all entered
20 the house, isn't that right?

21 A Correct.

22 Q You didn't take him back to Richland County
23 headquarters, did you?

24 A No, we did not.

25 Q All right. You didn't put him in, you know, an

1 interrogation room at Richland County, did you?

2 A I didn't take him there, so I couldn't take him to
3 an interrogation room.

4 Q You could have if you had wanted to, though, right?

5 A I left that up to Mr. Branham's decision, but we
6 could have, yes.

7 Q Well, I mean, you in your capacity as lead
8 investigator in these situations, you have done
9 that before, right?

10 A Sometimes I do, sometimes I don't. I mean, it
11 depends.

12 Q It depends. Okay.

13 MR. COOPER: I beg the Court's indulgence one
14 second.

15 THE COURT: Okay.

16 (Pause.)

17 Q Okay, Sergeant Lutz, one more thing. Back to the
18 statement.

19 Excuse me just a second, I want to make sure I
20 get this right.

21 If you could please refer to the last page of
22 the statement. You've got -- you write,
23 Investigator Branham showed Lecroy some tablets.
24 You asked, what are these. His response is,
25 Flexeril, Valium, and stuff my friends brought

MICHAEL A. POOLE -- REDIRECT BY MR. LUPTON

241

1 over, right?

2 A Correct.

3 Q And your next question is, where did the meth come
4 from. And his response is, a friend brought it
5 from Atlanta, is that right?

6 A Correct.

7 MR. COOPER: Your Honor, I have nothing
8 further. Thank you.

9 THE COURT: Okay.

10 REDIRECT EXAMINATION

11 BY MR. LUPTON:

12 Q The first page of the statement, the second page of
13 State's Exhibit 18, did he say whose meth that it
14 was you found?

15 A He said that I think he found -- they found my pot
16 and meth on the desk, and some was in his pocket.

17 Q And did he say anything about what he did with the
18 meth?

19 A He stated he sold the meth to his friends only, and
20 the pot was for his personal use.

21 Q Now, there was two other points. One was brought
22 out, been brought out a couple of times about y'all
23 being armed. And it is correct that y'all do carry
24 pistols as part of your job, is that fair?

25 A Yes, sir.

1 Q Now, at the point where you were taking the
2 statement, did you or anyone else have a pistol
3 drawn?

4 A No one had a pistol drawn.

5 Q Was anyone threatening or trying to make the
6 Defendant think in my way that that pistol was
7 going to be used in any way if he didn't make a
8 statement?

9 A No, everyone was just wearing a pistol like we were
10 cell phones and other things, just on the side.
11 Nobody was touching them or grabbing them or
12 pointing to them.

13 Q And the second point is the pain. You talked about
14 obvious pain.

15 At what point in relationship to when the
16 statement was taken was the Defendant in pain?

17 A During the statement, never. And he hadn't been
18 for some time.

19 Q Had not been in pain for some time?

20 A I would say -- we got him on the couch probably in
21 the first five to ten minutes, and he found his
22 position, and he was fine for the next 20, 25
23 minutes.

24 MR. LUPTON: Nothing further.

25 RECROSS-EXAMINATION

1 BY MR. COOPER:

2 Q Sergeant Poole, on the statement -- I think you
3 discussed this with Mr. Lupton -- you put January
4 24th. It was actually January 25th, right?

5 A Yes, sir.

6 Q Okay. And that is just a mistake because you just
7 got the date wrong, right?

8 A Yes. I made reference to Thursday and January 24th
9 was a Wednesday.

10 Q Yes, sir. Did you ever see that tin in his bedroom
11 that said "drama queen"?

12 A Did I see what?

13 Q Did you see the tin that was labeled "drama queen"?

14 A I think I saw it at some point.

15 Q All right.

16 MR. COOPER: That's it, Your Honor. Thank
17 you.

18 THE COURT: Anything further?

19 MR. LUPTON: No, Your Honor. I ask this
20 witness to be excused, please.

21 THE COURT: You are excused.

22 (Witness steps down.)

23 MR. LUPTON: Your Honor, I believe you wanted
24 to break for lunch. I've got the chain and chemist
25 coming after lunch.

1 THE COURT: Okay. We are going to break for
2 lunch now. I remind you not to discuss the case in
3 any shape, form, or fashion. You all report back
4 to your jury room at, let's say 1:45.

5 Thank you.

6 (WHEREUPON, the jury is excused for
7 lunch.)

8 THE COURT: I will take up that brief plea
9 that Dolly had at 1:35, but you all can come back
10 at 1:45.

11 MR. LUPTON: Thank you.

12 MR. BAILEY: Thank you, Your Honor.

13 (Lunch Recess.)

14 THE COURT: Are you ready to resume the trial?

15 MR. LUPTON: Your Honor --

16 MR. COOPER: Mr. Bailey had to excuse himself
17 for one second. He will be right back.

18 THE COURT: Anything I need to take up?

19 MR. COOPER: Your Honor, at this time I don't
20 think we have anything. I'll ask Mr. Bailey when
21 he gets back. I don't think we have anything else.

22 THE COURT: Okay. Thank you.

23 (Pause.)

24 THE COURT: Do you have anything that needs to
25 go on the record?

TENA GOFF -- DIRECT BY MR. LUPTON

245

1 MR. BAILEY: No, Your Honor.

2 THE COURT: Bring the jury in.

3 (WHEREUPON, the jury came into open
4 court at approximately 2:00 o'clock
5 p.m.)

6 THE BAILIFF: The jury is all present, Your
7 Honor.

8 THE COURT: Okay. Thank you, ladies and
9 gentlemen of the jury. We will resume the trial.
10 Is the State ready to proceed?

11 MR. LUPTON: Yes, Your Honor. The State calls
12 Tena Goff.

13 THE BAILIFF: Place your left hand on the
14 Bible, raise your right, and face the clerk.

15 (Witness complies.)

16 THE CLERK: Do you swear or affirm that the
17 testimony you shall give in this case will be the
18 truth, the whole truth, and nothing but the truth,
19 so help you God?

20 THE WITNESS: I do.

21 THE CLERK: Please take a seat on the witness
22 stand, and please state your full name for the
23 record.

24 THE WITNESS: Tena Goff.

25 TENA GOFF,

1 after being duly sworn, testified as follows:

2 DIRECT EXAMINATION

3 BY MR. LUPTON:

4 Q And could you tell the jury where it is you are
5 employed and in what capacity, please?

6 A I work for the Richland County Sheriff's Department
7 and I'm the evidence custodian.

8 Q Are you in fact the head evidence custodian?

9 A I am.

10 Q And how long have you been employed as evidence
11 custodian at the Sheriff's Department?

12 A Almost 13 years.

13 Q Could you tell the jury what duties that entails,
14 please?

15 A My job is to manage and supervise the personnel
16 over the evidence room to ensure that policies and
17 procedures are followed when accepting evidence in
18 and also when we sign it out or chain it out over
19 to investigators and officers for court.

20 Q And when you accept evidence in, what procedures do
21 you follow?

22 A Depending on if the officer is coming in and
23 handing it to us person to person or if they use
24 our temporary storage lockers outside the evidence
25 room. We have a drop box and lockers that look

1 like gym lockers that officers have the ability to
2 drop their evidence in or place, lock it, and then
3 they don't have access or they can't get back in
4 until one of the evidence staff members goes over
5 and opens it up for them.

6 Q All right. And I show you what has been marked as
7 State's Exhibit -- well, first of all, do you have
8 any independent recollection of whether or not you
9 received the evidence in this case person to person
10 or through your drop box?

11 A I do not.

12 Q And showing you Exhibit 14 For Identification, is
13 there something on there that can refresh your
14 recollection as to whether you received it in
15 person?

16 A This particular item was received by Ms. Joy
17 Delatore on January 25th of 2007 at 1:45. I
18 believe that is what it says, 1:45. And it was
19 marked person to person by Investigator Robertson.

20 Q All right. And where the evidence is received
21 person to person, can you explain the procedures
22 for what happens with evidence prior to it being
23 accepted?

24 A There is an evidence label or, in this case, that
25 heat sealed pouch has a preprinted label on it. We

1 look over that label to make sure that the
2 information on it is completely filled out. We
3 can't verify that it is correct or not because we
4 don't know. We make sure that the case number is
5 on there, the type of crime, the information on the
6 Defendants or participants in the case. Also the
7 information according to the items that are placed
8 inside that bag or box, if you will. And then it
9 has been properly sealed and signed by the officers
10 to include the date and time of when they turned it
11 over to the evidence room.

12 Q And would you or any other evidence technician
13 accept evidence if it was not properly sealed and
14 properly filled out?

15 A No.

16 Q And as far as seal, can you explain the seal part?

17 A May I hold that bag?

18 Q Certainly.

19 A This is what we call an evidence bag. And it is
20 ordered in this manner. There is a receipt on top,
21 and this red strip is actually blue, and there is a
22 blue piece of plastic that keeps it from sealing on
23 itself until the officer fills it out, places their
24 evidence inside, then they take that blue part off
25 and then they seal this bag. Once it is sealed you

1 can't open the bag up or tamper with it without it
2 destroying the lines on the back.

3 If they place it evidence in a box, there is
4 red evidence sealing tape that they put over the
5 seams, initial and date it, so we could tell right
6 away if someone has tampered with it or has
7 reopened that box because that seal would have then
8 been broken.

9 Q And I'll show you this box. It is not in evidence
10 but for demonstrative purposes. Is that what
11 you're talking about?

12 A Yes. The box -- this is a label, an evidence label
13 that has a peel-off back that the officers fill out
14 and then put on the box. This is the red seal that
15 I'm talking about. It is on the top. And on the
16 bottom they will initial and date it. You can tell
17 very easily if the evidence has been tampered with
18 because this would break.

19 Q So with regards to what is received in evidence,
20 would you or any other evidence technician receive
21 evidence without inspecting it or making sure it is
22 properly sealed?

23 A We always check it before it comes in.

24 Q And if it is not properly sealed or if the seal has
25 been tampered with, what would you do?

1 A We phone call or we call and try to make contact
2 with the officer who submitted the evidence,
3 whether we talk to them person to person or leave a
4 message, we let them know their evidence is not
5 being accepted because there is something that
6 needs to be fixed, an error of one sort or another.
7 And then that evidence is put into a locker until
8 that officer comes back to us and corrects the
9 issue.

10 Q And would that -- if there is a problem with the
11 paperwork, can that be corrected? I'll withdraw
12 that.

13 In this situation, from the paperwork can you
14 tell whether or not the items were accepted into
15 evidence?

16 A Yes, they were accepted into evidence.

17 Q And based on that fact, does that -- can you draw a
18 conclusion as to whether or not they were turned in
19 properly sealed?

20 A Because they were accepted and logged into the
21 evidence room, they were properly sealed.

22 Q And once they are logged into the evidence room,
23 where are they kept?

24 A Depending on the nature of the item, whether
25 examinations have been requested or going to the

1 lab, will depend on whether it goes onto the
2 permanent shelf where it will sit for the duration
3 until it goes to court or we are instructed by the
4 officers to dispose of it. It will go into a
5 temporary bin, we've got one bin set up for the
6 green plant material, we have another one for hard
7 drugs, and those are separate. And they stay in
8 those bins until the analyst comes down and asks
9 for them to take upstairs to be analyzed.

10 Q And is that a secure location?

11 A Yes.

12 Q Who has access to those locations?

13 A Myself and my two partners who are assigned to the
14 evidence room.

15 Q And at the time of this case back in January of
16 2007, who were those people?

17 A At the time there was only two of us, myself and
18 Ms. Joy Delatore.

19 Q And is Joy Delatore still employed as an evidence
20 technician?

21 A No, she is not.

22 Q Do you know why she left?

23 A For a better job.

24 Q Implying that there could be a better job than the
25 one you have?

1 A There is always a better job than the one you have.

2 Q So did she -- was there any reason why she had to
3 leave?

4 A No.

5 Q Any allegations of misconduct or failure to follow
6 procedures, anything of that nature?

7 A No.

8 Q And do you know if she still lives in this state?

9 A She does not.

10 Q And so the evidence was received. It was stored in
11 the evidence room, as you indicated, is that
12 correct?

13 A Yes, sir.

14 Q Was it then turned over to -- the green plant
15 material over to one person and the rest of the
16 suspected drugs turned over to a separate person?

17 A That is correct.

18 Q And can you tell who those two people are that the
19 drugs were turned over to?

20 A Items 8 and 9, which were the green plant material,
21 was turned over to David Bell. And Items 1, 2, 4,
22 5, 6 -- excuse me, 1, 2, 3, 4, 5, 6, 14, 15 and 16
23 were handed over to Investigator Farmer.

24 Q All right. And from the paperwork, you have
25 State's Exhibit 14, green plant material. Is that

TENA GOFF -- DIRECT BY MR. LUPTON

253

1 one of the items that was given over to, you said
2 David Bell?

3 A These two items in this bag were given to David
4 Bell, yes.

5 Q And then State's Exhibit 9, right here, is this --
6 can you identify that as one of the items that was
7 turned over?

8 A I cannot.

9 Q Can you -- and looking at your paperwork, was there
10 a pill bottle with liquid that was turned over?

11 A Yes.

12 Q And is this a pill bottle with liquid?

13 A It is.

14 Q And the notations on there? I'll ask -- let me put
15 it this way. The items that you received that were
16 turned in that were sealed, were they turned over
17 to the chemist in a sealed condition?

18 A They were.

19 Q And when they were returned, what condition were
20 they in?

21 A They were still in a sealed container.

22 Q Were they in the original sealed container, what
23 are typically called Best envelopes?

24 A I can't answer that because they are not in the --
25 they are not in the evidence bags now.

1 Q All right. If I could show you this item. Do you
2 recognize what that is?

3 A It is a heat sealed pouch with our case number on
4 it.

5 Q And what does this -- what are these typically used
6 for?

7 A That is how the chemist upstairs in the lab
8 packages their -- packages the items that they have
9 analyzed in the case.

10 Q All right. So when they turn it back to you it
11 will be packaged in these?

12 A Yes, but these would still be in their original
13 package whether it was this or in a box.

14 Q Inside or with?

15 A Inside that seal.

16 MR. LUPTON: Your Honor, at this point I am
17 going to ask that this be marked as a State's
18 Exhibit.

19 THE COURT: Okay. What number will it have?

20 THE COURT REPORTER: Twenty-seven.

21 THE COURT: Thank you.

22 (WHEREUPON, State's Exhibit No. 27 was
23 marked for identification only.)

24 Q I will show you these items. They are all stapled
25 together as one large item. Do you recognize what

TENA GOFF -- DIRECT BY MR. LUPTON

255

1 that is?

2 A Yes, these are the original bags with our computer
3 generated bar codes for these particular items.

4 Q So when they were received -- when these items were
5 received into evidence, would they have been in
6 those bags?

7 A Yes, they were.

8 Q And is that the bags that you or another evidence
9 tech would have turned over?

10 A Yes.

11 MR. LUPTON: Your Honor, I ask that this be
12 marked as a State's Exhibit.

13 (WHEREUPON, State's Exhibit No. 28 was
14 marked for identification only.)

15 MR. LUPTON: And, Your Honor, I would ask that
16 State's 27 and 28 be admitted as evidence.

17 MR. COOPER: Your Honor, may I look at them?
18 (Pause.)

19 MR. COOPER: Okay, no objection to 27 and 28,
20 Your Honor.

21 THE COURT: Okay, thank you. Those will be
22 admitted.

23 (WHEREUPON, State's Exhibit No. 27 was
24 admitted into evidence.)

25 (WHEREUPON, State's Exhibit No. 28 was

1 admitted into evidence.)

2 Q And just so that we're clear, when it goes to the
3 chemist, the items are going to be sealed, not only
4 in this case but in any case, are going to be
5 sealed up in bags like these, Exhibit 28?

6 A Yes.

7 Q And when it comes back from the chemist it is going
8 to be sealed up in a -- all the items are going to
9 be sealed up together in a bag like State's
10 Exhibits 27?

11 A Yes.

12 Q And this is what you're going to receive?

13 A Yes.

14 Q And before you or any other evidence tech would
15 take evidence back from a chemist, would you
16 ensure -- what would you do with this bag?

17 A Make sure that it is completely sealed and that the
18 seal has been signed -- has been initialed and
19 dated.

20 Q All right. Now in this case obviously the bag has
21 been cut open and the contents removed.

22 A Yes.

23 Q Is that fair to say?

24 A Yes.

25 Q Now, at the time you received it or at the time it

TENA GOFF -- DIRECT BY MR. LUPTON

257

1 was-received back, if it were in that condition
2 what would occur?

3 A We wouldn't accept it. It would -- we would make
4 the analyst take it back and seal it before they
5 submitted it to us.

6 Q Now, in this particular case you can see you've got
7 the bags that the drugs originally came in for the
8 various substances. Can you tell who received it
9 from looking at the bags?

10 A All of these were accepted into evidence by
11 Ms. Delatore.

12 Q And looking at those items and looking at State's
13 Exhibits 9, 3, 15 and 24, can you identify that
14 these match the descriptions that they were logged
15 in as being contained in those bags?

16 A State's Exhibit 9 was in that bag. State's Exhibit
17 24 came out of this bag. State's Exhibit 3 and 15
18 came out of this bag.

19 Q All right. Now, once those items were submitted
20 into evidence and placed in the evidence room, does
21 your paperwork indicate who it is that retrieved
22 those and turned them over to the chemist?

23 A Items 7 and 8 from this bag, I handed those over to
24 David Bell on January 29th of 2007.

25 Q And that is marijuana, suspected marijuana in

1 State's Exhibit 14?

2 A It is green plant material, yes. And then, again,
3 Items 1 through 6, 14, 15 and 16, which are these
4 three bags right here.

5 Q State's Exhibits 3, 15, 24 and 9?

6 A Uh-huh. And then these heat sealed pouches, those
7 were turned over by me to Investigator Andy Farmer.

8 Q And just to be clear, were they sealed?

9 A They were.

10 Q And who received those items of evidence back into
11 the evidence room?

12 A The green plant material was accepted back into the
13 evidence room by Ms. Delatore, and Items 1 through
14 6, 14 through 16 were accepted back into evidence
15 by Mr. Cedarstaff.

16 Q And the procedures are the ones that we talked to
17 as far as checking to make sure that Item 27 was
18 sealed?

19 A Yes.

20 Q And once they were placed back into evidence, other
21 than being signed out for court, did they remain in
22 the evidence room?

23 A Yes, they did.

24 Q And at that time had they been -- were they
25 tampered with in any way while in the evidence room

TENA GOFF -- CROSS BY MR. COOPER

259

1 before or after testing?

2 A No.

3 Q Would any person in the evidence room tamper with
4 them for any reason?

5 A No.

6 Q Anyone other than evidence technicians have any
7 access to those items?

8 A No, they do not.

9 MR. LUPTON: Beg the Court's indulgence.

10 (Pause.)

11 MR. LUPTON: Nothing further, Your Honor.

12 THE COURT: Defense?

13 MR. COOPER: I will keep it very brief, Your
14 Honor.

15 CROSS-EXAMINATION

16 BY MR. COOPER:

17 Q Ms. Goff, I just want to ask you one thing about
18 the bags when they are sealed. In the field when
19 the investigator collects evidence, when he places
20 it in the bag he places it in, is he to seal it
21 immediately? Is that your understanding?

22 A I can't answer that.

23 Q You can't answer that? You don't know about that?

24 A I do not.

25 Q Okay. Fair enough.

1 MR. COOPER: Thank you.

2 MR. LUPTON: Your Honor, I would ask that this
3 witness be excused.

4 THE COURT: Yes.

5 (Witness steps down.)

6 MR. LUPTON: Your Honor, the State would call
7 William Cedarstaff.

8 (Witness enters courtroom.)

9 THE BAILIFF: Place your left hand on the
10 Bible, raise your right, and face the clerk.

11 (Witness complies.)

12 THE CLERK: Do you swear or affirm that the
13 testimony you shall give in this case will be the
14 truth, the whole truth, and nothing but the truth,
15 so help you God?

16 THE WITNESS: I do.

17 THE CLERK: Thank you. Please have a seat on
18 the witness stand, and state your full name for the
19 record.

20 THE WITNESS: William Curtis Cedarstaff.

21 WILLIAM CURTIS CEDARSTAFF,
22 after being duly sworn, testified as follows:

23 DIRECT EXAMINATION

24 BY MR. LUPTON:

25 Q Mr. Cedarstaff, would you please tell the jury

WILLIAM CURTIS CEDARSTAFF -- DIRECT BY MR. LUPTON

261

1 where it is you are employed and in what capacity?

2 A The Richland County Sheriff's Department, evidence
3 technician.

4 Q And how long have you been employed there?

5 A A year and a half.

6 Q And in that capacity, did you have a chance to
7 receive evidence in this case?

8 A Yes, sir.

9 Q And, first of all, have you been trained in the
10 proper standards and procedures for receiving
11 evidence?

12 A Yes, I have.

13 Q And upon receiving evidence from a chemist after
14 analysis, what would the proper procedure be?

15 A Once the evidence was brought in I would take and
16 check each piece of evidence, make sure it is
17 properly sealed, and then put it back where it
18 belongs.

19 Q All right. I'll show you what has been marked
20 State's Exhibit 27. Do you recognize that?

21 A Yes, sir.

22 Q And obviously that has been cut, correct?

23 A Correct.

24 Q At the time -- first of all, did you receive that
25 back from -- in the course of this case?

1 A This particular item? Yes, sir.

2 Q And who did you receive it from?

3 A Andy Farmer. Investigator Farmer.

4 Q And at the time you received it back, what actions
5 did you take?

6 A Checked the seal to make sure it was resealed, it
7 was secure, and then filed it away with the rest of
8 the evidence.

9 Q Do you have -- based on your records, are you able
10 to tell what date you received it back from him?

11 A That would be the 28th of August, 2007.

12 Q And at the time you received it back, other than --
13 at the time you received it back, what condition
14 was it in?

15 A The same condition it is in now, sir.

16 Q I'm sorry?

17 A It was in the same condition it would be in now. I
18 mean, I received what was given to me.

19 Q All right. Did it have stuff in it? Based on the
20 records you have?

21 A On the records I have, it was -- I brought it back
22 in. It was there.

23 Q And on the chain of custody form does it list what
24 items were received back?

25 A Yes, sir.

WILLIAM CURTIS CEDARSTAFF -- DIRECT BY MR. LUPTON

263

1 Q And what items were those?

2 A Items Number 3, 16, 15, 14, 5, 6, 1, 4 and 2.

3 Q All right. And based on the descriptions, can you
4 tell if that is these items of evidence here?

5 And obviously the State's Exhibits Numbers are
6 our numbers, not the lab's numbers.

7 A Yes, sir. Yes, sir, those are those items.

8 Q All right. And so would those items have been
9 sealed up in State's Exhibit 27 at the time you
10 received it back from Andy Farmer?

11 A Correct, sir.

12 Q What condition was the bag itself in at the time
13 you received it back?

14 A It was completely sealed on the bottom with
15 Andy's -- Mr. Farmer's initials and date on it.

16 Q And was that cut, what is on the side of it now,
17 was that there at the time?

18 A Not at that time, no, sir.

19 Q Would you have accepted it if it had been there?

20 A No, sir, I would not.

21 Q Now, once you received it back, what did you do
22 with it?

23 A Put it back in with the rest of the case, sir.

24 Q And that is in a secure location?

25 A Correct, sir, a secure locker.

1 Q And would you or anyone else in the evidence room
2 have tampered with it at any point?

3 A No, sir.

4 Q And did anybody other than evidence technicians
5 have it?

6 A No, sir.

7 Q So based on the chain of custody records, it went
8 from Tena Goff to the chemist, then you received it
9 back, is that correct?

10 A I received it back from Investigator Farmer, yes,
11 sir.

12 Q And other than being having checked out for court,
13 it has remained in the evidence room since that
14 time?

15 A That is correct.

16 MR. LUPTON: Nothing further.

17 MR. BAILEY: No questions, Your Honor.

18 THE COURT: You can be excused, sir.

19 (Witness steps down.)

20 MR. LUPTON: Your Honor, at this time the
21 State calls David Bell.

22 THE COURT: Okay.

23 THE BAILIFF: Place your left hand on the
24 Bible, raise your right, and face the clerk.

25 (Witness complies.)

A Yes, sir, I did. I analyzed marijuana. All the

1 marijuana that came into the Richland County
2 Sheriff's Department evidence room, I would test it
3 to see if it was marijuana or not.

4 Q And how long did you have that job?

5 A Eight years.

6 Q And did you receive any training for that job?

7 A Yes, sir, I did. I was trained and certified by
8 the South Carolina Law Enforcement Division to
9 analyze marijuana.

10 Q All right. And in that capacity, approximately how
11 many times have you analyzed marijuana?

12 A Rough guess, I have analyzed over 100,000 analyses
13 of marijuana.

14 Q Lot of marijuana?

15 A Well, sir, I have seen a lot of it.

16 Q Have you ever been qualified as an expert to
17 testify as a marijuana analyst?

18 A Yes, sir, I have. I have been in Magistrate's
19 Court, Family Court and in General Sessions Court.

20 MR. LUPTON: Your Honor, at this time I would
21 move to have David Bell qualified as an expert in
22 marijuana analysis.

23 THE COURT: Any objection?

24 MR. COOPER: Your Honor, I don't object to
25 that.

1 THE COURT: Okay, thank you.

2 Q Did you receive marijuana in this case?

3 A Yes, sir, I did.

4 Q And at the time you received it, what did you do
5 with it?

6 A After I received the evidence from the evidence
7 room, I proceeded to take it up to the laboratory
8 upstairs.

9 Q Prior to accepting it, what is the first thing you
10 did with it?

11 A The first thing I did, I examined it to see what
12 was in the evidence bag.

13 Q And did you examine the bag itself as well?

14 A Yes, sir, I did.

15 Q And what condition was it in?

16 A It was in a --- may I refer to my report?

17 Q Yes.

18 A It has been quite a few of them. This was a, like
19 a white piece of plastic that was wrapped around
20 some green plant material and then sealed on top
21 like a little baggie type thing.

22 Q I show you what is marked State's Exhibit 14 and
23 ask you if you can identify that.

24 A Yes, sir. This appears to be the evidence that I
25 received from the evidence room back then. And

1 this is the white plastic that was wrapped around
2 the green plant material as I stipulated while ago.

3 Q Okay. And as I was asking, what is the first thing
4 when you receive that evidence envelope, what is
5 the first thing you do prior to accepting it and
6 taking it to your station?

7 A I make sure it is sealed and then I take it
8 upstairs, you know, and then that is where I unseal
9 it and take it out for testing.

10 Q If it was not properly sealed, would you have
11 accepted it?

12 A No, sir, I would not have.

13 Q And you took it up, you said, and then you unsealed
14 it and tested it?

15 A Yes, sir, I opened it myself personally.

16 Q And can you explain briefly what that all entails?

17 A I will take an instrument, on this particular type
18 of bag I would use a pair of scissors and cut along
19 the edge and so I can go inside the bag and remove
20 what is inside the bag.

21 Q And then what testing do you do?

22 A Yes, sir, that is what I did.

23 Q No, what testing do you do?

24 A Oh, okay. What I did was, all the marijuana that I
25 receive, I am required by law to take out samples,

1 I use a pair of tweezers under a microscope and I
2 look at the marijuana sample under a microscope in
3 my test dish. And there is several characteristics
4 of marijuana that you have to find before you even
5 do a chemical test on it.

6 And those characteristics are: Serrated
7 edges, cystolithic hairs, unicellular hairs, or
8 multi-cellular hairs, is what SLED came up with as
9 far as the identification of marijuana as far as
10 the law goes.

11 And out of those four characteristics, I have
12 to find three before I even do a chemical test on
13 marijuana.

14 So usually on this type of marijuana sample,
15 it is obvious you don't have the serrated edges, so
16 I have to find three different hairs that are
17 needed to qualify as marijuana, at which time I do
18 that under the microscope.

19 Q And why do you say it is obvious you wouldn't find
20 the serrated edges?

21 A Because of the way it is crushed in real small
22 pieces. Normally you won't find a serrated edge in
23 that.

24 Q And so in this case did you find the other three
25 physical indicators?

1 A Yes, sir, I did, I found all three hairs required
2 by law to do a chemical test on it.

3 Q All right. And then explain the chemical test,
4 please.

5 A The chemical test is a solution that our chemist at
6 the office -- I'm not a chemist, so -- they make up
7 a decanol solution, what they call a decanol
8 solution. Several chemicals that is required by
9 SLED that can be used. And we put the chemicals in
10 the marijuana and we get a certain reaction, what
11 we call a pink eye. If it has tetrahydrocannabinol
12 in it, or THC is what we refer to it, you'll get
13 what they call a pink eye. And I have to do that
14 in order to make sure that it does have THC in it.
15 And it did have THC.

16 Q In this case did you do that with two items of
17 marijuana that were seized?

18 A Yes, sir, I did. I did it with the marijuana,
19 green plant material that I found in the white
20 plastic bag, and I also had a cigarette that
21 contained some green plant material that I also did
22 the test on it and it also came back positive.

23 Q Do you also weigh the marijuana?

24 A Yes, sir, I do.

25 Q And in this case what were the weights?

1 A On the green plant material that was extracted from
2 the white plastic bag, it was 3.88 grams, which is
3 equivalent to 0.13 ounces. And the partially
4 smoked cigarette was 0.42 grams, or .01 grams -- I
5 mean, ounces.

6 Q And does that include the weight of the plastic bag
7 or the weight of the --

8 A No, sir, I do not use the bag for the weight. It
9 is strictly the green plant material is what I
10 weigh.

11 Q And what about the wrapping paper on the cigarette?

12 A No, sir, none of that is included in the weight.

13 Q And did you generate a report in this case?

14 A Yes, sir, I did.

15 Q Do you have a copy of that?

16 A Yes, sir, I do.

17 MR. LUPTON: Your Honor, I would ask that this
18 be marked as State's Exhibit.

19 THE COURT: Okay.

20 MR. COOPER: No objection.

21 (WHEREUPON, State's Exhibit No. 29 was
22 marked for identification only.)

23 MR. LUPTON: And I would ask that it be
24 admitted as State's Exhibits 29.

25 THE COURT: Okay. Any objection?

1 MR. COOPER: Oh, no objection, Your Honor.

2 (WHEREUPON, State's Exhibit No. 29 was
3 admitted into evidence.)

4 MR. LUPTON: Your Honor, at this time, having
5 established chain and identity of the substance, I
6 would ask that State's Exhibit 14 be admitted into
7 evidence.

8 MR. COOPER: Ted, can I make sure --
9 (Pause.)

10 MR. COOPER: Your Honor, no objection.

11 THE COURT: Okay.

12 (WHEREUPON, State's Exhibit No. 14 was
13 marked for identification and received
14 into evidence.)

15 MR. LUPTON: Thank you. Nothing further.

16 MR. COOPER: Your Honor, I have no questions.

17 THE COURT: Okay. You can step down.

18 MR. LUPTON: Your Honor, I would ask that
19 Mr. Bell be excused.

20 THE COURT: Okay, you can step down and be
21 excused. Thank you for coming.

22 THE WITNESS: Thank you, ma'am.

23 (Witness steps down.)

24 MR. LUPTON: And, Your Honor, the State would
25 call Andy Farmer.

1 THE BAILIFF: Place your left hand on the
2 Bible, raise your right, and face the clerk.

3 (Witness complies.)

4 THE CLERK: Do you swear or affirm that the
5 testimony you shall give in this case will be the
6 truth, the whole truth, and nothing but the truth,
7 so help you God?

8 THE WITNESS: I do.

9 THE CLERK: Thank you. Please have a seat on
10 the witness stand, and state your full name for the
11 record.

12 THE WITNESS: James Andrew Farmer.

13 JAMES ANDREW FARMER,
14 after being duly sworn, testified as follows:

15 DIRECT EXAMINATION

16 BY MR. LUPTON:

17 Q Could you tell the jury where it is that you are
18 employed and in what capacity, please?

19 A I'm currently employed with the Richland County
20 Sheriff's Department as a forensic chemist.

21 Q And could you explain to the jury what that job
22 requires and what training you have for that job.

23 A The job entails -- any time an officer or someone
24 from the department seizes what they suspect to be
25 an illegal drug, it is submitted to my section of

1 the Drug Analysis Department. We do the analysis
2 on that to determine what the substance actually
3 is.

4 The training we go through every year, an
5 outside source would have a proficiency test we
6 have to pass, and have been doing that now for the
7 last six years.

8 I have a total experience of over nine years
9 and 11 months as a forensic chemist. I have a
10 Bachelor of Science Degree in Chemistry that I
11 obtained from Lander University in May of 1993. I
12 have training in forensic chemistry that I received
13 from the South Carolina Law Enforcement Division
14 Forensic Laboratory Department of Drug Analysis, I
15 have training in forensic chemistry that I received
16 from the Department of Justice Drug Enforcement
17 Division Special Research and Testing Laboratory,
18 and training from the South Carolina Criminal
19 Justice Academy.

20 And I have been recognized as an expert
21 witness in forensic chemistry in the courts of
22 South Carolina 26 times and twice federally.

23 Q And you talked about the lab being certified?

24 A We are currently in the process of receiving an
25 outside certification.

1 Q And you said you had been qualified as an expert
2 more than 20 times?

3 A That's correct. Total of 28 times.

4 MR. LUPTON: Your Honor, at this time I would
5 ask the witness be qualified as an expert in the
6 field of forensic chemistry.

7 MR. COOPER: I have no objection, Your Honor.

8 THE COURT: Okay. So qualified.

9 Q Now, as part of your job did you receive evidence
10 in this case?

11 A Yes, sir, I did.

12 Q For testing. Now, the procedures for receiving
13 evidence, could you explain what you do when you
14 first receive evidence from the evidence room?

15 A I will actually go down to the evidence section and
16 they will have a variety of cases that we received.
17 I receive that evidence directly from an evidence
18 technician in that section. I verify the evidence
19 at that location, and then I actually take it up
20 into the Drug Identification Laboratory and it is
21 cured in that section.

22 Once I have actually obtained it -- or taken
23 it to that department, I verify the evidence again
24 and log it into a system that we maintain upstairs
25 in our laboratory.

1 The evidence is then locked in a lock box that
2 I have access to until I'm actually ready to
3 process the evidence.

4 Q And you say verify. What do you mean by that?

5 A I verify the evidence based on the evidence number,
6 the item numbers, the description of the evidence
7 is actually listed by the officer, suspect name,
8 chain of custody, and as well as who I received the
9 evidence -- or verify the evidence is actually
10 sealed correctly. If the evidence is not sealed, I
11 will not obtain the evidence from the evidence
12 technician at the evidence room.

13 Q All right. And you talk about all these things you
14 do. If any of those things are not correct, what
15 would you do?

16 A I would not receive the evidence.

17 Q And in this case, did you receive certain items of
18 evidence?

19 A Yes, I did.

20 Q Now, in front of you is various items that have
21 been marked State's Exhibit -- we'll put that one
22 aside for the moment -- State's Exhibit 3, 15, 9
23 and 24, as well as corresponding evidence bags.
24 Can you look at those?

25 A (Witness complies.)

JAMES ANDREW FARMER -- DIRECT BY MR. LUPTON

277

1 Q Now, starting off with the State's Exhibits 3, 9,
2 15, and 24, the suspected controlled substances?

3 A Yes, sir.

4 Q Now, is there anything about those, any specific
5 features that you can identify that would be
6 unique?

7 A Yes. When I open an item of evidence, I open only
8 one item of evidence at a time. When I open that
9 item of evidence, I verify that the description
10 matches the item of evidence that I'm taking out.

11 At that point I will actually, if it is in a
12 ziplock or whatever the packaging may be, I will
13 actually put that case number and item number,
14 along with my initials, on that item.

15 And in this case, that is what I see here.

16 Q And on each of these items of evidence, do each of
17 these have those numbers on there that you are
18 describing?

19 A Yes.

20 Q And looking at each item of evidence, do you
21 recognize the handwriting?

22 A Yes, sir.

23 Q And whose handwriting is that in each case?

24 A That is my handwriting.

25 Q Now, the evidence envelopes, these evidence

1 envelopes, can you look at those, and do they
2 correspond with the State's Exhibits that you have
3 just identified? Based on your initials?

4 A Yes, sir.

5 Q And can you explain to the jury what condition
6 these envelopes which are collectively marked as
7 State's Exhibit 28, can you explain what condition
8 they were in at the time you received the items?

9 A Those bags are referred to as Best bags. They are
10 tamper-evident, which means that if someone were to
11 try to open the bag it would be obvious to me when
12 I inspected the bag. It has also got a seal at the
13 top that has to be correctly closed for it to be
14 completely sealed. And so the items of evidence
15 are submitted in those bags for us to verify that
16 they are correct.

17 Q And you did that in this case?

18 A Yes, I did.

19 Q Now, when you -- and you talked about opening one
20 item at a time. When you say one item at a time,
21 what do you mean by that?

22 A One bag at a time. And so when I take the item of
23 evidence out, it prevents me from having any type
24 of contamination or possibility of getting one of
25 the items of evidence mixed up with another.

1 Q Now, in this case did you test each of those items?

2 A Yes, sir, I did.

3 Q And can you explain what testing you did on each
4 item? Start out with the suspected
5 methamphetamine. What did you do to test that?

6 A With the suspected methamphetamines, there is a
7 chemical spot test that we actually use. It is a
8 presumptive test. It is designed to give us an
9 idea of what substance that we're looking at.

10 Based on the color reaction that occurs with
11 that test, it gives me an idea of what to do next,
12 extraction process.

13 Once I have gotten a preliminary testing and
14 have an idea of what substance I'm looking at, what
15 extracted substance, I run it on what is referred
16 to as a gas chromatograph-mass spectrometer, or a
17 GC-MA for short. That instrumentation is a
18 confirmatory test and it will definitively give me
19 the results of the analysis.

20 Q And in this situation, what did you find?

21 A On which item did you want?

22 Q Starting out with the methamphetamine, starting out
23 with what is labeled as State's Exhibit 3, and then
24 State's Exhibit 15.

25 A State's Exhibit 3 is what is referred to as Item 2

1 on my analysis. The item description was ziplock
2 with ziplock containing a crystal powder substance.
3 The analysis results were methamphetamine,
4 7.57 grams, which is 116.80 grains, which is a
5 Schedule 2 or C2 substance.

6 Q And then the item I believe 15?

7 A State's Exhibit 15, which on the report is Item 4,
8 the item description was drama queen metal tin with
9 eight ziplocks each containing crystal powder
10 substance. The results were methamphetamine
11 combined weight, 4.09 grams, which is 63.10 grains,
12 which is a C2 or Schedule 2 substance.

13 Q And just to be clear, the 7 grams plus 4 grams,
14 would that be greater than 10 grams?

15 A Yes, sir, 11.66 grams.

16 Q And you provided weights on there. Can you explain
17 to the jury how you come up with those weights?

18 A Yes, sir. Whenever I have a suspected illegal
19 substance, we do the initial -- I do the initial
20 testing of the substance, which includes the
21 presumptive test, the chemical spot test, as well
22 as taking a sample out that is necessary for my
23 GC-MS analysis to run.

24 The size requirements are very small. I only
25 need what is typically about the size of a couple

1 of grains of salt. Once I have actually obtained
2 my sample for analysis, I will then weigh the
3 substance on a certified balance in our section and
4 will notate that on my work sheet before I actually
5 issue a report.

6 Q You say certified scale?

7 A That's correct.

8 Q Is it calibrated?

9 A Yes, it is.

10 Q To what degree of accuracy?

11 A This balance is calibrated down to four decimal
12 places, two further than actually what is reported
13 in the analysis.

14 Q And what is weighed?

15 A Just the substance. There is no packaging weight
16 whatsoever.

17 Q Now, the Item Number 9, can you explain what you
18 did with that? Not Item Number 9, State's Exhibit
19 9.

20 A State's Exhibit 9, my item description is from Item
21 1 on my report, it is a pill bottle with liquid.
22 The analysis results were 1,4-Butanediol, which is
23 a dye -- which is an analogue or prodrug of gamma
24 hydroxybutyric acid, which is also referred to as
25 GHB, and that is a Schedule 1 substance.

1 Q And so you have -- did you obtain a weight on that?

2 A No. Since it was liquid, we do not obtain weights
3 on liquid.

4 Q Then what is marked as State's Exhibit 24, the
5 pills?

6 A Yes, sir.

7 Q What kind of analysis did you perform on those?

8 A With the pill analysis, we actually will do a
9 presumption spot test, and with pharmaceutical
10 grade pills they have an imprint or logo that is
11 stamped on each one of the pills. We will identify
12 each one of the pills based on both a combination
13 of presumptive test and that logo.

14 Q And can you explain what pills you found?

15 A Item 5 was a ziplock with an orange ziplock
16 containing peach tablets. The results were
17 Alprazolam indicated four tablets, which is a
18 Schedule 4 or C4 substance.

19 Q What is the common name for that?

20 A Alprazolam is often referred to as Xanax. Item 5.1
21 was ziplock from Item Five, with a blue tablet.
22 The results were Diazepam indicated, one tablet, C4
23 or Schedule 4 substance.

24 Q And that is commonly referred to as?

25 A Valium.

1 Q And which pill is that?

2 A The blue tablet.

3 Q With the V in it?

4 A Yes.

5 Q And which are -- the Alprazolam are the Xanax?

6 A They are the peach tablets.

7 Q And what else?

8 A Item 6 is a ziplock with an orange tablet. The
9 results were cyclobenzaprine hydrochloride
10 indicated, one tablet, which is an RX.

11 Q And?

12 A Item 6.1, ziplock from Item 6 with a white tablet.
13 The results are zolpidem tartrate indicated, one
14 tablet, which is a C4 or Schedule 4 substance.

15 Q And does that have a common name as well?

16 A The cyclobenzaprine hydrochloride is referred to as
17 Flexeril, which is for muscle spasms, and the
18 Zolpidem is Ambien, which is for insomnia.

19 Q Now, once you conducted each of these tests, what
20 did you do with all of the drugs that you tested?

21 A Once I do my testing, my initial testing, I will
22 take the items of evidence, repackage them the best
23 possible, if possible I repackage it in same way
24 that I received it. And then we'll actually place
25 the items of evidence into a heat seal bag. And it

1 remains in my custody until I issue the report and
2 ready to return the bag back to the evidence room.

3 Q All right. And in this case, looking at these bags
4 that are State's 28, did you reseal them in that?

5 A No, sir, not in these bags.

6 Q All right. I show you what is marked 27, State's
7 27. Can you explain what that is?

8 A This is the heat seal pack that I actually take the
9 Best bags, tamper evidence bags, as well as all the
10 items of evidence and will seal all of that back in
11 this bag. This bag gets the label that has my
12 name, officer, suspect name, as well as the item,
13 evidence number, and then at the bottom on the
14 inside of the bag I will actually seal -- that I
15 would seal it -- date it and seal it as well as my
16 initials and seal it across my writing.

17 Q And in that situation there is a spot where it was
18 resealed?

19 A That's correct. The liquid item that was
20 1,4-Butanediol, I opened this package back up and
21 obtained more evidence to do another confirmatory
22 test than GC-MS to verify that it was
23 1,4-Butanediol. And when I did that, I notated
24 that I reopened the package and resealed it.

25 Q And was that all done while it was still in your

1 custody?

2 A That's correct.

3 Q And while it was in your custody, did anybody else
4 have access to it?

5 A No.

6 Q And other than the tests you have described, did
7 you tamper with it, alter it, or change it any way?

8 A No, sir.

9 Q And once you resealed it in State's 27, what did
10 you do with that overall package?

11 A The overall package remains in my custody until I
12 have actually completed the analysis and written my
13 report.

14 Once the report is written, it is handed to
15 another competent chemist who verifies the analysis
16 and actually reviews the case work.

17 Once the report has been reviewed, I sign the
18 report, and then we will actually return the
19 evidence back to the evidence room.

20 Q And what condition was the bag in at the time you
21 turned it back in?

22 A It was sealed.

23 MR. LUPTON: Your Honor, at this time, having
24 established chain and chemical analysis and weights
25 on the Items 3, 9, 15, and 25, I believe -- 24, I

1 apologize -- I move to admit those items into
2 evidence.

3 THE COURT: Any objection?

4 MR. COOPER: If I can just have a quick
5 opportunity to view them before they are in?

6 THE COURT: Absolutely.

7 (Pause.)

8 MR. COOPER: Your Honor, we have no objection.

9 THE COURT: Okay.

10 (WHEREUPON, State's Exhibit No. 3 was
11 marked for identification and received
12 into evidence.)

13 (WHEREUPON, State's Exhibit No. 9 was
14 marked for identification and received
15 into evidence.)

16 (WHEREUPON, State's Exhibit No. 15 was
17 marked for identification and received
18 into evidence.)

19 (WHEREUPON, State's Exhibit No. 24 was
20 marked for identification and received
21 into evidence.)

22 (WHEREUPON, State's Exhibit No. 30 was
23 marked for identification only.)

24 Q And I show you State's Exhibit 30. Is that -- what
25 is that?

JAMES ANDREW FARMER -- DIRECT BY MR. LUPTON

287

1 A This is the official original report that I issued
2 after the analysis.

3 Q And this is the results of your findings?

4 A That's correct.

5 MR. LUPTON: Your Honor, I ask that this be
6 admitted as State's Exhibit 30.

7 THE COURT: Any objection?

8 MR. COOPER: No objection. You left one of
9 these over here.

10 (WHEREUPON, State's Exhibit No. 30 was
11 admitted into evidence.)

12 MR. LUPTON: I have nothing further Your
13 Honor.

14 MR. COOPER: I have no questions, Your Honor.

15 THE COURT: Okay, you can step down and be
16 excused. Thank you for coming.

17 (Witness steps down.)

18 MR. LUPTON: Your Honor, at this time the
19 State would rest.

20 THE COURT: Ladies and gentlemen of the jury
21 -- excuse me, did you have something?

22 MR. BAILEY: We just have a few quick motions.

23 THE COURT: Oh, absolutely. I am going to
24 release them.

25 Ladies and gentlemen of the jury, we're going

1 to take a break at this point. I remind you not to
2 discuss the case in any shape, form or fashion.

3 Thank you. You may be excused to your jury
4 room. We'll be with you shortly.

5 (WHEREUPON, the jury retires to the jury
6 room at 2:55 p.m.)

7 THE COURT: The State has rested. Are there
8 any motions before the Court at this time?

9 MR. BAILEY: Yes, Your Honor. We would like
10 to start with moving for a directed verdict. We
11 believe that a directed verdict is called for in
12 the charge that the evidence when taken in the
13 light most favorable to the State still has failed
14 to provide a basis for which the jury can find
15 Mr. Lecroy guilty beyond a reasonable doubt as
16 required by Jackson versus Virginia.

17 You know, clearly we have the standing
18 objection on the warrant. We find that the warrant
19 was improper and that anything seized from the
20 warrant would therefore should have been found
21 inadmissible, not to mention the fact we just feel
22 the State has not met their burden in linking
23 Mr. Lecroy directly with practices involving --

24 THE COURT: What was that last part,
25 practices?

1 MR. BAILEY: We feel like the State hasn't
2 proven Mr. Lecroy is guilty of trafficking as the
3 case has been presented, Your Honor.

4 THE COURT: Okay. Mr. Lupton?

5 MR. LUPTON: Unless you need me to reply, Your
6 Honor, I think it is obvious that we have met that
7 burden.

8 THE COURT: Okay. All right.

9 MR. BAILEY: Yes, Your Honor. Now, we would
10 also like to renew all --

11 THE COURT: I just thought you had a --

12 MR. BAILEY: I'm sorry, Your Honor.

13 THE COURT: That's okay. I just thought you
14 had a response to what he said. That's okay.

15 I find the directed verdict is not appropriate
16 at this time, that the State has put up sufficient
17 evidence, and it is up to the jury to rule on any
18 credibility with respect to inferences and all to
19 be taken in light of that evidence.

20 So your motions are respectfully denied.

21 MR. BAILEY: Thank you, Your Honor. Also, we
22 would like to preserve for the record all previous
23 objections made during this trial, including but
24 not limited to the standing objection as to all of
25 the drug evidence submitted from the warrant.

1 THE COURT: Okay. And the Court would stand
2 by its prior ruling.

3 MR. BAILEY: Yes, Your Honor. We just want to
4 renew those objections for the record.

5 Also, we would -- at this time we would like a
6 ruling on the earlier motion to remove the jury in
7 question that was taking notes at the time when the
8 other jurors weren't given access to notepads. We
9 would move that he be replaced with the alternate
10 juror at this time. We're afraid that because he
11 was taking notes at the time and the others were
12 not given the opportunity, that he may, you know,
13 his own perception may be perceived as, you know,
14 an overbearing influence on these matters within
15 the first witness that he was taking notes on, and
16 it might be an overbearing influence on the other
17 jurors.

18 THE COURT: State?

19 MR. LUPTON: Your Honor, again, I do not
20 believe that that is warranted in this situation.
21 I do not believe that there is any prejudice
22 because he was paying closer attention than anybody
23 else. There is no indication that anybody else
24 wasn't paying attention.

25 However, I am indifferent as to any of the 13.

1 I'm happy with any 12 of them. So I'm not
2 objecting to that just to remove that as an issue
3 on appeal.

4 THE COURT: My ruling would have been that I
5 do not believe that it would be improper with how
6 we handled it by taking the notes from him, but out
7 of an abundance of caution since the State has now
8 rested, then I will be happy to accommodate the
9 Defense request and have the alternate placed into
10 the jury panel.

11 MR. BAILEY: All right. Thank you very much,
12 Your Honor.

13 THE COURT: Anything further at this time?

14 MR. BAILEY: No, Your Honor. After that is
15 clear, we are ready to proceed. If you would like
16 to take five minutes --

17 THE COURT: Yes, we will give ourselves a
18 break.

19 MR. LUPTON: Your Honor, I would ask for the
20 record that we're proceeding with State's witnesses
21 or proceeding with closing arguments.

22 MR. BAILEY: We're ready to proceed with
23 closing arguments. We're not putting up any
24 evidence, Your Honor.

25 THE COURT: Okay. All right.

1 MR. LUPTON: I would just ask that they rest
2 on the record.

3 THE COURT: Oh, absolutely. We'll do that
4 once they get back. And then we'll need to just
5 talk about charges.

6 Okay, but how about you all just take a few
7 moments.

8 MR. BAILEY: Your Honor, we can rest on the
9 record right now.

10 THE COURT: Okay.

11 MR. LUPTON: What I meant was to do it in
12 front of jury.

13 THE COURT: You just have to do it in front of
14 the jury.

15 MR. BAILEY: Sure.

16 THE COURT: We will do it when they come back.

17 MR. BAILEY: That sounds fine.

18 THE COURT: You all can go ahead and set up
19 for closing, but we will go ahead and talk about
20 the charges.

21 MR. LUPTON: Thank you, Your Honor.

22 (Break.)

23 MR. LUPTON: Something that came out in the
24 openings, the Defense was talking about there
25 having been some party and then suggesting perhaps

1 that the drugs were left over from some party.

2 Now, obviously they have every right to argue
3 any fact that is in evidence and any inference that
4 can be reasonably drawn from that, but I do object
5 to any talk about some party when there has been
6 absolutely no testimony that there is any kind of
7 party or anybody else.

8 The only evidence -- and not just -- not just
9 that is on the record, but on the evidence that is
10 known to the State -- now, they may have talked to
11 their client and know something different, but
12 there is absolutely no evidence of there having
13 ever been a party related to anywhere close to the
14 date of offense.

15 The closest there is, is in the statement he
16 says that the pills were some pills and then a
17 couple of pills that the friends brought, that
18 some friends brought over.

19 So I do have -- I do object to anything that
20 strays beyond reasonable inferences to be drawn
21 from the evidence.

22 THE COURT: Okay.

23 MR. BAILEY: I think that not only has it been
24 submitted into evidence by the Solicitor's record
25 that friends had brought stuff to Mr. Lecroy, we

1 think that any -- it is definitely a reasonable
2 inference that people brought -- that could have
3 brought him drugs or been present at some type of
4 proceeding.

5 THE COURT: I think there is a distinction
6 between the statements, though. The State is
7 indicating the word "party" to suggest that left
8 over from a party as if there had been an event
9 occurring, as opposed to he has to accept what is
10 in the statement about the friends bringing
11 something at some point in time potentially, but to
12 clarify it as a party at which things could have
13 just been left around loosely, I think was the
14 distinction Mr. Lupton was trying to make.

15 MR. BAILEY: Well, I mean, as long as what I
16 stated, that is what we're concerned about. I will
17 not say that Mr. Lecroy had a party, per se. If he
18 doesn't want me to use the word "party" in relation
19 to Mr. Lecroy, that is -- you know, I have no
20 problem with it. I think it is a reasonable
21 inference, but, you know, I can certainly forego
22 using the word "party" as in Mr. Lecroy had a
23 party.

24 MR. LUPTON: And I don't object to him, if he
25 wants to, say, point to the specific points of

1 evidence and say, I think from this you should draw
2 an inference that there was a party, then that is
3 fine with me.

4 THE COURT: Okay.

5 MR. LUPTON: What I do not want is him making
6 statements of fact, "there was a party," when there
7 is nothing in evidence. I think that that is --

8 THE COURT: Absolutely. And the law is on
9 your side on that. Right, there has to be
10 reasonable inferences from evidence that occurred
11 at trial, not from any speculation or anything that
12 somebody might think, but just something that
13 occurred. And there has been no evidence of
14 anything other than the mother and Mr. Lecroy at
15 his home at this point.

16 MR. BAILEY: At the time the police came.

17 THE COURT: When the police came, right. But
18 I'm saying the statement about the friends may have
19 brought something, that is fine, but that isn't
20 even to suggest that there is a party going on, a
21 friend brought you something.

22 MR. BAILEY: I mean --

23 THE COURT: That can just be a passage from
24 hand to hand or something, but it doesn't suggest a
25 party. I think I would rule with the State in that

1 regard in terms of the use of the word "party."

2 MR. LUPTON: Thank you, Your Honor.

3 MR. BAILEY: Your Honor, I still have
4 something to address.

5 THE COURT: Sure.

6 MR. BAILEY: Like I said earlier, I still
7 think that saying there could have been a party is
8 a reasonable inference. It is in their evidence
9 that got -- you know, they've got either drugs
10 being brought to the house by friends, they say
11 Atlanta, out of town. I think it is a reasonable
12 inference that he had a social gathering at his
13 house.

14 I still would object to -- I mean, you know,
15 if that is the Court's ruling, I can certainly not
16 say Mr. Lecroy had a party, per se. I wanted to
17 get that on the record. I can say that if that is
18 the Court's ruling to proceed, but I still think
19 that it is a reasonable inference. I still would
20 object to that.

21 THE COURT: Well, I agree with what Mr. Lupton
22 is saying. You can't say he had a party. There is
23 no evidence that he had a party.

24 MR. BAILEY: Okay. I mean, our position is
25 the same, but I will refrain --

1 THE COURT: But he did qualify himself by
2 saying, point to the evidence and that along with a
3 statement about friends bringing it suggests that
4 he could have, or what have you, but don't just
5 make it a statement of fact.

6 MR. BAILEY: Sure. Yes, I will certainly
7 refrain from using or saying that Steven Lecroy had
8 a party, you know, for the purposes of the record.

9 THE COURT: Right.

10 MR. BAILEY: And your order, Your Honor.

11 THE COURT: Right.

12 MR. BAILEY: I still want to say for the
13 record that I think that that is acceptable, but --

14 THE COURT: Yes, I'm talking about the
15 inference that he may have, or whatever.

16 MR. BAILEY: I understand.

17 THE COURT: But don't say it as a statement of
18 fact because that is not in evidence.

19 MR. BAILEY: All right. Thank you, Your
20 Honor.

21 THE COURT: That is the distinction. Okay.
22 Anything further? How long do you all anticipate
23 for your closing? She is still trying to print out
24 the jury charges, and of course you all need to see
25 them first, but essentially we will have the

1 standard charges and then possession and all that.
2 The only part we are working on is the lesser
3 included offense language.

4 MR. LUPTON: I don't anticipate -- I would be
5 surprised if I went more than 15, 20 minutes tops.

6 MR. BAILEY: I think we will probably do it in
7 a fraction of that.

8 THE COURT: Okay. All right. So do you want
9 to proceed and then just come and look at the
10 charges right before we charge? Is that fine, so
11 we can just continue on now? Can you think of
12 anything specifically that you want in addition to
13 the standard charges?

14 MR. BAILEY: Yes, Your Honor, we just have the
15 State versus Jackson charge about the Defense
16 respectfully requests Your Honor charge the jury
17 that the Defendant's absence at trial should not be
18 considered at all in the deliberation process.
19 That's all we have. May I approach?

20 THE COURT: I'll show you one that we were
21 going to use.

22 MR. LUPTON: Your Honor --

23 MR. BAILEY: I would like to make ours part of
24 the record. I know you have another one.

25 THE COURT: Well, just see if you like it or

1 not.

2 (Pause.)

3 MR. LUPTON: The State does not object to
4 either charge whether together or either one
5 separately. I believe that both are accurate
6 reflections of law and both are appropriate.

7 MR. BAILEY: But, you know, we prefer ours for
8 the record, but we think this is -- this gets the
9 idea across, Your Honor.

10 THE COURT: Okay. And then do you all still
11 want the charge about the Defendant is not required
12 to testify at trial, because I think that just
13 further supports the Defense position that there
14 was no requirement that he be at trial and it
15 should not be considered, and that the fact that
16 even if he were at trial he didn't have to testify.

17 MR. BAILEY: That's fine, Your Honor.

18 THE COURT: Okay.

19 MR. BAILEY: We would prefer you say his
20 absence cannot be used against him, and not so much
21 that he not be required to be at trial. We feel
22 like that.

23 THE COURT: Oh, no, no, no, no, I am not going
24 say that about the requirement, I'm just telling
25 you that that way would take care of your situation

1 that we talked about earlier that there be any
2 requirement that he be here in the first place, but
3 that even if he were here, he still didn't have to
4 testify.

5 So, either way, the absence should not be
6 deliberated upon, and nor if he failed to testify,
7 that should not be considered in jury
8 deliberations..

9 MR. BAILEY: That's fine. And just for the
10 record, we would like to renew our previous
11 objections.

12 THE COURT: Okay. Thank you. And this
13 proposed charge will be the next Court's Exhibit
14 then.

15 (WHEREUPON, Court's Exhibit No. 14 was
16 marked for identification only.)

17 THE COURT: Okay, we will proceed on and then
18 give you a chance to look at the charges right
19 before.

20 Jurors, please.

21 (WHEREUPON, the jury came into open
22 court at approximately 3:29 p.m.)

23 THE BAILIFF: The jury is all present, Your
24 Honor.

25 MR. BAILEY: Your Honor, may we approach?

1 (WHEREUPON, a bench conference was held
2 in the presence of the jury but out of
3 the hearing of the jury.)

4 THE COURT: Ladies and gentlemen, prior to
5 your break the State had rested and then, as I told
6 you earlier in the case, then that meant the Court
7 had to take up legal motions at that point in the
8 trial.

9 So now we're ready to proceed to the Defense's
10 case. Defense, do you intend to put up a case?

11 THE BAILIFF: The Defense rests, Your Honor.

12 THE COURT: Okay. So now we're at the
13 conclusion of the trial, and at this time the
14 parties would have the opportunity to provide you
15 with their closing arguments.

16 But some other legal issues that came up, I'm
17 going to ask the alternate to step in and be part
18 of the jury panel, and then the gentleman, I
19 apologize for your name, but you're the one who
20 took the notes, can you tell me your name and juror
21 number for the record?

22 JUROR 92: Number 92, Mark Friendly.

23 THE COURT: Okay. And I have ruled that
24 because, in my mistake, I did not tell you all
25 about whether you could take notes or not, that out

1 of an abundance of caution we are going to allow
2 the alternate to step in at this point and then
3 have you step out. And so you will no longer be
4 part of the deliberations of the case. You are
5 welcome to stay and sit in the gallery and
6 continue, by otherwise you are excused.

7 JUROR: Okay.

8 THE COURT: Thank you for your service.

9 (WHEREUPON, Juror 92, Mark Friendly, was
10 excused.)

11 THE COURT: Okay, ladies and gentlemen, this
12 concludes the trial of the case. And at this point
13 you are going to hear the closing arguments by the
14 parties.

15 I will remind you that closing arguments are
16 not evidence in this case. The evidence that you
17 are required to recall is what you heard from the
18 jury stand by the witnesses, as well as any
19 evidence that will be available to you as you
20 deliberate.

21 This is the portion of the trial where the
22 parties will refresh your memory as to what you
23 have heard throughout the trial and try to help you
24 and assist you in drawing any reasonable inferences
25 from the evidence, obviously with the mindset of

1 trying to persuade you towards their side of the
2 case.

3 So I would caution you to remind yourselves of
4 what was there and that the attorneys' arguments
5 are not evidence, but that you should recall what
6 was the actual testimony and evidence on your own
7 in this case.

8 Please direct your attention to the State.

9 MR. LUPTON: Thank you, Your Honor. May it
10 please the Court?

11 CLOSING STATEMENT

12 MR. LUPTON: Ladies and gentlemen, at the
13 start of this trial I told you I was going to prove
14 to you beyond any reasonable doubt that the
15 Defendant was guilty of trafficking methamphetamine
16 and possession of controlled substance and
17 possession of marijuana.

18 Ladies and gentlemen, the evidence in this
19 case has shown that. The evidence in this case has
20 shown that here in Richland County, on
21 January 25th, 2007, Steven Michael Lecroy had in
22 his possession more than 10 grams of
23 methamphetamine; he had controlled substances, the
24 Xanax, Valium, the Ambien; that he had marijuana.
25 The evidence shows that.

1 Now, under the laws of the State of South
2 Carolina, possession of more than 10 grams of
3 methamphetamine is by definition trafficking.

4 Trafficking can be proven by proof of
5 possession alone of that amount of drugs. It can
6 also be proven by a person selling or intending to
7 sell over 10 grams of methamphetamine.

8 Now, in this case you'll have the drug report
9 in evidence showing you that he had over 11 grams
10 of methamphetamine. He had, I believe it was
11 7.57 grams in his pocket, and there in his room he
12 had 4.09 grams.

13 You saw his statement. You will have his
14 statement with you in evidence. And in his
15 statement, after he was advised of his rights,
16 after he was made comfortable, after he agreed to
17 talk, he told Investigator Poole very clearly
18 certain things.

19 He told him that, they searched my room -- my
20 room -- and found my meth and pot. They found my
21 meth and pot. Not somebody else's meth. My meth.
22 They found my pot and meth on my desk. He's
23 identifying the methamphetamine from his desk.
24 They found my meth. I also had some meth in my
25 pocket. Not that he could deny possessing what is

1 in his pocket, but he is not credible. But he even
2 admitted that, that was my meth. My meth.

3 Do you sell drugs? Yes.

4 We have both possession and the fact that he
5 sold or intended to sell the drugs, the
6 methamphetamine.

7 Yes, just to my friends, I only sell meth.

8 Now, ladies and gentlemen, in addition to that
9 statement that you will have with you in evidence
10 you will have the pictures. You will have the
11 pictures which you will be able to look at and see
12 what was found in his pocket, and you'll have those
13 drugs in evidence as well. You will have a copy of
14 the statement that you can read. And you will have
15 the pictures from his room, pictures of his desk
16 where you can see the drugs sitting out in plain
17 view. The GHB. You can see where the marijuana
18 was. You can see the meth pipes and the marijuana
19 pipes. You can see the tin there on top of the
20 shelf that contained more of the methamphetamine.

21 You will be able to look at the pictures and
22 see where all the drugs were out in plain view in
23 his bedroom that he claimed that had his stuff all
24 over it and that he was sleeping in. You'll have
25 the marijuana and you'll have the pills, you'll

1 have the drug analysis which shows you what those
2 items were and shows you how much of those items
3 there were.

4 Ladies and gentlemen, there is no question in
5 this case, clearly he had possession of more than
6 10 grams of methamphetamine, he had possession of
7 controlled substances, he had possession of
8 marijuana. He admitted it. And it was obvious all
9 over his room.

10 Now, certain things that have come up, certain
11 things that may come up as the Defense gets the
12 last opportunity to speak to you in this trial
13 because the State has the burden of proof, the
14 State goes first, and the Defense gets to go last.
15 And there a few things I want to talk about.

16 The first is something that is brought up
17 multiple times by the Defense, and I have
18 absolutely no reason why, and that is questions
19 about lifestyle choices of the Defendant.

20 I don't even know why that has been brought up
21 in evidence. That has absolutely nothing to do
22 with this case. Whatever he decides to do with his
23 free time is up to him.

24 When he sells drugs by his own admission in
25 the community, that is not up to him. The drugs

1 were illegal. Whatever lifestyle choices he makes
2 are not. They have no relevance.

3 Now, something else that came up was stuff
4 that was said by the attorney in opening, whatever
5 they might say in the closing, questions that they
6 asked.

7 I will remind you and the judge will remind
8 you in her charge on the law -- and charge on the
9 law just means instructions on the law -- I will
10 remind you that what the attorneys say is not
11 evidence. Evidence is strictly these documents
12 here, things that have an exhibit label attached to
13 them.

14 Testimony that came from this witness stand
15 where a person swore an oath to tell the truth,
16 told you what they knew and were subject to
17 cross-examination, that is evidence. That is the
18 only evidence in this case. What attorney's say,
19 what they argue is not evidence, whether it is in
20 the form of a statement or question, only what came
21 out in the witness stand and what is put into
22 evidence as an exhibit.

23 Now, there was some talk about the Defendant's
24 comfort level and being tased. And I think it
25 reasonable to guess that the Defense will try and

1 argue that because there were police officers in
2 the house and because they were asking questions
3 after the Defendant had been tased and after he was
4 handcuffed, that somehow the statements were not
5 voluntary, they were coerced, and therefore you
6 shouldn't consider his 3-page confession as
7 evidence.

8 Ladies and gentlemen, the evidence in this
9 case is clear that the Defendant was moved to the
10 couch and allowed to make himself comfortable. He
11 was checked by EMS and was okay. They didn't take
12 him. No restrictions. They -- the officers didn't
13 have to move his handcuffs. They could have kept
14 him cuffed behind his back. But they did
15 everything they could in their power to be fair to
16 him, to let him move his hands in front of him, to
17 let him get into a position on the couch where he
18 could be comfortable. And they made sure he was
19 comfortable for a period of time before he was
20 asked questions.

21 They didn't take him down to the station. The
22 Defense talks about that, you could have taken him
23 to the station. You can ask yourself, would a
24 reasonable person be more comfortable and feel less
25 intimidated in their own home where they are

1 familiar, surrounded by familiar surroundings,
2 they've got family members nearby that would be
3 there if something happened than down at the
4 station surrounded by nothing but police officers,
5 locked doors, and nobody friendly. I'm not
6 suggesting that the officers would do anything
7 wrong. But if a person were afraid that they
8 might, would they be less afraid in a place where
9 somebody related to them would hear that misconduct
10 or in a locked interrogation room.

11 The officers did everything they could
12 reasonably in this case. The evidence shows that
13 they were fair to the Defendant, they tried to make
14 him comfortable. And they did all that prior to
15 taking the statement. They explained the rights
16 one by one. Whether or not the boxes were checked
17 isn't a big deal. That doesn't matter. There is
18 no rule that says those boxes have to be checked.
19 The officer told you -- explained that, explained
20 what he did and why.

21 They took the statement. And they could have
22 taken him to jail. And they could have allowed
23 him -- or they could have taken him -- if the jail
24 wouldn't take him right away, they could have gone
25 to the hospital and checked him in there and kept

1 him in custody. But they treated him fairly and
2 allowed him to turn himself in later.

3 The evidence shows all of that, and you will
4 have that to consider.

5 Now, the other thing that was discussed a
6 little bit was the mother, and that she was listed
7 in the report. The officer explained that that is
8 simply because she was present and everybody
9 present was listed. And that briefly when they
10 first went in she was handcuffed. However, at the
11 time the statement was made she wasn't in
12 handcuffs, she wasn't a suspect. They were talking
13 with her about the old country, was the testimony.

14 Now, I don't know if they intend to get up and
15 try and throw the mom under the bus, figuratively
16 speaking, and try and say that the son was claiming
17 all this to protect his 70-plus-year-old mom. I
18 don't know, we'll have to wait and hear the closing
19 to find out. But I would ask you, do you really
20 think that that is realistic in this case, that the
21 mom kept that house immaculate with the carpet
22 runners around. And some of you may remember your
23 own grandmother, your own parents doing that. Is
24 it reasonable that she kept all that and went in
25 there and kept his room messy and kept drugs all

1 over his room? No. It is clear those were his
2 drugs. He wasn't protecting his mom by making the
3 statement.

4 Now, there is a couple of brief statements in
5 here, and I think they will probably try to make
6 something of that, where he was asked about the
7 pills.

8 And he says that he had some Flexeril and
9 Valium, and stuff my friends brought over.

10 And where did you get the meth from?

11 A friend brought it from Atlanta.

12 Well, I don't know where he got the meth from,
13 whether he got it from some friend from Atlanta or
14 whether he cooked it up himself. We have to take
15 his word for it, that he got it from Atlanta.

16 But regardless of where he got it, we have to
17 go back to the, my room, my meth.

18 Do you sell drugs? Yes, I only sell meth.

19 Regardless of where the methamphetamine came
20 from, it was his. And obviously he had to get it
21 from somewhere. The fact that he got it from his
22 friends doesn't matter. It is still his. It was
23 in his pocket, in his room.

24 Now, the pills, he talks about controlled
25 substances and other controlled substances that his

1 friends brought over. He doesn't say that they
2 weren't mine, I didn't know they were there. In
3 fact, he admits he knew they were there and they
4 were in his room. So whether he owned them or not,
5 he is in possession. If he takes drugs from his
6 friends, they are now in his possession.

7 But even if the Xanax, even if you throw that
8 out, the Valium is still there. The GHB analogue
9 is still there. The pot. My pot. And he smokes
10 it. He is still guilty of that.

11 Now, a couple of last things. The judge is
12 going to explain to you on the verdict form that
13 you have a choice to make on the methamphetamine.

14 Possession more than 10 grams is by definition
15 trafficking. If, after you deliberate, you believe
16 that he possessed with the intent to sell or not
17 those 11 grams of methamphetamine, you have to find
18 him guilty of trafficking.

19 However, in this case, because the drugs were
20 in two separate locations, one in his pocket and
21 one in his room, there is a possibility that if you
22 decide to choose to believe that the stuff he
23 admits to possessing in his room, that he didn't
24 really possess it, and you only want to find him
25 guilty of the stuff in his pocket, or vice versa,

1 that he would be guilty of a lesser included
2 offense of possession with intent to distribute.

3 The fact that he admits to selling it would
4 establish the intent to distribute, plus the fact
5 that any methamphetamine over one gram the
6 legislature established that there is an inference.
7 As a matter of fact, one of the hardest things to
8 find as a jury is the Defendant possessed with
9 intent to distribute. So even if you choose to
10 ignore his admission of possessing both sets of
11 drugs, you can still find him guilty, you can
12 still, I would submit, based on the evidence be
13 required to find him guilty of PWID, possession
14 with intent to distribute.

15 Of course, if you refuse to believe both his
16 admission of possession and the admission of use
17 and ignore the inference, weight that the
18 legislature established that the stuff in his
19 pocket was more than seven and a half times and
20 you wanted to find him guilty of only possession,
21 then that would be the third option.

22 I would submit to you that based on the
23 evidence in any reasonable view of the evidence you
24 have to find him guilty of trafficking.

25 Now, when I say possession -- and I hesitate

1 to mention this, but I only do it because it was
2 brought up in the opening. And regardless of how
3 the drugs got into that house, whatever the
4 argument is about somebody else bringing them in,
5 whether it is some social gathering or commercial
6 transaction, the statement clearly states, my
7 drugs, my meth, I only sell meth. That is enough
8 for the conviction.

9 But, even if somehow you were to believe that
10 he was somehow protecting somebody, trying to cover
11 for somebody, possession includes having dominion
12 and control over the drugs. That was his room.
13 That was his pocket. Even if he was holding those
14 drugs for a friend and was lying about them being
15 his, lying about selling, lying about the money
16 being from selling it, the fact that he possessed
17 the drugs, had dominion and control over the drugs
18 and knew about the drugs, even if he intended to
19 give them back to somebody else, that is still
20 trafficking.

21 I would argue that that is not what the
22 evidence shows. But just trying to anticipate
23 whatever arguments they make. Even if you believe
24 that theory, despite any lack of evidence to
25 support it, you would still be required under the

1 law to find the Defendant guilty.

2 Now, I appreciate the fact that you have
3 listened throughout this trial. I want to thank
4 you. And I want to do what I told you I was going
5 to do at the start, I'm going to ask you to go back
6 after you have heard the Defendant's closing, the
7 charge on the law, and I'm going to ask you to
8 render a just verdict.

9 And in this case, based on this evidence and
10 the law, that verdict is guilty as charged on all
11 three counts.

12 Thank you.

13 THE COURT: Thank you. Defense counsel, you
14 may proceed.

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

17 CLOSING STATEMENT

18 MR. BAILEY: Can I borrow a highlighter?

19 (Pause.)

20 MR. BAILEY: Ladies and gentlemen, when
21 someone walks in on a man, 39-year-old man with a
22 dog collar and a leash attached to his neck, people
23 assume the worst. People assume the worst. The
24 police officers, the State clearly in this case has
25 assumed the worst immediately. They made up their

1 mind about what had happened in this house, who had
2 been in this house, and now they want you also to
3 assume the absolute worst and to make up the
4 decision about Mr. Steven Lecroy, despite the fact
5 that they have failed to present enough evidence to
6 conclusively show that Mr. Lecroy is guilty of
7 trafficking, which is what they are saying he is
8 guilty of.

9 First of all, we're not saying that there were
10 no drugs. Nobody in here is going to tell you
11 there where no drugs in this house. What we're
12 disputing is that Mr. Steven Lecroy is this massive
13 drug trafficker as presented by the State.

14 Now, you know, they brought up a lot of
15 witnesses, a lot of credible scientific experts. I
16 wasn't going to waste your time by asking them a
17 bunch of questions.

18 The scientific verdict is in. There were
19 drugs in those bags. There were drugs in this
20 house. But you can't stop there. We have to ask
21 ourselves if this is trafficking who else could
22 have been involved, what else could have been going
23 on.

24 The truth is the State didn't ask these
25 questions. They walked in on this man in a very

1 strange, strange situation and assumed he was up to
2 no good, which I think a lot of people naturally
3 would. But it is necessary to dig a little bit
4 deeper here.

5 The State said early on, this is not Miami
6 Vice. Well, I am going to agree with the
7 Government's lawyer on that, this isn't Miami Vice.
8 Miami Vice was an hour long prime time show. And
9 in this case the State, I mean, the investigators
10 spent about 30 minutes at this scene before they
11 had a statement from Mr. Lecroy and packed up and
12 left. So 30 minutes was clearly all they needed to
13 do investigation-wise to wrap this up and determine
14 what had happened.

15 What they have got, drugs in the house, a very
16 shaky statement. Now, we're not saying that
17 Elfrieda Lecroy, the elderly woman, the mother of
18 Steven Lecroy, is the leader of a crystal meth
19 ring, absolutely not. But you do have to ask
20 yourself who is being protected. Who is
21 Mr. Lecroy, in a vulnerable moment and in a last
22 attempt to protect what is around him, who was he
23 trying to protect when he is handcuffed, when he
24 sees his mother handcuffed right after a police
25 raid and five -- at least five police officers jump

1 into this house. He was trying to protect his
2 mother, but we're not saying that these drugs were
3 his mother's.

4 What we are trying to say and what we think
5 the evidence can show, I think what the evidence
6 tells us, is that Mr. Lecroy was not alone in the
7 hours leading up to this police raid on the morning
8 of January 25th.

9 Now, I'd like to, you know, before I go into
10 explaining why we know he wasn't alone, why we can
11 easily infer that he wasn't alone, I would like to
12 point at the lack of the evidence the State
13 presented.

14 Again, Mr. Lecroy is accused of being, you
15 know, a trafficker of crystal meth. They don't
16 have any witnesses. They presented no one that has
17 said that Mr. Lecroy was selling drugs or that they
18 sold drugs to Mr. Lecroy or that they ever even
19 heard Mr. Lecroy might be a drug dealer.

20 They presented no video. In this day and age
21 with this technology it is not uncommon at all for
22 police officers to get videos, controlled buys, get
23 informants to get in. You know, a lot of
24 investigators get their ducks in a row and they
25 like to get it on video tape. I mean, we have got

1 You Tube. Yet, we don't have any videos about this
2 man who is allegedly leading this crystal meth
3 ring. We don't even have any fingerprints. We --
4 you know, we have seen -- we have also seen a
5 parade of photographs. You have seen all this
6 evidence. You see all these special bags.

7 You know, I don't know if -- I don't know why
8 the State wouldn't bother to tell you that this was
9 definitively Steven Lecroy's mint tin that says
10 "drama queen" or these are definitely his drugs
11 that came from his desk. But I think
12 fingerprintings, you know, long before there were
13 videos, controlled buys, CSC stuff, DNA evidence, I
14 mean, the State, I think it is reasonable to expect
15 that the State would at least fingerprint one of
16 these numerous items.

17 Now, they didn't check the little tin that
18 said "drama queen," but they had decided it was
19 Mr. Lecroy's. This guy who, you know, who to them
20 probably looked and, you know, reasonably
21 understandable, he probably looked like a freak
22 show. They walk into his room, you have got this
23 half naked man with a dog collar around his neck
24 and a leash, you know, pretty much bound in his
25 bedroom in the early morning hours. They assume

1 the worst.

2 Now, I grew up in Florence County. It was not
3 the booming metropolis that Columbia is. There
4 were fine -- you know, there wasn't so much to do.
5 But like a lot of teenagers there, we had a lot of
6 time on our hands.

7 My best friend, Joseph Brown, who I have known
8 since we were, you know, in preschool, his mom was
9 a nurse and she worked the night shift.
10 Inevitably, with very little to do, we would
11 sometimes hang out over at my friend Joseph's
12 house. I mean, this, you know, every few -- every
13 weekend or so.

14 And one particular night, I think Joseph
15 decided, and we talked about it, Joseph decided he
16 was going to have some people over. You might have
17 seen this story before, you might have seen it in
18 teen movie days. Essentially, you know, a few
19 people come over to the house, and what starts as a
20 few people over at a house, it got out of control
21 real fast, and it turned out to be a lot more
22 people at the house.

23 Of course, you know, Joseph's mother didn't
24 come home until probably 8:00 or 9:00 in the
25 morning, but when people finally cleared out, here

1 we were 16- and 17-year-olds, you know, we worked
2 fast to clean up as many cigarette butts as we
3 possible could and, you know, we are down on our
4 hands and knees, we are picking them up from the
5 sidewalk and the back yard, you know, around the
6 pool.

7 So we're picking up these cigarette butts and,
8 you know, I'm not proud of it, this is just
9 reality, this is what teenagers in Florence did,
10 picked up some beer cans too, I'm sure.

11 Well, Joseph's mom did not -- did not figure
12 out that Joseph had had, you know, essentially had
13 a party, had a gathering, had a bunch of, you know,
14 wild teenage hooligans over until about a week
15 later. And the reason why she found this out, she
16 found dozens of cigarette butts in the filter of
17 the swimming pool. You know, probably, I mean,
18 dozens. Those are the words I had heard. So we
19 are talking, you know, 80 to 100 cigarettes.

20 And I don't smoke cigarettes. I can't say if
21 Joseph, I don't think he was a smoker either, I
22 can't definitively speak to that, but I can tell
23 you that there is no way I smoked 80 to 100
24 cigarettes that night. There is no way that Joseph
25 Brown, even if he were a huge cigarette smoker --

1 he is actually a dentist now, so he is very, very
2 health conscious -- but just because you've got
3 this filter, you know, overloaded with cigarettes
4 doesn't mean that the people that are right there
5 at the house at this very moment are inevitably
6 attached to these items.

7 And that is what we have got here. We've got
8 this house, we've got this disaster area, and we
9 know that Mr. Lecroy has had guests at some point.
10 Mr. Lecroy, it is very reasonable, we can tell
11 Mr. Lecroy wasn't alone, for several reasons.

12 One, you know, we've got a mention of his
13 friends in his statement.

14 All right. Now, they ask where did these
15 pills come from, Flexeril, Valium. He said my
16 friends brought it over. So we know his friend
17 brought something over. We know that there were
18 people, there were other people in the house.
19 Where did this meth come from. A friend from
20 Atlanta brought it over. So it is clear that there
21 were friends in the house.

22 Another thing is, you know, Mr. Lecroy was
23 caught in a pretty compromising situation, and I
24 know this is real awkward and might imply kind of
25 perversion, but I think that the police officers

1 came in early in the morning after he had folks
2 over doing, you know, God knows what, his guests
3 had obviously left. And, you know, left him, you
4 know, in this -- left, you know, Lord knows what
5 else.

6 The State has not established, we don't know
7 how many people were involved. We don't know how
8 many people could have had their hands on this. We
9 have got a bunch of witnesses up here giving, you
10 know, they know how many police officers touched
11 the evidence, they know who handed what bag to who,
12 they did an excellent job of establishing the chain
13 of custody, but without fingerprints on any of this
14 stuff, how do we even know that all of this was
15 supposed to be Mr. Lecroy's. The police really
16 didn't check to see who else could have been
17 involved. You know, we got it wrapped up in 30
18 minutes.

19 And I'd like to talk a little bit -- I'd like
20 to talk a little bit about the situation, the scene
21 that Mr. Lecroy found himself in. Again, I think
22 it is important that we look at the facts as they
23 are. You know, it is a unique situation. He was
24 in a compromising situation, probably left by some
25 kind of romantic caller, half bound and half naked.

1 The police come in. Mr. Lecroy is, you know,
2 half naked, stuff all over, you know, all over the
3 house. Whatever guests he has had, you know, by
4 this point at 9:30 in the morning have already
5 left. I mean, I don't know why it took five armed
6 officers to take down a half naked man in a dog
7 collar, but apparently it did.

8 Officer Branham and Officer Robertson both
9 agreed with me that he seemed out of control,
10 Mr. Lecroy was out of control, you know, possibly
11 delirious, you know, maybe some amount of drug
12 usage, not necessarily -- I mean, you are a drug
13 dealer.

14 They came into his house early in the morning.
15 They rammed open the door. We know at least five
16 officers came in in unison.

17 And the situation, they didn't really know how
18 to deal with it, but when Mr. Lecroy seemed odd, he
19 seemed kind of strange, they tased him. They tased
20 him three times.

21 A lot has been said about what it means to be
22 tased. How painful is it to be tased. There seems
23 to be varying degrees or varying opinions on this.

24 Investigator Branham didn't think it was all
25 too painful.

1 Investigator Poole, I might have
2 misunderstood, he said something, you know, it
3 depends on what your attitude is.

4 Investigator Robertson said something really
5 very interesting which was -- let's see if I can --
6 it was -- okay, the person will definitely do what
7 you want them to do once you have been tased.

8 Now, you know, obviously I'm not a doctor, but
9 we do know that it is a policy, as said by several
10 of these investigators, that they must call EMS
11 once somebody has been tased. It is serious and
12 traumatic enough that the Richland County Sheriff's
13 Department and the Government must call somebody to
14 check you out, which says to me that that would
15 have to stay under -- that would have an impact on
16 your physical state and on your mental state.

17 Now, I might be able to run the Boston
18 marathon after I have been tased three times, but
19 it doesn't mean I want to try it. It doesn't sound
20 like something -- it doesn't sound like I would
21 have a clear head after that.

22 So Mr. Lecroy has been tased three times.
23 They come in about 9:30. He has been handcuffed.
24 You know, he has been handcuffed. He's laying on
25 the couch. He has complained about a recurring,

1 serious, serious back problem. They lay him down.
2 They start to read him his rights. He sees his
3 mother probably in handcuffs. They testified,
4 several people, that Ms. Lecroy was wearing
5 handcuffs. To be tased three times and still be in
6 somewhat of a daze, a sense of panic after five
7 officers burst into your room. He was cornered.
8 He was handcuffed. He had been checked out by EMS,
9 who at some point the testimony has shown they were
10 still sort of checking him out while they were
11 interviewing him, while they were talking to him,
12 he is in pain.

13 His first instinct -- and this is important --
14 his first instinct isn't, who am I going to
15 blame -- or his first instinct is to protect my
16 mother. It is not, I'm going to throw mom under
17 the bus. Mom is obviously, his 70-year-old mom, is
18 an old lady. He sees his mom, this frail
19 70-plus-year-old woman who is in handcuffs and his
20 impulse is, my mom had nothing to do with this.
21 That is one of first things in the statement. Yes,
22 right here.

23 And the very first statement he says, my mom
24 has nothing to do with this. Just spits it out.
25 My mother has nothing to do with this.

1 This is a statement that was obviously made
2 under duress. You know, the police, they took a
3 statement. They took a statement when the man was
4 probably most vulnerable, while he was handcuffed.
5 And he couldn't even see the sheet that they were
6 writing. They were in a hurry. They were
7 operating quickly. They came in. Investigator
8 Poole didn't even check off the boxes on the rights
9 checklist.

10 Now, I find it interesting that Mr. Lecroy has
11 been, that when this over, when they have a
12 statement, they take off his handcuffs. They say,
13 I know you are in pain, we are just going to let
14 you sit. Go to the doctor or something. Come down
15 to the police station later and turn yourself in.

16 Well, if they were that concerned about his
17 comfort -- and the Government's lawyer has gone to
18 great lengths to explain how they made him
19 comfortable, despite the fact he is handcuffed and
20 on the couch and been tased three times, they did
21 their best to make him comfortable.

22 You know, instead of having him come down and
23 give a statement and give a clear statement, they
24 have plenty of time for it, they come in at 9:30
25 and start taking the statement after giving him

1 rights at 10:00 o'clock and they pack up and they
2 are out of here. Here is this weird freak show.
3 We got a statement saying, you know, it is him, it
4 is met.

5 Okay, well now he is not such a menace
6 anymore. We don't need to keep him cuffed while we
7 are talking to him, we will just let him go.

8 If they had been thorough, they would have
9 wanted to get the most accurate list convincing --
10 they may have gotten more information from
11 discussions with Mr. Lecroy. They could have --
12 you know, they might have spoken about the actual
13 trafficking operation should Mr. Lecroy actually
14 know anything about it.

15 They never ask who, they never ask what, they
16 never ask why. They just see Mr. Lecroy and, you
17 know, whose is obviously, you know, up to his knees
18 in women or some kind of social gathering or, you
19 know, sexual activity from the night before, and
20 they say, case closed, this is done, this is
21 enough. No witnesses of drug sales. They didn't
22 try to set up any drug sales, which drug teams do
23 all the time. No fingerprints on anything. We got
24 all this evidence over here. You will get to look
25 at it in the jury room and open it up and, you

1 know, play with the bags and, you know, you get to
2 see -- you have probably never seen -- until this
3 trial I had not seen crystal meth up close, but you
4 know what, you are not going to see any of
5 Mr. Lecroy's fingerprints on it.

6 Why did the State not bother to at least put
7 his fingerprints on this stuff. We don't know how
8 many people put fingerprints on it. He said it was
9 many people. We know how many police handled it
10 later, but we don't know what Mr. Lecroy actually
11 touched, we don't know what he actually could have
12 done with what was in there. They found something
13 in his pockets and he is guilty of possession and
14 you find that Mr. Lecroy is guilty of possessing
15 certain things on his person, that is a lot
16 different from being a drug trafficker, as the
17 State wants you to convict him.

18 Now, the State has said -- the State said you
19 must -- you must find Mr. Lecroy guilty, you are
20 required under the law to find Mr. Lecroy guilty.

21 As Mr. Cooper said earlier, you are -- this is
22 your courtroom. You folks are the blood and the
23 soul of the judicial system. You don't -- you are
24 not required to do anything other than what you
25 feel is correct under the law. You are not

1 required to buy into a story the State has very
2 easily packaged, easily digestible, bad guy is
3 arrested at the end of the day, case closed.

4 I would ask that you dig deeper, that you ask
5 more of the State, you ask more of the Government,
6 you ask for, you know, a more involved
7 investigation, ask a few more questions, rather
8 than get a man who has been tased up on his back
9 threatened by seeing his mother in handcuffs to
10 spit out, oh, I did it, and then, you know, lock
11 it -- pack up shop and leave.

12 Now, this is not -- you know, these
13 investigators, I think that they were -- I know
14 that they are doing their job. They have a lot on
15 their plate. I have met a few of these men
16 personally, and I do like them very much. You
17 know, but, you know, maybe their boss, you know,
18 has them sent somewhere else. Maybe there is
19 another Michael Phelps controversy that needs to be
20 investigated, I don't know. But what I do know is
21 that for whatever reason this was rushed and more
22 could have been done and we would not have
23 questions in front of us today if the State had
24 been more thorough.

25 I really don't have much else to say. I am of

1 course the last person you are going to be hearing
2 today. Again, I would remind you that we don't
3 have fingerprints, we don't have videos, we don't
4 have any records of any sales, these things which,
5 you know, if you had sat on other drug cases or if
6 you had read about it in the paper, these are
7 common, common, common tools of drug enforcement.

8 Again, if you feel that there is enough
9 evidence to convict Mr. Lecroy on possession of
10 something by being in his pocket, you know, I think
11 it is a huge difference between being a crystal
12 meth ring leader, I ask you not to make an
13 assumption based on, you know, the same thing that
14 the police assume. They come in and it looks
15 strange. They make an assumption, they make a
16 decision, and it is over.

17 That is reasonable doubt, ladies and
18 gentlemen. And the judge will talk to you about
19 reasonable doubt. And there was reasonable doubt
20 to believe that Mr. Lecroy was guilty of
21 trafficking, there is reasonable doubt to believe
22 that this stuff was even his if they can't put a
23 fingerprint on it.

24 Anyway, ladies and gentlemen, we appreciate
25 your time today. You know, I know it is sometimes

1 tough to sit here. I know it is -- you know, I
2 have noticed everybody paying as much attention as
3 they possibly could.

4 Again, you are the heart and soul of this
5 institution. I would just ask that we not take the
6 easiest solution. The simplest answer is usually
7 not the most correct answer.

8 And we would ask that you find Mr. Steven
9 Lecroy not guilty of trafficking of
10 methamphetamines.

11 Thank you very much.

12 THE COURT: Ladies and gentlemen of the jury,
13 we are going to take a very short break to the jury
14 room. I just need to discuss some jury
15 instructions with the various counsel.

16 I remind you not to discuss the case, and
17 we'll have you back very shortly, just a brief
18 break.

19 (WHEREUPON, the jury retires to the jury
20 room at 4:12 p.m.)

21 (Pause.)

22 THE COURT: Jurors, please.

23 (WHEREUPON, the jury came into open
24 court at approximately 4:19 p.m.)

25 JURY CHARGE

1 THE COURT: We have now concluded the trial.
2 I will now instruct you with respect to the jury
3 charges in this case.

4 I have asked the bailiff to secure the
5 courtroom so that you can direct your attention to
6 me, and no one should be walking in and out of the
7 courtroom.

8 Thank you, bailiffs.

9 Now, Mr. Foreperson and members of the jury,
10 you have heard the evidence and the arguments of
11 both parties. I will now explain to you the law
12 which applies to this action.

13 The Defendant, Steven Lecroy, is charged with
14 trafficking in methamphetamine 10 to 28 grams,
15 possession of marijuana, and possession of a
16 controlled substance.

17 The indictment charges the Defendant with
18 trafficking in methamphetamine 10 to 28 grams,
19 possession of marijuana, and possession of a
20 controlled substance.

21 I remind you that the fact the Defendant was
22 arrested, charged and indicted in this case is not
23 evidence in this case and cannot be considered by
24 you as evidence of guilt in this case, nor does it
25 create any presumption or inference of guilt. This

1 document is simply the formal written instrument
2 which contains the charge made against the
3 Defendant. It is the formal document by which this
4 case is brought into this court.

5 I remind you that during this trial you and I
6 have certain duties to perform. As the trial
7 judge, it is my responsibility to preside over the
8 trial of this case, and I have the duty to rule on
9 the admissibility of the evidence offered during
10 this trial. You are to consider only the competent
11 evidence before you. If there was anything ordered
12 stricken from the record in this case during the
13 trial, you must disregard that testimony. You are
14 to consider only the testimony which has been
15 presented from the witness stand, any exhibits
16 which have been a made a part of the record in this
17 case, and any stipulations of counsel.

18 I have the additional duty to charge you with
19 the law applicable to this case. As the presiding
20 judge, I am the sole judge of the law of this case,
21 and it is your duty as jurors to accept and apply
22 the law as I now state it to you.

23 If you already have an idea as to what the law
24 is or what the law ought to be and it does not
25 agree with what I now tell you the law is, you must

1 abandon this idea because you are sworn to accept
2 the law and apply the law exactly as I state it to
3 you.

4 In every case tried in this court before a
5 jury, the jury becomes the sole and exclusive judge
6 of the facts in the case. A trial judge cannot
7 intimate, state, comment on or make any statement
8 to a trial jury about the facts in a case.

9 Since you, the jury, are the sole judge of the
10 facts in this case, you are not to infer from what
11 I have said during the progress of the trial and
12 ruling on the admissibility of evidence or
13 otherwise or anything that I say now during the
14 course of this instruction to you that I have any
15 opinion about the facts in this case. The law does
16 not allow me to have an opinion about the facts in
17 this case. That is a matter solely for you, the
18 jury, to determine as jurors. It is your duty to
19 determine the effect, the value, the weight and
20 truth of the evidence presented during this trial.

21 The Defendant is charged with trafficking in
22 methamphetamine 10 to 28 grams in violation of
23 South Carolina Code Section 44-53-375,
24 Subsection(c).

25 The State must prove beyond a reasonable doubt

1 that the Defendant knowingly sold, manufactured,
2 cultivated, delivered, purchased, brought into this
3 state, provided financial assistance, or otherwise
4 aided, abetted, attempted or conspired to sell,
5 manufacture, cultivate, deliver, purchase or bring
6 into this State what is knowingly in actual or
7 constructive possession, knowingly attempted to be
8 in actual or constructive possession of
9 methamphetamine.

10 There are three elements in the offense of
11 trafficking in methamphetamine that the State must
12 prove beyond a reasonable doubt:

13 That the substance involved was in fact
14 methamphetamine;

15 That the Defendant had possession of that
16 methamphetamine, actual possession or constructive
17 possession;

18 And that there were in fact 10 grams or more
19 of methamphetamine involved.

20 What does possession of methamphetamine mean
21 under the law? The law classifies methamphetamine
22 as a controlled substance. Possession means more
23 than simply having a controlled substance in one's
24 possession. There must be a knowing possession.
25 The State must prove beyond a reasonable doubt that

1 the Defendant was in possession of the
2 methamphetamine, that he knew he had it in his
3 possession, and that he knew the item was a
4 controlled substance under the law.

5 There are two kinds of possession recognized
6 in the law of this state, actual possession and
7 constructive possession.

8 Actual possession means that the
9 methamphetamine was in the actual physical custody
10 of the Defendant.

11 Constructive possession means that the
12 Defendant had dominion and control or the right to
13 exercise dominion or control over either the
14 methamphetamine itself or the property on which the
15 methamphetamine was found.

16 Mere presence at the scene where the drugs
17 were found is not enough to prove possession or
18 mere association by a Defendant with people who
19 possess the controlled substance is insufficient
20 proof that the Defendant himself possessed the
21 controlled substance.

22 The Defendant's knowledge and possession may
23 be inferred when a substance is found on the
24 property under the Defendant's control. However,
25 the inference is simply an evidentiary fact to be

1 taken into consideration by you, along with the
2 other evidence in this case, and to be given the
3 weight you decide it should have.

4 If you determine that the State has not proven
5 trafficking in methamphetamine beyond a reasonable
6 doubt, you should then consider whether the State
7 has proven beyond a reasonable doubt that the
8 Defendant is guilty of possession with intent to
9 distribute methamphetamine.

10 Possession with intent to distribute contains
11 all of the elements of trafficking except the
12 amount of the methamphetamine.

13 In addition, the State must prove beyond a
14 reasonable doubt that the Defendant had the intent
15 to distribute the methamphetamine.

16 Distribute means to deliver other than by
17 administering or dispensing a drug.

18 Intent may be shown by acts in kind of the
19 Defendant and other circumstances from which you
20 may naturally and reasonably infer intent.

21 And in determining whether the Defendant had
22 the intent to distribute the methamphetamine, you
23 may consider the circumstances surrounding the
24 Defendant's alleged possession.

25 You may consider the amount of the substance

1 alleged to have been possessed, the manner in which
2 it was allegedly possessed, the place where it was
3 allegedly possessed, and other factors which you
4 consider to be important.

5 You must find beyond a reasonable doubt that
6 the Defendant did not intend to have the
7 methamphetamine solely for his own use.

8 If you find that the State has failed to prove
9 beyond a reasonable doubt that the Defendant is
10 guilty of trafficking in methamphetamine or
11 possession with intent to distribute
12 methamphetamine, you may consider whether the State
13 has proved beyond a reasonable doubt that the
14 Defendant is guilty of simple possession of
15 methamphetamine.

16 Simple possession does not require an intent
17 to distribute the methamphetamine. The State must
18 prove beyond a reasonable doubt that the Defendant
19 knowingly or intentionally possessed
20 methamphetamine.

21 Knowingly means with knowledge, consciously,
22 not accidentally.

23 Intentionally means willfully, intending the
24 result which actually occurs, not accidentally or
25 involuntarily.

1 Intent may be shown by acts and conduct of the
2 Defendant and other circumstances from which you
3 may naturally and reasonably infer intent.

4 The Defendant is also charged with possession
5 of marijuana in violation of South Carolina Code
6 Section 44-53-370, Subsection(d).

7 To prove possession of marijuana the State
8 must prove beyond a reasonable doubt that the
9 Defendant had both the power and the intent to
10 control the disposition or use of the marijuana.

11 Possession may be either actual or
12 constructive.

13 Actual possession means the Defendant was in
14 the actual physical custody of the marijuana. It
15 means the marijuana was in the actual physical
16 custody of the Defendant.

17 Constructive possession means that the
18 Defendant had dominion and control or the right to
19 exercise dominion or control over either the
20 marijuana itself or the property in which the
21 marijuana was found.

22 Mere presence at the scene where the drugs
23 were found is not enough to prove possession. The
24 Defendant's knowledge and possession may be
25 inferred when a substance is found on the property

1 under the Defendant's control. However, this
2 inference is simply an evidentiary fact to be taken
3 into consideration by you alone, with all the other
4 evidence in the case, and to be given the weight
5 you decide it should have.

6 The Defendant is also charged with possession
7 of a controlled substance. The State must prove
8 beyond a reasonable doubt that the Defendant
9 knowingly or intentionally possessed a controlled
10 substance.

11 Knowingly means with knowledge, consciously,
12 not accidentally.

13 Intentionally means willfully, intending the
14 result which actually occurs, not accidentally or
15 involuntary.

16 Intent may be shown by acts and conduct of the
17 Defendant and other circumstances from which you
18 may naturally and reasonably infer intent.

19 To prove possession, the State must prove
20 beyond a reasonable doubt that the Defendant had
21 both the power and the intent to control the
22 disposition or use of the controlled substance.

23 Possession may be either actual or
24 constructive.

25 Actual possession means that the controlled

1 substance was in the actual physical custody of the
2 Defendant.

3 Constructive possession means that the
4 Defendant had dominion and control or the right to
5 exercise dominion or control over either the
6 controlled substance itself or the property on
7 which the controlled substance was found.

8 Mere presence at the scene where the drugs
9 were found is not enough to prove possession.

10 Actual knowledge of the presence of the
11 controlled substance is strong evidence of the
12 Defendant's intent to control its disposition or
13 use.

14 The Defendant's knowledge and possession may
15 be inferred when a substance is found on a property
16 under the Defendant's control. However, again,
17 this inference is simply an evidentiary fact to be
18 taken into consideration by you, along with the
19 other evidence in the case, and to be given the
20 weight you decide it should have.

21 The Defendant has pled not guilty to these
22 indictments, and that plea puts the burden on the
23 State to prove the Defendant guilty.

24 A person charged with committing a criminal
25 offense in South Carolina is never required to

1 prove himself innocent. The Defendant is presumed
2 to be innocent unless and until the State has
3 established beyond a reasonable doubt.

4 It is a vital, important rule of law that a
5 Defendant in a criminal trial, no matter how grave
6 or serious may be the offense with which he is
7 charged, must always be presumed innocent of the
8 charge for which the indictment was issued unless
9 guilt has been proved by the evidence satisfying
10 you beyond a reasonable doubt.

11 This presumption of innocence is legal proof
12 of innocence. The presumption of innocence does
13 not end when you begin your deliberations, but it
14 accompanies the Defendant throughout the trial
15 until you reach a verdict of guilt based on
16 evidence satisfying you beyond a reasonable doubt.

17 This presumption of innocence is like a robe
18 of righteousness placed about the shoulders of the
19 Defendant, that remains with the Defendant until it
20 has been stripped from the Defendant by evidence
21 satisfying you of the Defendant's guilt beyond a
22 reasonable doubt.

23 The presumption of innocence is not mere legal
24 theory. It is not just a legal phrase. It is a
25 substantial right to which every Defendant is

1 entitled unless you, the jury, are satisfied from
2 the evidence of the Defendant's guilt beyond a
3 reasonable doubt.

4 Now, the State has the burden of proving the
5 guilt beyond a reasonable doubt and is required to
6 prove every element of the charged offense by
7 evidence which satisfies each of you of the guilt
8 of the Defendant beyond a reasonable doubt.

9 The Defendant, again, is not required to prove
10 his innocence. The burden of proof always remains
11 upon the State in South Carolina to prove guilt
12 beyond a reasonable doubt.

13 Now, some of you may have served as jurors in
14 civil cases where you were told it was only
15 necessary to prove that fact if it was more likely
16 true than not true, such as the greater weight or
17 preponderance of the evidence in criminal cases.
18 But the State's proof in a criminal case must be
19 more powerful than that. It must be beyond a
20 reasonable doubt.

21 What is a reasonable doubt in the law? A
22 reasonable doubt is the kind of doubt that would
23 cause a reasonable person to hesitate to act. The
24 term reasonable doubt should be given its plain and
25 ordinary meaning. Proof beyond a reasonable doubt

1 is proof that leaves you firmly convinced of the
2 Defendant's guilt.

3 There are very few things in this world that
4 we know with absolute certainty, and in criminal
5 cases the law does not require proof that overcomes
6 every possible doubt.

7 If based on your consideration of the evidence
8 you are firmly convinced that the Defendant is
9 guilty of the crime charged, you must find him not
10 guilty -- you must find him guilty, I apologize.

11 If, on the other hand, you conclude there is a
12 real possibility that he is not guilty, you must
13 give the Defendant the benefit of the doubt and
14 find the Defendant not guilty.

15 There are two types of evidence generally
16 presented during a trial, direct evidence and
17 circumstantial evidence.

18 Direct evidence is the testimony of a person
19 who asserts or claims to have actual knowledge of a
20 fact, such as an eyewitness. It is evidence that
21 immediately establishes the main fact to be proved.

22 Circumstantial evidence is proof of a chain of
23 facts and circumstances indicating the existence of
24 a fact. It is based on inference and not on
25 personal knowledge or observation. The law makes

1 absolutely no distinction between the weight or
2 value to be given to either direct or
3 circumstantial evidence, nor is a greater degree of
4 certainty required of circumstantial evidence than
5 of direct evidence.

6 You should weigh all the evidence in this
7 case. After weighing all the evidence, if you are
8 not convinced of the guilt of the Defendant beyond
9 a reasonable doubt, you must find the Defendant not
10 guilty.

11 Necessarily, you must determine the
12 credibility of witnesses who have testified in this
13 case.

14 Credibility simply means believability. It
15 becomes your duty as jurors to analyze and to
16 evaluate the evidence and determine which evidence
17 convinces you of its truth.

18 In determining the credibility of witnesses
19 who have testified in this case, you may believe
20 one witness over several witnesses or several
21 witnesses over one witness. You may believe only
22 part of the testimony of a witness and reject the
23 remaining part of the testimony of that same
24 witness. You may believe the testimony of a
25 witness in its entirety or reject the testimony of

1 a witness in its entirety.

2 You may consider whether any witness has
3 exhibited to you any interest, bias, prejudice or
4 other motive in this case. You may also consider
5 the appearance and manner of a witness on the
6 stand.

7 Now, a statement alleged to have been made by
8 the Defendant has been admitted into evidence in
9 this case. While the Court has determined that the
10 statement is admissible, I instruct you that you
11 make the ultimate decision of whether or not the
12 Defendant made the statement.

13 If the Defendant did make the statement, you
14 must determine whether the statement was made by
15 the Defendant voluntarily and of his own free will.
16 This means that the statement was not caused by
17 pressure, force, fear, threats, coercion or
18 intimidation, or by hope or a promise of leniency
19 or a reward of any kind.

20 In determining whether the statement was
21 voluntary, you should consider both the
22 characteristics of the Defendant and the details of
23 the questioning.

24 Some of the factors that you must consider
25 are, the age of the Defendant, the Defendant's

1 education or lack of education, the Defendant's
2 mental ability or capacity, the Defendant's IQ or
3 intelligence, the Defendant's background and
4 environment, the place and length of detention, the
5 nature of the questioning, and the advice or lack
6 thereof to the Defendant of his constitutional
7 rights, including but not limited to the right to
8 remain silent, that any statement could be used
9 against him in a court of law, the right to have a
10 lawyer present, that if he couldn't afford a lawyer
11 a lawyer would be appointed to represent him
12 without any cost, and that he could stop making a
13 statement at any time.

14 You must consider carefully all of the
15 surrounding circumstances before you give any
16 weight to an alleged statement.

17 The State has the burden of proving beyond a
18 reasonable doubt that the alleged statement was
19 voluntary.

20 If you determine it was, you may give the
21 statement any further consideration that you deem
22 proper. You must decide what weight, if any,
23 should be given to the alleged statement.

24 If you determine the alleged statement was not
25 the free and voluntarily statement of the

1 Defendant, you should not consider the statement at
2 all.

3 Under the laws of this state, a Defendant may
4 be tried even if the Defendant does not attend the
5 trial, but the fact that the Defendant is not
6 present may not be considered against the Defendant
7 in any manner whatsoever.

8 The Defendant in this case has not testified.
9 This is his constitutional right. It is not a
10 circumstance as you can take into consideration or
11 even allow to enter into your discussion in the
12 jury room.

13 Under the Constitution of South Carolina and
14 the United States Constitution, it is the
15 Defendant's constitutional right not to testify.
16 The burden of proof is upon the State of South
17 Carolina to establish his guilt by competent
18 evidence beyond a reasonable doubt. The fact that
19 the Defendant did not take the witness stand and
20 testify in his own behalf does not create any
21 inference against him. The jury must not permit
22 that fact to weigh in the slightest degree against
23 the Defendant, nor should this fact enter into the
24 discussions or deliberations of the jury in any
25 manner.

1 And, finally, your verdict cannot be based
2 upon sympathy, passion, prejudice, emotion or any
3 other consideration not in evidence in this case.

4 Your verdict must be unanimous. Unanimity is
5 mandated. That means every juror must agree on the
6 jury verdict. There cannot be any split or divided
7 vote in any form or fashion, such as 11 to 1, 10 to
8 2, or 9 to 3. Each of you must agree. Please do
9 not sign the verdict form until every single juror
10 agrees.

11 And now directing my comments particularly to
12 the foreperson.

13 You will have three verdict forms because
14 there are three charges in this case.

15 The first verdict form will be indicating
16 itself as to the charge of trafficking
17 methamphetamine 10 to 28 grams, that you, the jury,
18 unanimously find the Defendant, Steven Lecroy, and
19 then you have a set of choices.

20 As we indicated in the charges, it will be:
21 Guilty of trafficking in methamphetamine 10 to
22 28 grams, which is the actual indictment charge;
23 and then, if not, the lesser included offense you
24 can find him guilty of possession with intent to
25 distribute methamphetamine; and if not that one,

1 another lesser included offense of guilty of
2 possession of methamphetamine; or guilty of
3 neither, and then that will just be a not guilty.

4 And then as to other two charges for
5 possession of marijuana and possession of
6 controlled substance, the Defendant will be found
7 guilty as charged or not guilty on either of those.

8 Once you have all agreed on that decision, the
9 foreperson will sign the form and then also date
10 it.

11 You all will be directed to go back to your
12 jury room, but you cannot begin the deliberations
13 until we bring the evidence in to you, which will
14 be, you know, instantaneously essentially, but you
15 must wait until everybody is assembled to the
16 extent somebody wanted a break or restroom or
17 whatever, you all need to be deliberating at the
18 same time at any given moment.

19 All right, do the parties have any exceptions
20 to the jury charge?

21 MR. LUPTON: None from the State, Your Honor.

22 MR. BAILEY: None from us, Your Honor.

23 THE COURT: Okay. All right. Thank you very
24 much. Thank you.

25 One moment, there will be one other charge

1 that I have to give you.

2 (Pause.)

3 THE COURT: And that is with respect to expert
4 witnesses, because we did have an expert witness's
5 testimony.

6 The rules of expert witnesses in terms of
7 evidence do not permit witnesses to testify to
8 opinions or conclusions. An exception to this rule
9 exists when you actually have an expert witness,
10 and that is a person who by education and
11 experience has become an expert in some art,
12 science or profession, can give an opinion as to
13 the subject the witness claims to be an expert in
14 and may also give the reasons for the opinion.

15 You should consider any expert opinion given
16 by the witness and like any other evidence give the
17 weight you think it deserves.

18 If you decide that an expert witness's opinion
19 is not based on sufficient education and
20 experience, or if you decide that the reasons given
21 in support of the opinion are not sound or that the
22 opinion is outweighed by other evidence, you can
23 disregard the opinion entirely.

24 An expert witness's testimony is to be given
25 no greater weight than that of other witnesses

1 simply because the witness is an expert. And you
2 do not have to accept an expert's opinion even
3 though it is uncontradicted.

4 Okay. Anything further from the parties?

5 MR. LUPTON: Nothing from the State, Your
6 Honor.

7 MR. BAILEY: No, Your Honor.

8 THE COURT: Okay. You can be excused to your
9 jury room and we'll bring the evidence in to you
10 for your deliberations.

11 (WHEREUPON, the jury retires to the jury
12 room at 4:45 p.m.)

13 (Pause.)

14 MR. LUPTON: Your Honor, both the State and
15 the Defense viewed all the evidence, and I think
16 both agreed that it was in order and was proper to
17 go back.

18 MR. COOPER: I agree with that.

19 THE COURT: Okay.

20 (Exhibits checked and sent to the jury;
21 jury instructed to begin deliberations
22 at 4:50 p.m.)

23 (WHEREUPON, the jury came into open
24 court at approximately 5:30 p.m.)

25 THE BAILIFF: Your Honor, the jury is present.

1 THE COURT: Okay, Mr. Foreperson, it is my
2 understanding that you and your fellow jurors have
3 reached a verdict?

4 THE FOREPERSON: That's correct, Your Honor.

5 THE COURT: Please hand the verdict forms to
6 the bailiff, who will then hand them to the clerk.

7 (Foreperson complies.)

8 (Court views verdict form.)

9 THE COURT: Okay, Madam Clerk, I will ask that
10 you publish the verdict.

11 THE CLERK: Yes, Your Honor.

12 Indictment Number 2007-GS-40-1330, The State
13 of South Carolina versus Steven Lecroy. As to the
14 charge of trafficking in methamphetamine 10 to 28
15 grams: We, the jury, unanimously find the
16 Defendant, Steven Lecroy, guilty of trafficking in
17 methamphetamine 10 to 28 grams.

18 Indictment Number 2007-GS-40-1329, The State
19 of South Carolina versus Steven Lecroy. As to the
20 charge of possession of a controlled substance:
21 We, the jury, unanimously find the Defendant,
22 Steven Lecroy, guilty as charged.

23 Indictment Number 2007-GS-40-1331, The State
24 of South Carolina versus Steven Lecroy. As to the
25 charge of possession marijuana: We, the jury,

1 unanimously find the Defendant, Steven Lecroy,
2 guilty as charged.

3 Signed: Number 120, Foreperson.

4 February 25th, 2009.

5 Mr. Foreman, were these your verdicts and the
6 verdicts of the entire jury?

7 THE FOREPERSON: Yes, ma'am.

8 THE CLERK: Thank you.

9 THE COURT: Ladies and gentlemen of the jury,
10 thank you for your service. We really appreciate
11 you coming forward. Yes?

12 MR. BAILEY: Your Honor, just at this time I
13 move to have the jury polled, please.

14 THE COURT: Yes, absolutely.

15 THE CLERK: Ladies and gentlemen of the jury,
16 I am going to ask you two questions relating to
17 your verdicts. Please answer yes or no to both
18 questions as I call out your number.

19 Number 120, were these your verdicts?

20 THE FOREPERSON: Yes, ma'am.

21 THE CLERK: Are they still your verdicts?

22 THE FOREPERSON: Yes, ma'am.

23 THE CLERK: Number 148, were these your
24 verdicts?

25 JUROR 148: Yes, ma'am.

1 THE CLERK: Are they still your verdicts?

2 JUROR 148: Yes.

3 THE CLERK: Number 109, were these your
4 verdicts?

5 JUROR 109: Yes.

6 THE CLERK: Are they still your verdicts?

7 JUROR 109: Yes.

8 THE CLERK: Number 151, were these your
9 verdicts?

10 JUROR 151: Yes, ma'am.

11 THE CLERK: Are they still your verdicts?

12 JUROR 151: Yes.

13 THE CLERK: Number 235, were these your
14 verdicts?

15 JUROR 235: Yes, ma'am.

16 THE CLERK: Are they still your verdicts?

17 JUROR 235: Absolutely.

18 THE CLERK: Number 95, were these your
19 verdicts?

20 JUROR 95: Yes.

21 THE CLERK: Are they still your verdicts?

22 JUROR 95: Yes.

23 THE CLERK: Number 280, were these your
24 verdicts?

25 JUROR 280: Yes, ma'am.

1 THE CLERK: Are they still your verdicts?

2 JUROR 280: Yes, ma'am.

3 THE CLERK: Number 221, were these your
4 verdicts?

5 JUROR 221: Yes, ma'am.

6 THE CLERK: Are they still your verdicts?

7 JUROR 221: Yes, ma'am.

8 THE CLERK: Number 217, were these your
9 verdicts?

10 JUROR 217: Yes.

11 THE CLERK: Are they still jury verdicts?

12 JUROR 217: Yes.

13 THE CLERK: Number 128, were these your
14 verdicts?

15 JUROR 128: Yes.

16 THE CLERK: Are they still your verdicts?

17 JUROR 128: Yes.

18 THE CLERK: Number 186, were these your
19 verdicts?

20 JUROR 186: Yes.

21 THE CLERK: Are they still your verdicts?

22 JUROR 186: Yes.

23 THE CLERK: Number 153, were these your
24 verdicts?

25 JUROR 153: Yes.

1 THE CLERK: Are they still your verdicts?

2 JUROR 153: Yes.

3 THE CLERK: The jury has been polled, Your
4 Honor.

5 THE COURT: Okay, thank you.

6 Ladies and gentlemen of the jury, thank you
7 for your jury service. I really appreciate your
8 time and efforts in this case as do the parties.
9 You all have made your decision and will stand by
10 it as you have indicated to the Clerk of Court.

11 This will conclude your service on this trial.
12 I will let you know that no one ever knows what
13 jurors are thinking, so there is a chance you might
14 get a call from somebody associated with one of the
15 cases. It is up to you as to whether or not you
16 wish to accept the call. I'm sure that no one will
17 harass you or be unprofessional in any regard, but
18 if they do then just report that and we will handle
19 that and you can report it to the Clerk of Court.

20 Thank you for your time and service on this
21 matter. Yes?

22 THE FOREPERSON: Now, do we report back to the
23 jury --

24 THE COURT: The clerk will give you further
25 instructions.

1 THE FOREPERSON: As far as rest of the week?

2 THE COURT: Right, yes.

3 THE FOREPERSON: Thank you.

4 (WHEREUPON, the jury is excused.)

5 THE COURT: Okay, I have the envelopes in
6 which each verdict form will be placed into
7 separately. The Court will then seal them and
8 write "sealed" on them and sign and date them for
9 purposes of the Defendant being tried in his
10 absence.

11 MR. BAILEY: Yes, Your Honor.

12 THE COURT: Okay.

13 MR. BAILEY: And are we given an opportunity
14 to give any mitigation at this time?

15 THE COURT: Yes, you will. I am just waiting
16 on Mr. Lupton to come back around.

17 MR. BAILEY: I will be ready to do post-trial
18 motions whenever --

19 THE COURT: Okay. You can proceed now.

20 MR. BAILEY: Thank you, Your Honor. Yes, we
21 will wait on him.

22 MR. LUPTON: Go right ahead. I am just making
23 sure the CDR code is correct.

24 THE COURT: Okay.

25 MR. BAILEY: First, Your Honor, I'd like to

1 renew all objections and objections to denied
2 motions that we made throughout the trial. I'd
3 like to renew all of those for the record.

4 And second, Your Honor, I'd like to move for a
5 new trial based on several things mentioned
6 earlier.

7 One, we believe that it was improper for
8 Mr. Lecroy to be tried in absence. Therefore, we
9 would ask for a new trial.

10 Also, we believe that there was a faulty
11 warrant relating back to our standing objection.
12 Therefore, any evidence admitted was improper;
13 therefore, there was not sufficient evidence to
14 convict Mr. Lecroy.

15 Also, we would like to object to unusually
16 short deliberation.

17 Also, just getting back to trying in his
18 absence, I'd like to say, Your Honor, I believe
19 that we were deficient counsel because Mr. Lecroy
20 was not available. You know, try as we may, I
21 don't think we could adequately represent him
22 appropriately without him here to assist in his own
23 defense. And, therefore, we believe that this
24 ineffectiveness probably prejudiced our client and
25 the outcome of this case, therefore making us

1 ineffective in this situation, Your Honor.

2 MR. LUPTON: Your Honor, the last allegation
3 is the most serious. If they are alleging that
4 they were deliberately ineffective in some way,
5 then I think that is a matter for an appropriate
6 tribunal. And I would like to establish on the
7 record whether or not they are saying that they are
8 deliberately ineffective.

9 MR. BAILEY: Your Honor, you know, with all
10 due respect, I take great offense to that. I was
11 saying that I feel like we couldn't help a
12 deficiency due to the fact that there was not
13 someone here to help.

14 THE COURT: And let the Court state that they
15 were very adequate and sufficient as his counsel
16 given the circumstances, and that my opinion is
17 that they were extremely well prepared to take on
18 any issues with respect to the State in trying this
19 case.

20 MR. BAILEY: Thank you very much, Your Honor.

21 MR. LUPTON: And I would echo that. Your
22 Honor, they fought this, Mr. Rhodes Bailey has
23 fought extremely vigorously since he has had this
24 case assigned to him back at the end of May,
25 beginning of June. He has fought extremely

1 vigorously on this, as the Court is aware from your
2 personal observations. And I think that using that
3 term of art, "ineffective," is inappropriate in
4 this situation. I don't believe that to the extent
5 that he is trying to articulate that he doesn't
6 think that -- that he thinks that the Defendant
7 having absented himself from the State from this
8 trial, that that caused some inability on his part
9 to be able to do as good a job as he would have
10 been able to do had the Defendant been present.
11 Obviously that was the Defendant's decision.

12 THE COURT: Absolutely.

13 MR. LUPTON: But I think that the term of art,
14 "ineffective assistance of counsel," is not in any
15 way implicated in this situation. Mr. Bailey and
16 Mr. Cooper, from my observations, fought this case
17 every bit as vigorously and professionally and ably
18 as they could have done with the Defendant present.
19 And I just think that using the term "ineffective"
20 is not an appropriate term and perhaps it could
21 have been better phrased.

22 THE COURT: Okay.

23 MR. LUPTON: However, the other statements,
24 the Defendant being not present, the Court has
25 obviously had extensive contact with the case. And

1 you are aware of all the efforts that have been
2 made to get the Defendant to trial. The Defendant
3 chose not to appear. And that is his, to a certain
4 extent, his right. He has a right and obligation
5 to appear, but he doesn't have a -- he also has, to
6 a certain extent, a right not to appear, and he
7 chose to not appear.

8 The record is clear that Mr. Bailey had
9 contact with him after the last bench warrant was
10 ordered. After the extensive discussions about
11 trial in absentia, I'm certain that Mr. Bailey, as
12 he was vigorously trying to advocate his client's
13 rights, conveyed all that information to his
14 client. And there has been no, to my
15 understanding, no allegation by Mr. Bailey that he
16 deliberately withheld any of that information from
17 his client. And I don't believe it is credible
18 based on -- I think the Court's observations, my
19 observation of Mr. Bailey, that he would never do
20 that. So the Defendant was aware of all of this
21 and fled the State. The evidence is that he is in
22 California. And it is not the first time he has
23 run. So I think the TIA was extremely appropriate
24 under the circumstances.

25 As far as the rulings, obviously the Court has

1 made its rulings, and I believe they were
2 appropriate.

3 THE COURT: The Court will stand by its prior
4 ruling that I don't believe that the motion for new
5 trial is proper, and I particularly believe that we
6 have gone over the issues with respect to the
7 Defendant being tried in his absence and that the
8 State has sufficiently established the record from
9 which the Defendant was duly noticed for trial and
10 warned that if he did not appear at trial he would
11 be tried in his absence.

12 The Court has ruled on the alleged faulty
13 warrant. I believe that the admission of the
14 warrant was proper.

15 I don't believe that there is any reason to
16 believe that the jury's short deliberations in any
17 way undermine their sensitivity to the trial, no
18 indication that none of the jurors were not paying
19 attention.

20 And then finally, I don't agree that counsel
21 was at all deficient. In fact, they were as
22 prepared as they could be short of their client's
23 choice to not be here to assist them and him tried
24 in his absence.

25 So the Court will stand by those rulings.

1 Let's proceed to sentencing.

2 MR. LUPTON: And, Your Honor, just briefly, on
3 the record I would like to note that the
4 deliberations were about 45 minutes, which is not
5 an incredibly short period of deliberation
6 considering that this is a case in which the drugs
7 were found in the Defendant's room and he gave a
8 written confession.

9 THE COURT: And it was a short trial. The
10 trial lasted today. And that includes opening and
11 closing, as well as any -- our lunch periods,
12 breaks, and our conference of trial issues.

13 MR. LUPTON: Thank you, Your Honor.

14 THE COURT: Okay.

15 MR. LUPTON: Your Honor, with regards to
16 sentencing, Your Honor, you know most of the facts.
17 I will add that the questions about the mom, the
18 Defendant made statements threatening the mother
19 during the course of this, so any question about
20 him being protecting his mother in the statement, I
21 know the jury has already ruled, but that is not
22 credible.

23 The Defendant also made statements that were
24 not elicited due to the inordinate potential for
25 prejudice in that he admitted that he trafficked

1 approximately an ounce, it was either a week or a
2 month, that he trafficked in the amount of about an
3 ounce of methamphetamine or 28 grams per week that
4 he was moving from his source in Atlanta to his
5 various contacts locally.

6 Additionally, we didn't go into the fact that
7 he was questioned about his willingness to
8 cooperate. He initially said that he would work
9 with law enforcement in turning in others that he
10 was associated with who were involved in the
11 trafficking of the methamphetamine, his sources
12 essentially. He ultimately refused to do that
13 based on the fact that they were his friends and he
14 was not willing to turn them in.

15 So questions arose during the trial without
16 police never asked him anything. They did and he
17 refused to cooperate, so that effort was made.

18 As far as the sentencing goes, the Defendant
19 has a 1986 breaking in motor vehicle, grand
20 larceny; 1986, petit larceny; 1994, marijuana and
21 public disorderly; a '96, public disorderly; a 2001
22 breach of trust; and 2003, possession of crack.

23 The marijuana and the crack are within the
24 period for the trafficking. However, the two
25 possessions you can only look back ten years, so

1 only the crack charge would count as an enhancer,
2 so the State believes that it is appropriate to do
3 a sentence for trafficking third offense on the
4 meth and a possession second on the marijuana and
5 the controlled substance.

6 THE COURT: Okay, possession of controlled
7 substance second, is that still one year?

8 MR. LUPTON: Zero to one year, yes, Your
9 Honor.

10 THE COURT: Okay. All right. Defense?

11 MR. BAILEY: Thank you, Your Honor. You know,
12 obviously I'm going to -- I'm in the odd position
13 of speaking on behalf of Mr. Lecroy with sentencing
14 and he is not here.

15 I will say I was first sort of appointed or I
16 was appointed from the bench with reference to me
17 by Judge Early in May of last year.

18 Mr. Lecroy did have some problems with his
19 last lawyer. And, you know, there were some
20 ethical concerns from Judge Early. I inherited the
21 case in sort of strange shape.

22 I will say in my limited discussions with
23 Mr. Lecroy, he was an amicable fellow. I don't
24 believe he is a bad guy. Obviously he has made
25 some pretty serious mistakes that have some pretty

1 serious consequences.

2 I believe that the minimum, mandatory minimum
3 for trafficking methamphetamine third is 25 years.
4 Mr. Lupton can definitely shed light on that. I
5 think the range for that charge alone is 25 to 30.

6 Mr. Lecroy, again, I can't find the specific
7 documentation, in conversations it was presented to
8 me that he was not in great health. And I believe
9 that even the minimum sentence of 25 years is
10 pretty significant. In my limited time in this
11 office, it is definitely the biggest drug sentence,
12 even if that was minimum, that I would have seen
13 personally in my cases.

14 I would ask Your Honor only that he be given
15 minimum 25 years and that the other drug charges
16 run concurrent along with that 25 years. There is
17 not really much I can ask, Your Honor.

18 THE COURT: Do you know what period of time he
19 was incarcerated?

20 MR. BAILEY: Oh, gosh, I don't have that
21 information with me right now, Your Honor.

22 THE COURT: I will just check the credit for
23 time served box.

24 All right, Mr. Steven Lecroy shall be
25 sentenced for 25 years for trafficking --

1 MR. LUPTON: Your Honor?

2 THE COURT: Yes?

3 MR. LUPTON: The -- may we approach?

4 THE COURT: Yes.

5 (WHEREUPON, a bench conference was

6 held.)

7 THE COURT: Okay. As I indicated earlier,

8 I've got the envelopes. These will be sealed and

9 placed into the envelope.

10 MR. BAILEY: Thank you, Your Honor.

11 MR. LUPTON: Thank you, Your Honor.

12 MR. BAILEY: Thank you for your time.

13 (WHEREUPON, the proceedings were concluded.)

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(END OF TRANSCRIPT)

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I, Deborah M. McCurdy, Official Court Reporter for the Fifth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Richland County, South Carolina, on the 24th and 25th days of February, 2009.

December 31, 2009

Deborah M. McCurdy, RPR
Fifth Circuit Court Reporter

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF RICHLAND) 5TH JUDICIAL CIRCUIT

THE STATE) TRANSCRIPT OF RECORD
-VS-) 07-GS-40-1329
STEVEN LECROY,) 07-GS-40-1330
DEFENDANT.) 07-GS-40-1331

SEPTEMBER 9, 2009

COLUMBIA, SOUTH CAROLINA

B E F O R E:

THE HONORABLE MICHELLE J. CHILDS, JUDGE

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

TED LUPTON, ASSISTANT SOLICITOR
ATTORNEY FOR THE STATE

RHODES BAILEY, ASSISTANT PUBLIC DEFENDER
ATTORNEY FOR THE DEFENDANT

SHARON L. VIZER-HANKS
CIRCUIT COURT REPORTER

I N D E X

	PAGE
SENTENCING HEARING	---3
CERTIFICATE OF REPORTER	---5

NO EXHIBITS WERE INTRODUCED

1 Wednesday, September 9, 2009

2 MR. LUPTON: Your Honor, may it please the Court. I
3 apologize to the court reporter. I have absolutely no memory
4 of what the exact indictment numbers are, so I can't give it
5 to her.

6 This is, Your Honor, before you on the sentencing or
7 unsealing of sentence on the T. I. A. for Mr. Steven Lecroy.

8 THE COURT: Okay. The sealed sentence for a
9 T. I. A. trial by myself February 25, 2009, referencing
10 indictment 2007-GS-40-1331, is an indictment for possession of
11 marijuana 2nd offense which has been true billed by the grand
12 jury, the verdict form indicates guilty as charged. For
13 possession of marijuana 2nd offense you're sentenced to the
14 State Department of Corrections for 1 year. This will run
15 concurrent with the other sentences, and you'll be given
16 credit for time served.

17 Indictment number 2007-GS-40-1329, for a sealed
18 sentence for a trial in his absence on February 25, 2009
19 conducted myself, it was for the offense of possession of a
20 controlled substance 2nd offense, you're sentenced to the
21 State Department of Corrections for 1 year. It runs
22 concurrent with your other sentences, and you're given credit
23 for time served.

24 And then indictment number 2007-GS-40-1330, a trial
25 in absence on that same date, for February 25, 2009, for

1 trafficking in methamphetamine, 10 to 28 grams, 3rd offense,
2 you are hereby sentenced to the State Department of
3 Corrections for 25 years, and you're to be given credit for
4 time served, and this will run concurrent with your other
5 offenses.

6 Anything further?

7 MR. LUPTON: Nothing from the State, Your Honor.

8 MR. RHODES: Your Honor, I don't have anything
9 really to add except just to preserve for the record --
10 although I'm sure it was preserved during the initial
11 mitigation before the sealed sentence, just to preserve for
12 the record our previous objections during trial and our motion
13 for a new trial, and our objection to Mr. Lecroy being tried
14 in his absence at this time.

15 THE COURT: Okay. Thank you, sir.

16 MR. RHODES: Thank you, Your Honor.

17 THE COURT: And those prior rulings will stand.

18 MR. RHODES: Thank you, Your Honor.

19 MR. LUPTON: Thank you, Your Honor.

20 THE COURT: And just for the record to indicate on
21 the other offenses, obviously I sentenced but these are
22 sentences pursuant to guilty verdicts by the jury on all 3
23 charges.

24 (WHEREUPON, the hearing was concluded.)

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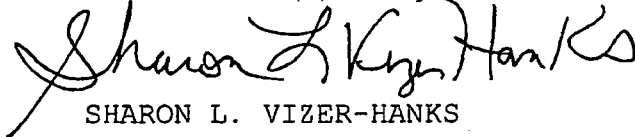
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I, Sharon L. Vizer-Hanks, Official Court Reporter
for the 5th Judicial Circuit of the State of South Carolina,
do hereby certify that the foregoing is a true, accurate and
complete transcript of record of all the proceedings had and
the evidence introduced in the hearing of the captioned case
in Circuit Court on the 9th day of September 2009.

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

November 20, 2009



SHARON L. VIZER-HANKS

CIRCUIT COURT REPORTER

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Steven Lecroy, Appellant.

Appeal From Richland County
J. Michelle Childs, Circuit Court Judge

Unpublished Opinion No. 2011-UP-434
Submitted October 1, 2011 – Filed October 11, 2011

AFFIRMED

Appellate Defender LaNelle Canteay Durant, of
Columbia, for Appellant.

Attorney General Alan Wilson, Chief Deputy
Attorney General John W. McIntosh, Assistant
Deputy Attorney General Salley W. Elliott, and
Assistant Attorney General Harold M. Coombs,
Jr., all of Columbia; and Solicitor Daniel E.
Johnson, of Columbia, for Respondent.

PER CURIAM: Steven Lecroy appeals his convictions for third-offense trafficking in methamphetamine, second-offense possession of a controlled substance, and second-offense possession of marijuana, arguing the circuit court erred in allowing the admission of (1) drug evidence found at his residence and (2) his statement claiming ownership of the drugs found at his residence. We affirm^[1] pursuant to Rule 220(b)(1), SCACR, and the following authorities:

1. As to whether the circuit court erred in admitting drug evidence found in Lecroy's home pursuant to a search warrant: State v. Tindall, 388 S.C. 518, 521, 698 S.E.2d 203, 205 (2010) ("On appeals from a motion to suppress based on Fourth Amendment grounds, [an appellate court] applies a deferential standard of review and will reverse if there is clear error."); State v. Weston, 329 S.C. 287, 290, 494 S.E.2d 801, 802 (1997) ("A search warrant may issue only

upon a finding of probable cause."); State v. Rutledge, 373 S.C. 312, 317-18, 644 S.E.2d 789, 791-92 (Ct. App. 2007) (holding a magistrate had substantial basis for concluding probable cause existed to issue a search warrant of a residence based on the evidence, which consisted of an anonymous tip, confirmation the individual identified by the informant lived at the address, the defendant's prior convictions for marijuana, and marijuana found in the trash can in front of the defendant's residence).

2. As to whether the circuit court erred in admitting Lecroy's statement claiming ownership of the drug evidence found at his residence: State v. Mitchell, 330 S.C. 189, 193 n.3, 498 S.E.2d 642, 644 n.3 (1998) (finding "a ruling in limine is not final, and unless an objection is made at the time the evidence is offered and a final ruling procured, the issue is not preserved for review" (citation omitted)).

AFFIRMED.

SHORT, WILLIAMS, and GEATHERS, JJ., concur.

[1] We decide this case without oral argument pursuant to Rule 215, SCACR.

3/8

FORM 5

2012 CP 4003271

STATE OF SOUTH CAROLINA

COUNTY OF RICHLANDSTEVEN MICHAEL LECROY 382554

Full name and prison number (if any) of Applicant.

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

APPLICATION FOR

POST-CONVICTION RELIEF

RICHLAND COUNTY
FILED
2012 MAY - 10 AM 10:43
JENNIFER W. MCBRIDE
CLERK, C.C. & G.S.

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention MCC 386 REDEMPTION WAY, MCCORMICK, SC. 29849
2. Name and location of Court which imposed sentence 5th CIRCUIT, RICHLAND CTY.
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 07GS4D1329 POSS OF CONT. SUB 2nd
 - (b) 07GS4D1330 TRAFFICKING METH 3rd
 - (c) 07GS4D1331 POSS OF MARS 2nd
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) 9-9-09 1YR AND A FINE OF \$236.90
 - (b) 9-9-09 25YRS AND A FINE OF \$236.90

Revised 3/2003

- (c) 9-9-09 1 YR AND A FINE OF \$236.50
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) ☒ after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
IMPOSITION OF SENTENCE
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. 5th JUDICIAL CIRCUIT RICHLAND COUNTY, SC
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. AFFIRMED THE CONVICTION
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. OCTOBER 11, 2011
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) INEFFECTIVE ASSISTANCE OF COUNSEL
- (b) NO NOTIFICATION OF TRIAL DATE
- (c) PRIVATE COUNSEL RELIEVED

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) DRAYTON V. EVATT, 312 S.C. 4, 430 S.E.2d 517 (1993) SEE ATTACHED
- (b) THE ORIGINAL ATTY (LANE DANIELSEN) WAS NOT NOTIFIED OF DATE.
- (c) I WAS NOT GIVEN COUNSEL OF CHOICE. 14th AMEND. VIOLATION

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? NO
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? NO

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(b) the name and location of the Court in which each was filed:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. _____
- ii. _____
- iii. _____

- iv. _____
- (d) the date of each such disposition:
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
- i. _____
- ii. _____
- iii. _____
- iv. _____
14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?
- YES
15. If you answered "yes" to (14) identify:
- (a) which grounds have been presented:
- i. INEFFECTIVE ASSISTANCE OF COUNSEL
- ii. _____
- iii. _____
- (b) the proceedings in which each ground was raised:
- i. DIRECT APPEAL
- ii. _____
- iii. _____
16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
- (a) _____
- (b) _____
- (c) _____
17. Were you represented by an attorney at any time during the course of

- (a) your arraignment and plea? yes
- (b) your trial, if any? yes
- (c) your sentencing? yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____

18. If you answered "yes" to one or more parts of (17), list:

- (a) the name and address of each attorney who represented you:
- i. MARY LAFAVE, Rhodes Bailey, James Cooper III
- ii. LANELLE DURANT 1330 Lady St. COLA, S.C. 29201
- iii. LANE DANIELSEN 1101 West Confederate Ave. COLA, SC 29201
- (b) the proceedings at which each such attorney represented you:
- i. TRIAL, DISMISSAL OF LANE DANIELSEN
- ii. APPEAL
- iii. ARRAIGNMENT AND PLEA

19. State clearly the relief you seek in filing this application:

CONVICTION SET ASIDE SO I MAY OFFER A NEW PLEA

20. Are you now under sentence from any other court that you have not challenged?

NO

Question 11 part A

DRAYTON V. EVATT States that if the issue is not objection upon during the trial that the issue is not preserved for review and counsel is ineffective. (PCR Manual from the SeBARASS

PER CURIAM: Steven Lecroy appeals his convictions for third-offense trafficking in methamphetamine, second-offense possession of a controlled substance, and second-offense possession of marijuana, arguing the circuit court erred in allowing the admission of (1) drug evidence found at his residence and (2) his statement claiming ownership of the drugs found at his residence. We affirm¹ pursuant to Rule 220(b)(1), SCACR, and the following authorities:

1. As to whether the circuit court erred in admitting drug evidence found in Lecroy's home pursuant to a search warrant: State v. Tindall, 388 S.C. 518, 521, 698 S.E.2d 203, 205 (2010) ("On appeals from a motion to suppress based on Fourth Amendment grounds, [an appellate court] applies a deferential standard of review and will reverse if there is clear error."); State v. Weston, 329 S.C. 287, 290, 494 S.E.2d 801, 802 (1997) ("A search warrant may issue only upon a finding of probable cause."); State v. Rutledge, 373 S.C. 312, 317-18, 644 S.E.2d 789, 791-92 (Ct. App. 2007) (holding a magistrate had substantial basis for concluding probable cause existed to issue a search warrant of a residence based on the evidence, which consisted of an anonymous tip, confirmation the individual identified by the informant lived at the address, the defendant's prior convictions for marijuana, and marijuana found in the trash can in front of the defendant's residence).

2. As to whether the circuit court erred in admitting Lecroy's statement claiming ownership of the drug evidence found at his residence: State v. Mitchell, 330 S.C. 189, 193 n.3, 498 S.E.2d 642, 644 n.3 (1998) (finding "a ruling in limine is not final, and unless an objection is made at the time the evidence is offered and a final ruling procured, the issue is not preserved for review" (citation omitted)).

AFFIRMED.

SHORT, WILLIAMS, and GEATHERS, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

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**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State,

Respondent,

v.

Steven Lecroy,

Appellant.

Appeal From Richland County
J. Michelle Childs, Circuit Court Judge

Unpublished Opinion No. 2011-UP-434
Submitted October 1, 2011 – Filed October 11, 2011

AFFIRMED

Appellate Defender LaNelle Cantey Durant, of
Columbia, for Appellant.

Attorney General Alan Wilson, Chief Deputy
Attorney General John W. McIntosh, Assistant
Deputy Attorney General Salley W. Elliott, and
Assistant Attorney General Harold M. Coombs, Jr.,
all of Columbia; and Solicitor Daniel E. Johnson, of
Columbia, for Respondent.

JEANETTE W. MCBRIDE
C.E.P. & G.S.

2011 OCT 28 AM 10:30

RICHLAND COUNTY
FILED

BOOK 213 PAGE 840

STATE OF SOUTH CAROLINA)
 COUNTY OF RICHLAND)

ORDER

The State of South Carolina,)

Indictment No.: 07-1329; 30; 31

v.)

Warrant No.: I998176

Steven Lecroy
 Defendant)

This matter came before the Court on May 29, 2008. Present atthe hearing were Lane Danielsen, representing the Defendant; andTed Lupton, representing the State.

The following motions were presented: _____

☐ Attached pertinent documents were submitted by the State/Defendant and were made a part of the record.

The Court determined: Defense attorney to be relieved. Ms. Danielsen to reimburse the defendant \$2,000.00 dollars. Bench warrant is lifted. Defendant needs to retain private counsel or a public defender to be appointed.

IT IS SO ORDERED.

May 29, 2008
 Date

MM [Signature]
 Presiding Judge for Fifth Judicial Circuit

2008 MAY 29 AM 11:55

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)
)
)
)
The State of South Carolina,)
)
vs.)
)
Steven Michael Lecroy)
Defendant)

IN THE COURT OF GENERAL SESSIONS
OF THE FIFTH JUDICIAL CIRCUIT

Indictment No. 2007GS401330,
2007GS401392, 2007GS401331

NOTICE OF MOTION AND MOTION TO
CONTINUE

2008 SEP -5 PM 2:13
BARBARA A. SCOTT
C.C. & E.S.

Assistant Solicitor: Ted Lupton

Counsel for the defendant will move before this Court on Monday, September 8, 2008, at 9:30 a.m. or as soon thereafter as this matter may be heard in front of Chief Administrative Judge J. Michelle Childs, for an Order for Continuance in the above referenced case. Defense counsel requests that the Chief Administrative Judge hear this motion because it specifically concerns the disciplinary conduct of a member of the South Carolina Bar. The State is likely to re-call this case to trial the week of September 8, 2008

Defendant's previous counsel, Lane Danielson, was relieved by the Honorable Judge Doyet A. "Jack" Early on May 29, 2008, due to unsatisfactory representation of her client. Ms. Danielson was also ordered by the Court to refund all legal fees to Defendant. Judge Early appointed the Office of the Public Defender to serve as Defendant's new counsel or until Defendant retained another private attorney. Defendant made clear to Assistant Public Defender J. Rhodes Bailey that he intended to use the funds retrieved by Ms. Danielson to retain said private counsel. As of this date, Ms. Danielson has failed to comply with the Court's order to refund fees to Defendant. As a result, Defendant has been unable to retain the counsel of his choice. He feels that he cannot not be represented adequately until doing so. Defendant's case was originally called to trial on August 28, 2008. The Court refused to grant Defendant's Motion for Continuance, but the trial ultimately

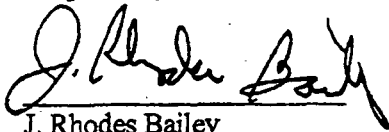
ended in a mistrial due to inappropriate testimony on the part of the State's witness. It is the Defendant's belief that the State intends to re-call his case to trial the week of September 8, 2008, on all of the charges.

Defendant respectfully requests a continuance for this trial pending Judge Early's order so that he may receive payment mandated by the Court and thus retain the attorney of his choice.

Additionally, counsel for the defendant is requesting transcripts from the previous mistrial on August 28, 2008. In the case of a mistrial, Defendant is entitled to these transcripts in order to use them for purposes of the retrial.

The Defendant moves that an Order Continuing the Case is the appropriate remedy in this case so that the Defendant may adequately and properly prepare a defense.

Respectfully submitted,



J. Rhodes Bailey
Assistant Public Defender
Date: September 5, 2008

STATE OF SOUTH CAROLINA)

County of)

VERIFICATION

I, Sam, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Sam Michael Kelly

SWORN to and subscribed before me this 04
day of May, 2012

Notary Public

My Commission Expires: 12-16-2019

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

LECROY Steven M -
00282554,

2012CP4003271

Applicant,

v.

RETURN

State of South Carolina,

Respondent.

RICHLAND COUNTY
FILED
2012 JUN -4 PM 12:01
JEANNETTE W. MCBRIDE
C.C.P. & G.S.

The Respondent, making its Return to the application for post conviction relief (PCR) filed May 8, 2012, would respectfully show this Court:¹

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. The Applicant was true bill indicted at the December 2007 term of the Richland Grand Jury for Possession of Controlled Substance- 2nd Offense, Trafficking in Methamphetamine (10 to 28 Grams) - 3rd Offense & Drugs/Possession of Marijuana - 2nd Offense (2007-GS-40-1329;1330;1331).² He was represented by James Cooper, Esquire, on the charge(s). Applicant proceeded to jury trial before The Honorable J. Michelle Childs. On February 25, 2009, the Applicant was found guilty of the charges as indicted and a sealed sentence was entered by Judge Childs. On September 9, 2009,

¹<http://www4.rcgov.us/publicindex/PICaseDetails.aspx?County=40+&Casenum=2012CP4003271&CourtType=G&CaseType=Civil&CourtAgency=40002>

² <https://sword.doc.state.sc.us/scdc-public/inmateDetails.do?id=+00282554>

the sealed sentence was opened and imposed, sentencing Applicant to twenty-five (25) years imprisonment for Trafficking Methamphetamine – 3rd Offense and one (1) year imprisonment each for Possession of Marijuana – 2nd and Possession of a Controlled Substance – 2nd Offense. All sentences were to run concurrently

Direct Appeal

A timely Notice of Appeal was filed and an Appeal was perfected by LaNelle Durant of the South Carolina Office of Appellate Defense. After briefing by both sides, the South Carolina Court of Appeals affirmed Applicant's convictions and sentences by order dated October 11, 2011. Lecroy v. State, 2011-UP-454 (S.C. Ct. App. filed October 11, 2011). The Remittitur was issued October 28, 2011.

The application for post conviction relief (PCR) was filed May 8, 2012.

II.

Attached herewith and incorporated herein are the records of the Richland County Clerk of Court regarding the subject conviction(s), the Applicant's records from the South Carolina Department of Corrections, and the trial transcript, and the Applicant's applicable direct appeal files.³ The Respondent reserves the right to amend this Return upon receipt of any relevant materials or submit an amended Return to reflect any amended allegations and/or to provide a more detailed procedural history.

³ The Respondent will utilize the Record on Appeal if the direct appeal was an Anders appeal.

III.

In his application for post-conviction relief, Applicant alleges he is being held in custody unlawfully based on the following:

- (a) INEFFECTIVE ASSISTANCE OF COUNSEL
 - (b) NO NOTIFICATION OF TRIAL DATE
 - (c) PRIVATE COUNSEL BELIEVED
- II. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) DRAYTON V. EVATT, 312 S.C. 4, 430 S.E.2d 517 (1993) SEE ATTACHED
 - (b) THE ORIGINAL ATTY (LANE DOWDSEN) WAS NOT NOTIFIED OF DATE
 - (c) I WAS NOT GIVEN COUNSEL OF CHOICE. 14TH AMEND VIOLATED

IV.

For the purposes of this Return, the Respondent interprets each of the Applicant's allegations to be claims that he received ineffective assistance of counsel. The Respondent contends that the Applicant's trial counsel rendered adequate assistance and provided representation within the range of competence required by attorneys in criminal cases. See Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

In a post-conviction relief proceeding, the Applicant bears the burden of proving the allegations in their application. Id. Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v.

Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 80 L.Ed.2d 674. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997).

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by

the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

V.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied. The Respondent therefore requests that this Court convene an evidentiary hearing solely on the issue of ineffective assistance of counsel. As to all other allegations, the Respondent moves for summary dismissal pursuant to S.C. Code Ann. § 17-27-70 on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

VI.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held. The Respondent will coordinate with the Applicant's attorney who is, according to the Respondent's file, William E. Griffin, Esquire regarding when the hearing should be set.⁴

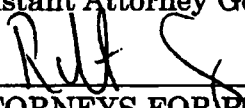
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney
General

ROBERT D. CORNEY
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737
rcorney@scag.gov

May 31, 2012

⁴ The current PCR Roster for the 5th Circuit is available at <http://www.scag.gov/criminal-litigation/postconvictionrelief>

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

LECROY Steven M -
00282554,

2012CP4003271

Applicant,

v.

CERTIFICATE OF SERVICE

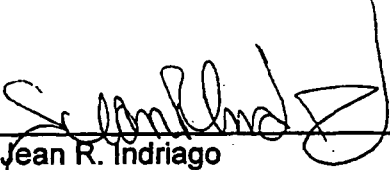
State of South Carolina,

Respondent.

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the a letter in the above-captioned matter on the following person(s) by routing the same to the United States mail, postage prepaid:

William E. Griffin, 575 Rapids Road , Columbia, SC 29202

DATED May 31, 2012.


Jean R. Indriago
Legal Assistant

RICHLAND COUNTY
FILED
2012 JUN -4 PM 12:01
JEANNETTE W. MCBRIDE
C.C.P. & G.S.

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND }

COURT OF COMMON PLEAS

STEVEN M. LECROY)
PETITIONER,)

v.)

TRANSCRIPT OF RECORD
12-CP-40-3271

STATE OF SOUTH CAROLINA,)
RESPONDENT.)

January 17, 2013
Columbia, South Carolina

BEFORE :

THE HONORABLE G. THOMAS COOPER, JR., JUDGE

APPEARANCES:

ROBERT FITZSIMONS, ESQ.
Attorney for the Petitioner

ROBERT CORNEY, ESQ.
Attorney for Respondent

FRANCES BAKIS-RAY, RPR
Circuit Court Reporter
Typed for Elizabeth Harris

INDEX

Page

JAMES D. COOPER, III:

Direct examination by Mr. FitzSimons	5
Cross-examination by Mr. Corney	11
Redirect examination by Mr. FitzSimons	16
Recross-examination by Mr. Corney	17

JOHN RHODES BAILEY:

Direct examination by Mr. FitzSimons	19
Cross-examination by Mr. Corney	41
Redirect examination by Mr. FitzSimons	54

Closing remarks by Mr. FitzSimons	56
Closing remarks by Mr. Corney	56
Reply argument by Mr. FitzSimons	60

(There were no exhibits submitted.)

1 MR. CORNEY: At this time the State calls
2 the post-conviction relief action of Steven LeCroy,
3 docket number 2012-CP-40-3271. Mr. LeCroy was true
4 bill indicted at the December 2007 term of the
5 Richland County grand jury for possession of
6 controlled substance as a second offense,
7 trafficking in meth 10 to 28-grams as a third
8 offense, and possession of marijuana —

9 THE COURT: Third?

10 MR. CORNEY: I apologize.

11 THE COURT: Trafficking third?

12 MR. CORNEY: Yes, sir, it was a third
13 offense, Your Honor.

14 THE COURT: 10 to 28?

15 MR. CORNEY: And it was 10 to 28-grams,
16 yes, sir, Your Honor. And possession of marijuana
17 second offense. He proceeded to jury trial
18 August 28th, 2008 at which time a mistrial was
19 granted at that point due to a State's witnesses, a
20 witness on the stand gave testimony up to a degree
21 of one of the charges. The State consented to
22 mistrial finding that was prejudicial and the case
23 will be called to re-trial. It was called to
24 re-trial by the State on February 24th, 2009 before
25 Judge Childs at which the applicant was not present.

1 The trial proceeded in absentia where he was found
2 guilty of the charges as indicted and a sealed
3 sentence was entered. On September 19th, 2009, the
4 sentence was unsealed and imposed at which time he
5 received 25 years imprisonment for trafficking in
6 meth third, one year for possession of a controlled
7 substance, and one year for the possession of
8 marijuana all to run concurrently. A notice of
9 appeal was filed. The appeal was perfected.
10 Lanelle Durant of the Office of Appellate Defense
11 represented Mr. LeCroy on the appeal. By opinion
12 dated October 11, 2011 his conviction and sentences
13 were affirmed. The remittitur was issued
14 October 28th, 2011.

15 He filed a timely PCR application May 8,
16 2012. He's represented by Mr. Bob FitzSimons.
17 Rhodes Bailey and Jay Cooper are both in the
18 courtroom. They served as his trial counsel. They
19 are here prepared to testify, Your Honor. At this
20 point I will turn it over to Mr. FitzSimons.

21 THE COURT: Mr. FitzSimons.

22 MR. FITZSIMONS: Your Honor, at this time
23 we call Jay Cooper, also known as Jay D. Cooper, III
24 to the stand please, sir.

25 THE CLERK: Place your left hand on the

PW - J. COOPER - DIRECT

1 Bible and face the judge.

2 WHEREUPON,

3 **JAMES D. COOPER, III,**

4 having been duly sworn by the Court, testified as
5 follows:

6 THE COURT: Have a seat in the witness
7 box. State your full name for the record.

8 THE WITNESS: My name is James D. Cooper,
9 III.

10 **DIRECT EXAMINATION**

11 BY MR. FITZSIMONS:

12 Q Mr. Cooper, you're not related to either of the
13 circuit Cooper judges, are you?

14 A Not this one. I may distantly be to the other
15 one.

16 Q And you're employed as a assistant public
17 defender for the 5th Circuit; is that correct?

18 A Yes, sir.

19 Q How long have you been doing that?

20 A I've been doing that since 2007.

21 Q And were you trial counsel to Mr. LeCroy when he
22 went to trial on the charge of trafficking in meth?

23 A I was one of his trial counsel. I was the second
24 chair to Mr. Rhodes Bailey.

25 Q And at that time Mr. Bailey was also working for

PW - J. COOPER - DIRECT

1 the Public Defender's Office?

2 A Yes, sir.

3 Q And would you say that at that point he was the
4 more experienced of the two of you?

5 A I don't know. He had been there about -- he had
6 been there six months longer than I had, I think.

7 Q But originally this case was ---

8 A No, no, no, actually I'm wrong about that. No,
9 it's been a while, I'm sorry. I think I had six
10 months on him. It all kind of runs together, but it
11 was close.

12 Q But he maxed out now and you're still in?

13 A He is maxed out and I'm still there, yes, sir.

14 Q Mr. Cooper, Mr. Bailey was the lead counsel or
15 did y'all make any distinction between who was lead
16 counsel?

17 A We did. In this case he was the lead counsel
18 because he knew the defendant and he going into it
19 he knew more about the case.

20 Q Do you recall an argument in this case on a
21 Jackson v. Denno issue?

22 A Yes, sir, I do.

23 Q Did you argue that motion, or did Mr. Bailey
24 argue that motion?

25 A I can't remember which one of us actually handled

PW - J. COOPER - DIRECT

1 it. I remember doing it. It's in the transcript.

2 Q You got a copy of the transcript there?

3 A Can you hand that up to me, Rhodes. I left it on
4 there.

5 Q Along about ending at page 110 or thereabouts.

6 A I'm sorry, I forgot to bring it up with me.

7 Q You only had ten pounds.

8 A Right. I mean, yeah, I remember the arguments;
9 but as to which one of us did it, I'd have to look
10 again and see. Somewhere we talked about it. It
11 looks like I did it.

12 Q You made the argument?

13 A On page 109, yes, it looks like I did it.

14 Q And if I might just sum up your argument, it was
15 that Mr. LeCroy was taken by surprise and hit with
16 the tazer several times and may not have been in a
17 complete state of, right state of mind, or able to
18 act voluntarily at the time that he was interrogated
19 and his statement was given?

20 A Yes, that's correct. And furthermore, I think it
21 was -- it was the fact that he'd been tazed multiple
22 times which was exposed to electrical shock multiple
23 times, that he may have been under the influence of
24 narcotics and that it was, it was those things taken
25 all together I think -- we thought we made the

PW - J. COOPER - DIRECT

1 argument that the statement shouldn't have been
2 considered voluntary.

3 Q And do you recall whether it was you or
4 Mr. Bailey that objected to the -- did the Court
5 grant your motion to suppress the evidence?

6 A No.

7 Q Do you recall who objected at that point?

8 A You mean the, when it was entered into a trial or
9 do you mean --

10 Q Well, during the motion, the Jackson v. Denno
11 motion, after the judge ruled did anyone object to
12 the judge's ruling?

13 A Well, it would have been, at the hearing, at the
14 pretrial hearing it would have been me because it
15 looks like I handled that. During the trial, I
16 don't know, it's not clear from my review of the
17 transcript.

18 Q And just to skip forward, this case was appealed
19 and Ms. Durant from Appellate Defense took this case
20 to the Court of Appeals; is that correct?

21 A Yes, sir.

22 Q I know you don't always, but did you by any
23 chance have the opportunity to review the record or,
24 excuse me, review the ruling of the Court of Appeals
25 on appeal on this case?

PW - J. COOPER - DIRECT

1 A Mr. Bailey told me about it. He told me what the
2 issue was and how, what they decided.

3 Q And did you learn of that any further on your
4 own, or do you only have Mr. Bailey's word for what
5 the Court of Appeals said?

6 A I don't think I actually read the opinion myself.
7 I think I took his word for it.

8 Q Did you go back in the course of preparing for
9 today's hearing and attempt to determine whether or
10 not you adequately preserved the record?

11 A Yes, sir.

12 Q Do you know whether you adequately preserved the
13 record for that issue to be reviewed on appeal?

14 A No, I cannot tell. It's not -- I can't tell from
15 my own memory, and I can't -- reviewing the record
16 it's not clear to me whether or not we
17 contemporaneously objected.

18 Q Did you meet with Mr. LeCroy prior to trial?

19 A No, sir.

20 Q Did you -- so you came in after Mr. Bailey had
21 prepared the case for trial the first time?

22 A Yes, sir.

23 Q Were you a participant in the first trial?

24 A No, sir.

25 Q So today is really your first chance to meet

PW - J. COOPER - DIRECT

1 Mr. LeCroy?

2 A Yes, sir.

3 Q As an officer of the Court is there anything you
4 did that you should not have done, failed to do what
5 you should have done which would have led to your
6 more adequately or effectively representing
7 Mr. LeCroy?

8 A Well, I can't, like I just said, I can't tell. I
9 can't remember and I can't tell from the record
10 whether or not I contemporaneously objected so I
11 don't know as we sit here today. I may not have,
12 but I — the truth is, I just don't know. Other
13 than that, I can't think of anything.

14 Q You made no statements to Mr. LeCroy at any
15 point? You never corresponded or spoke to him on
16 the telephone?

17 A No, sir.

18 Q You didn't mislead him in any way in that regard?

19 A No, sir.

20 Q You didn't fail to do anything he asked you to
21 do, or do anything he asked you specifically not to
22 do?

23 A No, sir.

24 MR. FITZSIMONS: That's all the questions
25 I have of this witness. Thank you, Your Honor.

PW - J. COOPER - CROSS

1 THE COURT: Cross-examination.

2 MR. CORNEY: Yes, sir, Your Honor.

3 **CROSS-EXAMINATION**

4 BY MR. CORNEY:

5 Q Mr. Cooper, have you had opportunity to review
6 the Jackson v. Denno hearings and transcript at all?

7 A I read it the other day, and I just couldn't
8 remember which one of us did it. To be honest with
9 you I haven't read it in detail; but I went through,
10 I looked over it.

11 Q Okay. Well just to start off with, in your
12 experience as a criminal defense attorney you're
13 aware that in a motion in limine if the evidence is
14 introduced through the next witness, if it's
15 introduced later down the line, you have to make a
16 contemporaneous objection to that introduction ---

17 A Yes, sir.

18 Q ---to preserve for appeal?

19 A Yes, sir.

20 Q And that's under State v. Shelber is the case
21 that discusses that?

22 A I'll take your word for it. I just know that's
23 the rule.

24 Q Okay, fair enough. Now during the Jackson v.
25 Denno hearing, Sergeant Lincoln Poole was the

PW - J. COOPER - CROSS

1 witness called by the State, correct?

2 A Yes, sir.

3 Q I'm gonna ask you about some specifics of his
4 testimony during the Jackson v. Denno hearing.
5 Obviously if you don't recall the transcript speaks
6 for itself in that regard.

7 A Okay.

8 Q I expect you to obviously answer that way.
9 Sergeant Poole testified that he didn't believe
10 Mr. LeCroy was under the effects of the stun gun
11 after he had been -- or tazed, after he'd been tazed
12 at least three times and the time he took the
13 statement from Mr. LeCroy, correct?

14 A Yes, he did. I remember that.

15 Q And he also testified the statement occurred
16 roughly 30 minutes after the stun gun was used on
17 him?

18 A I don't specifically remember the 30 minutes, but
19 I -- if that's what's in the transcript that's what
20 he said, yes.

21 Q And do you recall him testifying that he had
22 asked Mr. LeCroy about his education and Mr. LeCroy
23 had said he had eleventh grade education could read
24 and write?

25 A Yes, I do remember that.

PW - J. COOPER - CROSS

1 Q And do you recall Sergeant Poole testifying that
2 he asked Mr. LeCroy if he understood what the word
3 coercion meant and Mr. LeCroy was able to give him a
4 definition that Sergeant Poole thought was
5 appropriate to what that word meant?

6 A I'm not specifically but they always — I mean,
7 I'm sure he did say that if it's in the transcript.

8 Q And through Sergeant Poole there's testimony that
9 Mr. LeCroy -- that Sergeant Poole believed that Mr.
10 LeCroy understood his rights after he read them to
11 him, that Mr. LeCroy signed the waiver of rights
12 form at that point, correct?

13 A Yes, I remember that.

14 Q That waiver of rights form was then read during
15 Jackson v. Denno hearing, and there was a witness
16 that -- James Abraham is another officer that
17 testified he witnessed Mr. LeCroy sign the waiver of
18 rights form, correct?

19 A Yes, sir.

20 Q All right. Sergeant Poole's testimony was that
21 he didn't make any threats, there was no coercion,
22 no promises or force used against Mr. LeCroy to get
23 the statement from him, correct?

24 A Yes, sir.

25 Q And Sergeant Poole wrote Mr. LeCroy's statement

PW - J. COOPER - CROSS

1 for him, read it back to him orally and had
2 Mr. LeCroy sign it, that it was accurate and true
3 what he had said, correct?

4 A That's what he testified to, yes.

5 Q And that's all I'm talking about, it's just
6 Sergeant Poole's testimony during the Jackson v.
7 Denno hearing.

8 A Yes.

9 Q Now obviously the purpose of a Jackson v. Denno
10 hearing is just for admissibility purposes, but the
11 jury is still able to give their own weight to that
12 statement, correct?

13 A Yes.

14 Q And that's fairly what a threshold for
15 admissibility and just that voluntarily and
16 intelligently, correct?

17 A I have found that it is, yes.

18 Q All right. Now specifically with Mr. LeCroy's
19 arrest, he was found in a room and the drugs were
20 found in that room with him, correct?

21 A Yes.

22 Q There were drugs specifically found in his pocket
23 as well?

24 A Yes, I believe there were.

25 Q He was the only individual at the time the police

PW - J. COOPER - CROSS

1 entered his room, correct?

2 A Yes, sir.

3 Q So as far as dominion and control of those drugs,
4 he's the only one in the room that could have been
5 dominion and control of those drugs at that point in
6 time?

7 A Well, I mean, I wasn't the -- yeah, I mean,
8 that's reasonable to say, yes.

9 Q Okay. And yeah, I'm just talking about
10 reasonable inference that can be drawn there. In
11 your recollection -- let me ask you, I know you
12 weren't part of the first mistrial, you said you
13 came on after that. Are you aware of whether a
14 Jackson v. Denno hearing was held at that first
15 trial?

16 A I can't remember -- I can't remember exactly. I
17 know he and Mary Lafevre did it. I don't -- it's
18 been a long time. I'm sure that they did, but I
19 can't remember specifically.

20 Q Okay. Based on your reading of the Jackson v.
21 Denno hearing do you have any opinion as to -- as to
22 whether Court of Appeals had this issue been
23 addressed would have found the court erred in any
24 way --

25 MR. FITZSIMONS: Objection.

PW - J. COOPER - REDIRECT

1 THE WITNESS: I have no idea.

2 MR. FITZSIMONS: That's beyond
3 Mr. Cooper's knowledge.

4 THE COURT: Well, I think he just
5 acknowledged that.

6 MR. CORNEY: Thank you, Your Honor.
7 That's all the questions I have. Thank you very
8 much.

9 THE COURT: Redirect?

10 MR. FITZSIMONS: Just briefly on redirect.

11 **REDIRECT EXAMINATION**

12 BY MR. FITZSIMONS:

13 Q Mr. Cooper, the credibility of the officer was at
14 issue; was it not?

15 A Yes, sir.

16 Q And beyond that, the officer's opinion as to
17 voluntariness was at issue; was it not?

18 A Yes, sir.

19 Q And if we would typically rely on the officer the
20 statement would have come in, no question about it,
21 correct?

22 A I think so, yes.

23 Q And the point of issue of preservation then is to
24 go beyond mere opinion of the officer which offered
25 the statement; is that correct?

PW - J. COOPER - REDIRECT

1 A I agree with -- I agree with that. I think
2 that's one of the issues just like the other counsel
3 said after subsequent evidence comes in to go back
4 and see if any of that has changed the situation,
5 but I think you're -- that's a correct statement.

6 Q Thank you. That's all I have.

7 MR. CORNEY: Can I ask one follow-up
8 question, Your Honor.

9 THE COURT: Sure.

10 **RECROSS-EXAMINATION**

11 BY MR. CORNEY:

12 Q I know obviously you work at the public defender
13 and don't do a whole lot of appellate work, but are
14 you aware of credibility findings made by a jury or
15 how that's are addressed on appeal by appellate
16 court?

17 A Say that one more time.

18 Q I know that you don't do an awful lot of
19 appellate work, but are you aware of kind of the
20 standard that's used by appellate courts when it
21 comes to credibility findings that are made by lower
22 court?

23 A This is gonna make me sound ignorant, but I
24 think, I think that they, I think that they hold
25 those findings to a pretty high standard.

PW - J. BAILEY - DIRECT

1 Q They give great deference to this ---

2 A Yes, that's ---

3 Q ---the court's credibility findings?

4 A That's a better way to put it.

5 Q And that's because the court is not there to
6 judge the witnesses at the hearing or anything along
7 those lines. They're going just from the transcript
8 in front of them, correct?

9 A I imagine so, yes.

10 Q That's all the questions I have. Thank you.

11 THE COURT: All right, sir, you may come
12 down.

13 THE WITNESS: Thank you.

14 MR. FITZSIMONS: Your Honor, we call
15 Rhodes Bailey to the stand.

16 THE COURT: Come around, Mr. Bailey.

17 THE CLERK: Place your left hand on the
18 Bible, raise your right hand. Face the judge.
19 WHEREUPON,

20 **JOHN RHODES BAILEY,**
21 having been duly sworn by the Court, testified as
22 follows:

23 THE COURT: Have a seat in the witness
24 box. State your full name for the record.

25 THE WITNESS: Yes, sir. My name is John

PW - J. BAILEY - DIRECT

1 Rhodes Bailey.

2 **DIRECT EXAMINATION**

3 BY MR. FITZSIMONS:

4 Q Mr. Bailey, you're a member of the bar now in
5 private practice; is that correct?

6 A Yes, sir, I work for Grier, Cox and Krenshaw.

7 Q Better say that slowly, that's a little —

8 A I work for Grier, that's I-E-R, Cox, and
9 Krenshaw.

10 Q Did you at one time work for the 5th Circuit
11 Public Defender's Office?

12 A Yes, sir, for four years.

13 Q Okay. Mr. Bailey, did you represent Mr. LeCroy?

14 A I did, yes, sir.

15 Q Can you elucidate for the Court the tangle,
16 procedural history of Mr. LeCroy's case?

17 A Right, it was pretty complicated. I was in court
18 one day. It was probably —it was either plea court
19 or motions court. It would have been in May — I
20 think it was about 29th or so, May of 2008, and Mr.
21 LeCroy was in front of Judge Early. The solicitor
22 had transported because they were having problems
23 getting a hold of his then lawyer, Lane Danielsen
24 and he was on a bench warrant that sounded like
25 could have been vacated but no attempt I guess had

PW - J. BAILEY - DIRECT

1 been made by his lawyer at that time to vacate the
2 bench warrant. I think they even had to -- and I
3 can't remember all the details, but we were all kind
4 of there in the courtroom and it kind of halted. We
5 had a bunch of lawyers, you know, sitting in
6 different motions. They had to eventually sent out
7 some police out to find her and they brought her in
8 the courtroom. And you know, Judge Early relieved
9 her as counsel. He criticized her handling of the
10 case, and he told her to give -- I believe he told
11 her to give Mr. LeCroy his money back, and then he
12 essentially appointed me from the Bench where he
13 appointed the Public Defender's Office. And I think
14 I had done something in front of him earlier so he
15 knew who I was, and he was like, Mr. Bailey can be
16 your lawyer. And then he at that point when
17 Mr. LeCroy got screened it went to our office; but I
18 told our boss, Doug Strickler, I was like, you know,
19 you can assign it to somebody else but I'd be happy
20 to take it. I was just up there and I saw sort of
21 what was happening with him. So I started to
22 represent him at that point in May of 2008.

23 Q Okay. And just for the record did Ms. Danielsen
24 work for your office at some point?

25 A My understanding is she did, but it was long

PW - J. BAILEY - DIRECT

1 before I got there. It wasn't when she was
2 representing Mr. LeCroy.

3 Q So this was not a question of relieving one
4 public defender and appointing another?

5 A No, she -- she was a member of the private bar.
6 And yeah, it had nothing -- she didn't have any
7 association with the Public Defender's Office at
8 that time.

9 Q And she was retained as private counsel and Judge
10 Early relieved her as counsel on whose motion, do
11 you recall?

12 A I don't remember -- my understanding, and it was
13 kind of, it was a lot of drama to kind of unfold in
14 the courtroom for an afternoon. There was a lot of
15 stuff going on but it sounded to me -- and
16 Mr. LeCroy might be able to better testify to what
17 all went on 'cause I didn't, at this point I didn't
18 really have anything to do with the case. It
19 sounded like Steven was stuck in jail and he was
20 trying to contact Ms. Danielsen and that there was a
21 bench warrant and that she might not have properly
22 told Mr. Lutken (ph), or this was what was at issue,
23 that he -- that he had, you know, he was, he had
24 absconded, you know. And she didn't do -- and she
25 didn't take any measures to have it, have the bench

PW - J. BAILEY - DIRECT

- 1 warrant lifted. And I think that Ted Lutken, after
2 he'd written letters or Mr. LeCroy had written
3 letters or somebody, I think Ted Lutken was the one
4 who had transported that day to try and figure out
5 what was happening because Ted Lutken wanted to, you
6 know, try the case. So I think he put on the
7 transport list, but I think they had to get
8 something on the motions docket before they could
9 get Ms. Danielsen in there. It was a real mess.
- 10 Q But the case ended up in your office. Do you
11 happen to know by any chance was Mr. LeCroy's fee
12 ever refunded as Judge Early had ordered?
- 13 A It sounded like not because every time I tried to
14 talk with Mr. LeCroy about his case -- and he spoke
15 with me, I mean, we met with him a few times, but he
16 always said that he was gonna hire another lawyer,
17 that he didn't want us. I mean, he wasn't impolite
18 about it. He just said, you know, I'm gonna hire me
19 a lawyer, I'm gonna hire another private attorney as
20 soon as I get my money back. And I said, well you
21 know, if you don't hire a new lawyer they're gonna
22 call your case.
- 23 Q And you were at that point already on the hook?
- 24 A Well sure, yeah, I mean, we were -- you know, we
25 were planning for it, and he had been offered -- he

PW - J. BAILEY - DIRECT

1 was being — he was charged with trafficking third
2 which I believe carried 25 to 30. And Ted Lutken,
3 the solicitor who is no longer with the solicitor's
4 office, offered to allow him to plead straight up to
5 trafficking second which was 5 to 30, mandatory
6 minimum of 5. And he said — this was shortly after
7 we got Mr. LeCroy. And he said, you know, I won't,
8 I won't make an opinion as to what, and he asked
9 for, he can ask for the minimum, whatever, I'm not
10 gonna, you know, sort of object to it. Although he
11 didn't have the reputation of the most, you know,
12 compassionate solicitor when it came to sentences
13 and offers. In this case he seemed to, I mean, I
14 think he — in this case he extended the offer when
15 he knew essentially if Mr. LeCroy were to accept it
16 we would ask for, you know, five years. And I spoke
17 with Mr. LeCroy about this more than a few times and
18 he was kind of, he would say — let's see, look at
19 my notes. He thought that he, that these, I think
20 what I have the options that were being presented to
21 him were too cut and dry, that he didn't like how
22 they sounded, that he had used his brain storm with
23 Lane Danielsen and that she had convinced him that
24 this case was going to get thrown out, that the
25 confession was going to be suppressed, and that she

PW - J. BAILEY - DIRECT

1 had guaranteed him he would never go to jail for it,
2 that — something to that effect. So he seemed
3 pretty convinced that if he just got another lawyer
4 he could, you know, he could have, you know, the
5 charges would be disposed or he could get probation
6 or something. So every time I talked to him on the
7 phone he would say, well unless it's like drug court
8 or probation, I don't want anything to do with it.

9 And then he would say -- well, I know we
10 tried to contact Judge Early's office to get his
11 money back; but the first time it was called to
12 trial and there was the mistrial, which I believe
13 was August of '08, so it was about three months
14 later, he had not gotten — he had not retained a
15 new lawyer. And we asked the judge, we told him
16 that Mr. LeCroy wanted time to retrain a new lawyer.
17 That was judge Newman at the time, and Judge Newman
18 denied the motion. And I mean, you know, that's
19 pretty much it. He never retained another lawyer,
20 and I think he said it was because he was not
21 getting his money back from — had not gotten his
22 money from Ms. Danielsen so he probably didn't have
23 the money at the time anyway.

24 Q But he went to trial before Judge Newman, and you
25 were able to get a mistrial on that case?

PW - J. BAILEY - DIRECT

1 A Right. Me and Mary Lafevre, we tried -- it was
2 during -- one of the first witnesses, one of the
3 police officers said something about him having a
4 prior drug conviction so we moved for a mistrial and
5 we got a mistrial.

6 Q And at that point Mr. LeCroy was present; is that
7 correct?

8 A Right, Mr. LeCroy was present. Now we moved
9 for -- we moved to have the trial postponed for a
10 number of reasons. One, you know, Mr. LeCroy said
11 he wanted another lawyer, and we said, you know,
12 we're ready to be forward but Mr. LeCroy wants a
13 lawyer. Another one was that he seemed, you know,
14 under the influence of something. I mean, at the
15 time he was, he was kind of nodding off, he seemed
16 --

17 Q Was he on bond, excuse me?

18 A Yeah, at this point he was out on bond. Ever
19 since Judge Early vacated his bench warrant he was
20 out on bond.

21 Q Okay. But you moved to -- you moved to continue
22 the case and Judge Newman denied your motion to
23 continue, but then Mr. LeCroy's trial began and it
24 was mistried?

25 A That's correct, yeah.

PW - J. BAILEY - DIRECT

1 Q And that was in August?

2 A That was -- it looks like that was August 28th of
3 2008.

4 Q Do you know what became of Mr. LeCroy between
5 that August trial date and the February 24th date at
6 which point you had to try the case again?

7 A Yeah, I can give you -- I mean, I think I can
8 give you a rough -- I took a lot of notes on this
9 'cause it was so complicated with what was happening
10 with Ms. Danielsen. Let's see, okay, there was a
11 mistrial at this point. The solicitor would not
12 offer the plea to it. He wouldn't offer the five
13 years again. I mean, or he wouldn't you offer it to
14 allow five years. He said, he seemed to -- he kind
15 of was, he was saying he would offer after mistrial
16 offer him like 12-and-a-half or something to that
17 effect. That's what my notes say. We were trying
18 to work him down; but at this point I think he
19 has -- he kind of had a half offer, somewhere in
20 between. Let's see, we filed a motion -- the first
21 thing happened, I filed a motion for a continuance
22 because Ted Lutken wanted to call it immediately
23 because we had a right to the transcript from the
24 previous court hearing to match up the officer's
25 testimony. We had a big fight about that for a few

PW - J. BAILEY - DIRECT

1 weeks and then -- and Mr. Lutken said, no, no, I'm
2 not gonna, you know, you're not entitled to that.
3 Eventually Judge Childs agreed we were entitled with
4 it, and they had to order the transcripts. I
5 called, it looks like I called -- at one point in
6 September it looks like he didn't -- yeah, it looks
7 like Steven LeCroy didn't show up at some point
8 because he'd been re-noticed a few times. And I
9 tried to call him on September 16th because -- this
10 is in 2008 -- because Ted Lutken said he was gonna
11 put a bench warrant on him for not showing up. And
12 I got a message from Mr. LeCroy's phone, the thing
13 that subscriber's not taking calls at this time.
14 And this was, you know, this was after we'd had this
15 fight over getting the transcripts and delaying
16 another trial so we could get the transcript.

17 He did call me back on September 24th
18 about eight days later and it says -- okay, at this
19 point I was telling him that 12.5 year offer was
20 what was on the table and he -- and then he said
21 that -- well, he still seemed to think he could get
22 drug court or PTI. It was sort of a similar
23 conversation I'd been having with the first trial.
24 I told him that he needed to come in as soon as
25 possible on the bench warrant because they were

PW - J. BAILEY - DIRECT

1 gonna arrest him, and he said that — he gave me his
2 friend Lucas' phone number. And I called the
3 friend's number later on and relayed sort of a talk
4 offers, left a message, and we didn't get a return
5 phone call. So he called me at some point on the
6 24th and he at that point, my understanding was,
7 that a bench warrant was gonna be asked for him
8 because he hadn't come in for notice, he had been
9 noticed a bunch of times at this point.

10 Q Excuse me, you say he'd been noticed?

11 A Noticed. You know —

12 Q What's the physical procedure of noticing a
13 defendant?

14 A Well, in Richland County the solicitors put a lot
15 of emphasis on having a piece of paper that says you
16 got to be back in court on a certain date, where it
17 be a trial or a plea. And you know, they'll — if
18 you're not gonna go in front of a judge that day
19 whether it be for a plea or for trials called, you
20 know, they ask you to sign, you know, they ask you
21 to sign that you received notice they will I
22 understand I have to appear in court on X date and
23 at some point — I don't remember whether it was a
24 physical notice, usually there is; but especially
25 with Ted Lutken who didn't want to do everything,

PW - J. BAILEY - DIRECT

1 he, I mean, he had to notice somebody for
2 everything. So I don't have the document of when he
3 was noticed but he had been -- he had been back and
4 forth at least once since the mistrial. And I told
5 him, I was like, this is coming up again, they're
6 trying to call this case. And it looks like, I
7 guess, he didn't show up for one of the days he was
8 noticed. He was on the trial docket so Ted Lutken
9 asked for a bench warrant.

10 Q And bench warrant was issued?

11 A Right. I mean, I -- you'd have to check the
12 clerk's office to see when, what date it was
13 officially issued. And then you know, it may be a
14 few days until they get it issued. I tried it again
15 on September 25th and I didn't have any -- you know,
16 I was unable to reach him. I didn't hear from him
17 for a while. Then I got an email -- just to kind of
18 continue answering the last question. I got an
19 email from the solicitor at the end of January that
20 said, said that one of the investigators spoke to
21 one of his friends and said that Mr. LeCroy was in
22 Santiago, California and that he had run. He was
23 trying to run away from his warrant and that they
24 knew he was out there 'cause some -- an unpaid
25 parking ticket was forwarded to his address in South

PW - J. BAILEY - DIRECT

1 Carolina. So at that point, you know, so that was
2 the last, that was the last I heard of him was, I
3 guess, September of 2008. And then I heard he was
4 in California.

5 Q And then from September until February you were
6 either able to stay off Mr. Lutken or something
7 happened until you finally had to go to trial on
8 September; is that right?

9 A Right. Mr. Lutken was real adamant about trying
10 him in his absence. There were tons of things on
11 the docket but this is — he just was pushing for it
12 and Judge Childs heard this case.

13 Q Okay. So despite your efforts you ended up
14 having to go to trial without Mr. LeCroy present?

15 A That's right. That's right.

16 Q Okay. Mr. Bailey, I want to call your
17 attention — do you have the transcript there before
18 you?

19 A Uh-huh.

20 Q If you would turn to page 360 and 361 of the
21 transcript. Better go to the bottom of 359.

22 A 359?

23 Q Yes.

24 A Okay.

25 Q At this point the jury has been excused. And I

PW - J. BAILEY - DIRECT

1 believe the trial is completed and you're making
2 post-trial motions; is that correct?

3 A I may be. I don't remember this part. Let's
4 see. "I'll be ready to do post trial motions
5 whenever" -- yes, sir. Okay, so I'm start -- I'm at
6 the bottom 359 and I say, first Your Honor -- I
7 guess we're on page 360 now. "I'd like to renew all
8 objections and objections to denied motions that we
9 made throughout the trial. I'd like to renew all of
10 those for the record." That's what I say at the
11 beginning of 360. "And second, Your Honor, I'd like
12 to move for new trial based on several things
13 mentioned earlier." And you can stop me or --

14 Q Well, I'd ask you just to skip down to the last
15 paragraph on 360 that begins, "Also just getting
16 back to trying in his absence."

17 A Yes, sir. I said, "Also just getting back to
18 trying him in his absence I'd like to say, Your
19 Honor, I believe that we were deficient counsel
20 because Mr. LeCroy was not available. You know, try
21 as we may, I don't think we can adequately represent
22 him appropriately without him here to assist in his
23 own defense, and therefore, we believe that this
24 ineffectiveness probably prejudiced our client in
25 the outcome of the case therefore, making us

PW - J. BAILEY - DIRECT

1 ineffective in this situation, Your Honor."

2 Q Okay. And at that point it ends up being a three
3 way colloquy between you, Mr. Lutken, and the Court
4 as to whether or not you were in effect holding up
5 out a sword and trying to jump on it.

6 A Yeah, that was funny because Mr. Lutken first
7 said, oh, you know, if they're alleging they were
8 deliberately ineffective they should be tried in
9 front of a tribunal, on page 361. And then all
10 within, gosh, a page or so he starts saying we did a
11 really great job. So I —

12 Q He was just being a good sport at that point?

13 A Right. He was saying all -- they should put in
14 front of a tribunal if they're trying to throw this
15 case, or something like that. And then Mr. Lutken
16 started stating we were the greatest lawyers ever.
17 It was real, I mean, not to make light of it but it
18 was kind of funny.

19 Q What were you in effect actually trying to say to
20 the court at that point?

21 A Well, you know, I thought it was ridiculous,
22 especially with all the people sitting out at Alvin
23 S. Glenn that we were having a TIA. I thought it
24 was a waste of resources of time and; but you know,
25 as Mr. LeCroy's lawyer I felt like he, you know, him

PW - J. BAILEY - DIRECT

1 being tried in his absence wasn't, you know, you
2 know, he couldn't get a fair trial or get a complete
3 defense. That's what I was saying at the time, that
4 I thought that the trial should -- the verdict
5 should be get a new trial because he shouldn't be
6 tried in his absence.

7 Q Do you know of any case law or statutory law that
8 would back you up on that?

9 A Not off the top of my head. I'm sure I looked at
10 the time, but it's been a while since I've looked at
11 that kind of stuff.

12 Q Do you know whether or not you looked it up and
13 couldn't find any, or you didn't look it up?

14 A I know I -- I know that we looked at a lot of
15 cases on flight and evidence of flight and to try at
16 trial and absence. But I honest, I mean, I can't
17 tell you whether, you know, clearly I didn't quote a
18 specific case about being prejudiced by being tried
19 in your absence here, if that's your question.

20 Q All right. I want to ask you the questions that
21 I asked Mr. Cooper. First of all, you did actually
22 have considerable contact with Mr. LeCroy as you
23 already testified?

24 A Not as much as I would like 'cause I felt like
25 sometimes -- and he wasn't, you know, rude but I

PW - J. BAILEY - DIRECT

1 felt like he did kind of brush me off when I tried
2 to talk to him about offers, deals. And he seemed
3 to believe that there would just always be another
4 chance for another lawyer. But you know, I knew
5 him. I got to know him. We had a, you know, we had
6 an amicable relationship and so I did know
7 Mr. LeCroy. And I'm sure Mr. Cooper would have --
8 had Mr. Cooper -- had Mr. LeCroy been in the state
9 at the time Mr. Cooper, I'm sure, would have gotten
10 to know him too and would have been involved in
11 planning for his trial.

12 Q This is not a question though of client sitting
13 out at the jail that you failed to visit because he
14 was at the jail and you just didn't want to go out
15 there?

16 A Right. I mean, it was a physical impossibility.
17 At this point I guess, I mean, it seemed documented
18 that he was out of state. He was in California or
19 somewhere else so we didn't know where he was.

20 Q So, and do you know, was Mr. LeCroy ever told
21 specifically not only that a bench warrant would be
22 issued for his failure to appear but that he could
23 be tried in his absence?

24 A I mean, I -- I normally would tell clients that,
25 that if you don't show up they can still call the

PW - J. BAILEY - DIRECT

1 case without you. I cannot remember specifically if
2 we had that conversation because I don't think I
3 expect -- I don't think we expected him to. No, I'm
4 sure we did, now that I think about it. I remember
5 because Mary Lefevre and I were concerned during the
6 first trial in August of '08 that he wouldn't show
7 up. I mean, this is, you know, I remember 'cause he
8 was on bond and he was saying I'm gonna get another
9 lawyer. And I got -- we get the feeling we didn't
10 think he'd show up. And then he did show up, but
11 we're like, you know, you have to come, you know,
12 they're gonna call this case again with you or
13 without you. So I mean, after that mistried.

14 Q So you had warned him on that?

15 A I'm sure I did. It took me a second. There was
16 a lot going on here but I'm sure, I'm sure we let
17 him know that 'cause we wanted to stress the
18 importance of him being here.

19 Q Did Mr. LeCroy ever ask you to do anything that
20 you believe you failed to do or could have done more
21 thorough?

22 A No. You know, I would have been open to him
23 asking me to do more stuff if he'd been available or
24 in this state.

25 Q Did he ever ask you not to do anything that you

PW - J. BAILEY - DIRECT

1 did contrary to his wishes?

2 A No, sir, I don't believe so.

3 Q With regard to the issue of Jackson v. Denno
4 hearing and the voluntariness of that statement, do
5 you agree with Mr. Cooper as to whether or not the
6 two of you adequately preserved the record for
7 appeal?

8 A You know, I'd say Mr. Cooper kind of summed it
9 up. I feel like, you know, we had the Denno
10 hearing. I've looked back at the transcript. You
11 know, I thought it was our intent to make clear that
12 this was a contemporaneous objection. I know that
13 on, let's see, let's see. I know on page 115 right
14 before the judge lets it in. Let's see line, line
15 11, I said, Your Honor, I think this is it with our
16 motions. We just want to renew our objections to
17 the admissions of this evidence presented at
18 pretrial hearings. And then I said several other
19 times I think around page 360 I talk or so I talked
20 about renewing objections. I tried my best to renew
21 previous objections on page 300, page 289. I was
22 trying to say a catch-all. Now, and I'm sorry, you
23 might want to hone in on something particular here.
24 But I, I had thought that we had covered everything.
25 That was, you know, that was certainly my intent.

PW - J. BAILEY - DIRECT

1 Q Well, I'm going to show you a document and ask
2 you if you recognize it?

3 A Okay. Yes, sir, and this is the — this is the
4 appellate review of Mr. LeCroy's case, right.

5 Q And there were two issues reviewed on appeal; is
6 that correct?

7 A Looking at it...

8 Q Or rather —

9 A Yeah, one was the search warrant and one was the
10 statement, right?

11 Q At least Ms. Durant attempted to present two
12 issues for the appeal?

13 A That's right, yeah, that's what it appears to be.
14 Yes, sir.

15 MR. FITZSIMONS: And Your Honor, I believe
16 that the Court probably has a copy of that document
17 already in the record.

18 THE COURT: Where is it in the record?

19 MR. FITZSIMONS: Beg your pardon, Your
20 Honor?

21 THE COURT: Where would it be? All I have
22 is —

23 MR. FITZSIMONS: It's a one page.. I think
24 it was appended either to the application or to the
25 State's reply -- return, excuse me.

PW - J. BAILEY - DIRECT

1 MR. CORNEY: It's just the order and
2 remittitur should be stapled together in there.
3 Your Honor, we passed up a part of the packet to
4 make a part of the record at the outset of the
5 hearing for consideration by the Court it should be
6 in there I think.

7 THE COURT: All right.

8 MR. FITZSIMONS: And I know -- my client
9 made reference to it. I think my client may have
10 made it an attachment to his affidavit.

11 MR. CORNEY: Right, I think he put it in
12 his PCR application; didn't he?

13 THE COURT: Okay.

14 MR. FITZSIMONS: At least in reference
15 thereto if not the actual --

16 THE COURT: I've got it.

17 MR. FITZSIMONS: You have the document,
18 Your Honor, the court has the document? Or I do
19 need to enter it into evidence, the remittitur from
20 the Court of Appeals?

21 THE COURT: Here's the remittitur along
22 with the --

23 MR. FITZSIMONS: The unpublished opinion.

24 THE COURT: The opinion.

25 MR. FITZSIMONS: That's what we're talking

PW - J. BAILEY - DIRECT

1 about actually is the opinion. Thank you, Your
2 Honor.

3 THE COURT: Yes, I have it.

4 BY MR. FITZSIMONS:

5 Q All right. Mr. Bailey, if you would please, the
6 Court apparently addressed the two issues.

7 Ms. Canty's objection or Ms. Canty's attempt to have
8 the trial overturned because of a search warrant
9 issue, that is the garbage and check into the
10 garbage; and then the issue of voluntariness, that
11 is the Jackson v. Denno hearing; is that correct?

12 A Uh-huh, that's what it looks like.

13 Q And judges Short, Gathers, and is it —

14 A Williams.

15 Q Did they agree with you that you adequately
16 preserved the issue for appeal?

17 A I mean, it looks like no. They said — and I
18 didn't. I didn't say that myself. I was, you know,
19 I'm telling you I thought we made the intent. You
20 know, the Court of Appeals has said that the, a
21 ruling in limine isn't final unless the objection is
22 made at the time the evidence is offered. So they
23 say it was not preserved for review, yes, sir.

24 Q So whether or not ultimately Mr. LeCroy's
25 confession or statement should have come in, the

PW - J. BAILEY - DIRECT

1 appellate court did not review that issue; is that
2 correct?

3 A I mean, that's what it looks like.

4 Q And whether or not ultimately the jury could
5 believe or discard the testimony elicited from the
6 officer who presented that statement, that's really
7 not an issue either. What's really an issue is
8 whether or not the appellate court could review; is
9 that correct?

10 A Well, I mean, you know, my understanding is their
11 standard review didn't fit their standard of, you
12 know, preservation. I'm not really sure what your
13 last question was but...

14 Q Just because Mr. Corney is gonna ask you, well,
15 the jury heard this and the jury ruled on the
16 credibility, that's not really what's at issue here,
17 is it?

18 A Well, I mean, you know, I don't know what kind of
19 legal determinations you want me to make on an
20 appellate level, I mean...

21 Q Excuse me, I don't, I don't want you to feel like
22 I'm trying to ask you to make any appellate
23 determination whatever. I'm trying to determine is
24 the reason you and Mr. Cooper objected in the first
25 place was to keep it out; and if you couldn't keep

PW - J. BAILEY - CROSS

1 it out so there would be an issue for appeal; is
2 that correct?

3 A I mean, we, we wanted -- well, I mean, we didn't
4 think it should be let in. And I thought, and
5 you'll see several times I -- I mean, other times in
6 the record I said that, you know, I want to renew
7 all of our objections that we had made. I mean, we
8 didn't think it should be put in.

9 Q So that while it got in over your objection there
10 may have been some inadvertent failure to adequately
11 preserve the issue for appeal?

12 A Well, I mean, you know, that's the determination
13 that the Court of Appeals has made.

14 Q Thank you. That's all the questions I have.

15 THE COURT: Mr. Corney.

16 **CROSS-EXAMINATION**

17 BY MR. CORNEY:

18 Q Just as a little bit of background, Mr. Bailey,
19 Mr. LeCroy lived with his mother at the time of
20 this?

21 A That's my understanding, yes.

22 Q Was there ever any insinuation, any testimony,
23 anything at trial to point to the fact that these
24 drugs were his mother's?

25 A No. I mean, you -- on our part, is that what

PW - J. BAILEY - CROSS

1 you're saying, or on the part of the officers, or
2 what?

3 Q On the part of the State. The State ever try to
4 say, you know, the mother — was there anything in
5 evidence or in your discovery file to point to the
6 fact that the mother might have been involved in
7 this?

8 A No, no. I mean, Steven said to me, you know,
9 that he, that he can — I mean, if I remember
10 correctly he said that when he signed the statement,
11 and this is a while ago, that they were threatened
12 to take his mom's house and things like that. That
13 was really the only time his mother really came into
14 discussion from what I remember.

15 Q Okay. And Mr. LeCroy was the only person in the
16 room with these drugs at the time the house was
17 searched, correct?

18 A Yes.

19 Q And the only two people in the house were him and
20 his mother, correct?

21 A Well, the police came I think there were maybe
22 five officers or so. Yeah, when the police came I
23 think they were the only two people in the house my
24 understanding.

25 Q And there were, in fact, drugs found in Mr.

PW - J. BAILEY - CROSS

1 LeCroy's pocket?

2 A In his pocket?

3 Q Yes.

4 A I don't remember. I don't know if he was wearing
5 anything with pockets when they -- and I apologize,
6 it's hard to remember the exact facts but, I mean,
7 it seemed, it seemed that there were plenty of drugs
8 on the premises.

9 Q I beg the Court's indulgence for just one minute.

10 A And I, I can't remember specifically whether they
11 found drugs in the room or on him.

12 Q And I refer you to -- I don't know if you have a
13 copy of the transcript up there with you.

14 A I've got it.

15 Q And I believe it's during the testimony of John
16 Lusk (ph) on page 188. Read over lines 1 through --
17 1 through 7 on page 188. Just let me know when you
18 finish reading that.

19 A "In his right front pocket I found a red in color
20 straw. It had like a little part on the end that
21 looked like a scooper."

22 Q And lines 1 through 3, I apologize.

23 A Okay, I'm sorry. Start on lines 2, "In his front
24 left pocket I found a plastic Ziploc bag that had a
25 white crystal like substance in it."

PW - J. BAILEY - CROSS

1 Q Okay. Not to go through the rest of the
2 testimony but does that refresh your recollection as
3 to whether the drugs were actually found on
4 Mr. LeCroy?

5 A Yes, and it sounds familiar now that we're
6 looking at it.

7 Q With that in mind obviously his subsequent
8 confession is damaging to the defense's case,
9 correct?

10 A Right, a confession is pretty damaging.

11 Q But even without that confession, I mean, when
12 drugs were found in his pocket he's only one in the
13 room when the drugs were found, his mom is the only
14 other one in the entire house, do you think that Mr.
15 LeCroy could have been convicted with these even
16 without his confession?

17 A You know, I mean, of course it's always a
18 guessing game. You know, I think, I mean, certainly
19 there's a possibility or certainly, certainly he
20 could have still been convicted. You know, I can't
21 say for what -- I mean, we would have done our best
22 to prevent that from happening. I can't say for
23 what the jury was gonna do. They did have -- they
24 had several officers that were testifying to the
25 same thing as to what they saw in the room.

PW - J. BAILEY - CROSS

1 Q Okay. And I don't mean to put you in the, you
2 know, shoes of the jury, but there was still a lot
3 of damaging evidence against him even without the
4 statements?

5 A I would say the statement wasn't the only
6 evidence against him. I mean I, you know.

7 Q Understandable. I want to ask you some questions
8 I asked Mr. Cooper a little bit ago about Jackson v.
9 Denno hearing. First of all, do you recall if there
10 was a Jackson v. Denno hearing on the first
11 mistrial?

12 A You know, I can't remember specifically, but I
13 think there was because I feel like — I'm a little
14 rusty because I haven't done a criminal case in
15 since November, gosh, since the fall of 2011. But I
16 think for them to put the statement in, unless we
17 waive it they have to have a Denno hearing. So I
18 mean, I'm pretty sure we — or you know, I mean we,
19 you know, I think, we had a lot of pretrial motions
20 in front of Judge Newman that first time and we had
21 a lot of them and Judge Newman denied all of them.
22 I'd have to check, I'd have to check the transcript.
23 Ted Lutken didn't want him to — when we got the
24 transcript of the officer's testimony, I don't
25 believe we actually got the transcript for the

PW - J. BAILEY - CROSS

1 pretrial motions. Mr. Lutken made a lot of
2 objections to time and money being spent on
3 everything and said we were only entitled to the
4 transcript of the officer's testimony for potential
5 impeachment purposes later so, I just can't
6 remember. I think we did one because we did a lot
7 of them; but it was, this was a while ago.

8 Q Okay. And along those lines you said they were
9 all denied. To the best of your recollection, if a
10 Jackson v. Denno was raised it was denied and the
11 statement was admitted?

12 A It's, I mean, you know, I think — I jus remember
13 us moving for, I mean, just making a lot of motions
14 and that Judge Newman denied absolutely all of them.
15 And I was almost surprised that he gave us the —
16 that he granted our mistrial motion. That was the
17 first thing, break in our direction that day.

18 Q Now you've had an opportunity to review the
19 transcript of the second trial, the re-trial, and
20 the Jackson v. Denno hearing that was conducted?

21 A Right, right.

22 Q And —

23 A And I apologize if I don't remember it all
24 perfectly but...

25 Q And that's fine, and I'll direct the Court's

PW - J. BAILEY - CROSS

1 attention to I believe it's on page 87 is where the
2 Jackson v. Denno starts on page 115 of the
3 transcript. And Sergeant Poole was the State's
4 essentially lead witness in the Jackson v. Denno
5 hearing, correct?

6 A Yes. I'm sorry, are at 87, 88? What did you
7 say?

8 Q I'm not sure that his testimony starts at 87.

9 A 88 it looks like, I think, yeah.

10 Q Now during the course of Mr., Sergeant Poole's
11 testimony, he gave testimony that he did not believe
12 Mr. LeCroy was under the effects of the tazer at
13 that point in time, correct?

14 A That's what he testified, yeah.

15 Q And there was testimony that EMS had come and
16 checked out Mr. LeCroy following the tazer before he
17 gave a statement, correct?

18 A Yeah.

19 Q And that EMS had determined he was okay, he was
20 fine, and at that point in time then they started
21 getting his waiver of rights, correct?

22 A I mean, that was Officer Poole's testimony.

23 Q Officer Poole also testified he had asked
24 Mr. LeCroy at least three times if he was okay
25 before he started going over the waiver of rights

PW - J. BAILEY - CROSS

1 form and Mr. LeCroy said he was, correct?

2 A I mean, if that's what -- I think that's what
3 Investigator Poole said.

4 Q And Investigator Poole also testified that at
5 least 30 minutes between the time the stun gun was
6 used and when his discussions and statement was
7 taken from Mr. LeCroy?

8 A That's what Mr. Poole said.

9 Q He testified that Mr. Poole said he had a 11th
10 grade education and he was able to read and write?

11 A That sounds accurate.

12 Q Okay. He -- Sergeant Poole testified that he
13 asked Mr. LeCroy if he knew what the word coercion
14 meant and Mr. LeCroy was able to give him a
15 definition that Sergeant Poole thought was
16 appropriate; is that correct?

17 A Correct.

18 Q And I think Sergeant Poole actually testified
19 that, I think he said 90 something percent of people
20 he asked that question to, aren't able to give him
21 what he deems an appropriate response is to what
22 coercion means, correct?

23 A I do remember Investigator Poole saying that.

24 Q Sergeant Poole at that point in time said he
25 believed that Mr. LeCroy understood his rights, that

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1 he signed the waiver of rights form, correct?

2 A Correct. And I just want to specify that
3 that's -- right, I mean, that's what Mr.,
4 Investigator Poole, testified to.

5 Q And he also testified that James Abraham was
6 another officer that witnessed the signing. He was
7 the witness to Mr. LeCroy's reading of the rights
8 and waiver of his rights?

9 A Correct.

10 Q Sergeant Poole testified he didn't make any
11 threats, coercion, didn't make any promises or use
12 any force with Mr. LeCroy, correct?

13 A Right, that was his testimony.

14 Q And his testimony was that he wrote -- the state
15 informed Mr. LeCroy at that point in time because
16 Mr. LeCroy was having some kind of nerve problem
17 causing pain?

18 A Right, I remember him discussing that.

19 Q Okay. But Sergeant Poole testified he -- that he
20 asked Mr. LeCroy whether or not that was affecting
21 his ability to talk about this, Mr. LeCroy said he
22 was fine, correct?

23 A That's right.

24 Q And Investigator Poole then testified that he
25 read that statement, that he had written, that he

PW - J. BAILEY - CROSS

1 had dictated essentially for Mr. LeCroy, read it
2 back to Mr. LeCroy, Mr. LeCroy signed that statement
3 for accuracy and truthfulness, correct?

4 A Yes.

5 Q Okay. Now with the Jackson v. Denno hearing --
6 and I asked Mr. Cooper this earlier -- we're just
7 dealing with admissibility of the statement, not
8 credibility, what weight should be imported to that
9 statement, just whether it was made voluntarily,
10 correct?

11 A I mean, you know, I guess you're asking, I mean,
12 you're talking about the purpose of the Denno
13 hearing? I just want to make sure I'm answering
14 this correctly or I understand.

15 Q The difference between its admissibility from the
16 Jackson v. Denno hearing and what the jury can
17 consider if it's admitted at that point in time?

18 A Well, I mean, the Denno hearing is about
19 admissibility of it, yes.

20 Q And it's for the jury to decide whether they
21 believe the credibility of the witnesses that
22 testify as to the statement and what weight they
23 want to import to it, correct?

24 A Well I, you know, my understanding is factual
25 determinations and credibility determinations are

PW - J. BAILEY - CROSS

1 typically, you know, jury determinations; but of
2 course, my understanding is, you know, trial judges
3 can move it as -- or can determine it to be
4 inadmissible.

5 Q Absolutely, but you would -- would you agree that
6 the Jackson v. Denno admissibility bar is not
7 very -- it's not overly strenuous, it's a pretty low
8 bar to meet for admissibility purposes?

9 A You know, I can tell you that, I mean not -- I
10 mean, without getting too much into a legal
11 analysis, I mean, you know, we were pretty sure that
12 the judge was gonna let it in. Most of the time
13 when I had Denno hearings or motions to have them
14 excluded, you know, ed at trials or ones I'd seen
15 while in the courthouse were denied if that's -- or
16 most of the time the statements were let in, you
17 know, if that's any indication as to the bar.

18 Q Essentially it's pretty rare to have the
19 statement taken out ---

20 A You know, I hate to -- you know, I -- four years,
21 it's hard for me to -- I don't remember anybody in
22 my office specifically having something suppressed
23 at the Denno hearing despite the fact we always
24 made, had Denno hearings. And again, I'm -- for
25 whatever that's worth, you know.

PW - J. BAILEY - CROSS

1 Q Okay. Nothing before Mr. FitzSimons questioned
2 you about your statements on the record about close
3 of the trial about being ineffective because your
4 client wasn't there. Was that a comment how you
5 prepared for the case, how you presented the case,
6 or is that just from the standpoint of he's not here
7 to give us any information during the course of
8 trial and so he didn't get a fair trial?

9 A Well, I mean, I think, you know, I guess, I mean,
10 reading my words again I think it was just, you
11 know, we can't give him a fair trial. He can't get
12 a trial if he's not here. We can't do our job as
13 lawyers if he's not here.

14 Q Essentially another argument back to your
15 strenuous objections throughout the trial that he
16 was being tried in his absence?

17 A Right, I mean, we, you know, I fervently
18 disagreed with, you know, them trying him in his
19 absence and the manner of when it occurred.

20 Q And I don't mean to go to a ultimate conclusion
21 for the court to make here; but that comment
22 specifically, was that referring to anything you had
23 done during trial that you thought you didn't do a
24 good job?

25 A Well, you know, I think it kind of says, I think

PW - J. BAILEY - CROSS

1 it kind of speaks for itself. Where were we, on 360
2 or something? I don't really, I really don't think
3 I can give any other -- I think, okay, I said, I
4 believe we were -- and I was trying to get back to
5 the, being the TIA issue. I believe that we were
6 deficient counsel because Mr. LeCroy was not
7 available. You know, try as we may, I don't think
8 we can adequately represent him appropriately
9 without him here to assist in his own defense; and
10 therefore, we believe this ineffectiveness probably
11 prejudiced and in the outcome of this case,
12 therefore, making us ineffective in this situation,
13 Your Honor.

14 Q And on page 364 down at the bottom you mentioned
15 that Mr. Lutken, the solicitor, said he thought you
16 did a fine job. But 364, starting on line 20 the
17 court actually comments on your performance
18 throughout the course of the trial.

19 A And that was which line? I'm sorry.

20 Q That was starting line 20 there?

21 A It says --

22 Q 364.

23 A Okay, I think that was Judge Childs was saying --
24 and then finally I don't agree that counsel was at
25 all deficient. In fact, they were as prepared as

PW - J. BAILEY - REDIRECT

1 they could be short of their client's choice to not
2 be here to assist them in trial in his absence.

3 Q And that's your recollection obviously from the
4 transcript and the trial, correct?

5 A Right.

6 Q Thank you.

7 MR. CORNEY: Beg the Court's indulgence
8 for just one minute, Your Honor. That's all the
9 questions I have. Thank you, Your Honor.

10 THE COURT: Any redirect?

11 MR. FITZSIMONS: Briefly, Your Honor,
12 thank you.

13 **REDIRECT EXAMINATION**

14 BY MR. FITZSIMONS:

15 Q Mr. Bailey, you're not suggesting just because
16 the trial courts in the 5th Circuit have
17 consistently refused to grant Jackson v. Denno
18 suppression hearings, that those hearings should not
19 be held, are you?

20 A No, I'm not speaking at all to the -- I think
21 Denno hearings are very important. I'm just, I
22 mean, you know, I was asked is it rare, is it not,
23 or whatever. Clearly we had it because we thought
24 it should be held.

25 Q And again, the remittitur in opinion of the Court

PW - J. BAILEY - REDIRECT

1 of Appeals speak for itself that the appellate court
2 found specifically that you failed or Mr. Cooper of
3 the two of you in some combination failed to
4 preserve that issue for appeal. Is that not what it
5 says?

6 A And that's exactly what it says.

7 Q Thank you. That's all the questions I have.

8 MR. FITZSIMONS: Your Honor, if I might
9 have a moment to confer with my client. Thank you,
10 sir.

11 (Pause.)

12 THE WITNESS: I'm sorry, I can come down
13 now?

14 MR. FITZSIMONS: I have no further
15 questions of this witness.

16 THE COURT: All right, you may come down.

17 MR. FITZSIMONS: Your Honor, that's our
18 case.

19 THE COURT: All right. Anything on behalf
20 of the State?

21 MR. CORNEY: Nothing on behalf of the
22 State, Your Honor, just very brief closing.

23 THE COURT: All right, you may proceed.
24 Closing, Mr. FitzSimons.

25 MR. FITZSIMONS: Thank you, Your Honor.

1 Judge, Mr. Corey is doing his best to confuse the
2 issue. The issue is not the ultimate admissibility
3 of that statement. The issue is whether or not the
4 reviewing tribunal has the opportunity to rule on
5 the admissibility of that statement. And the duty
6 of trial counsel was to preserve that issue for
7 appeal; and you know, quite honestly, I think they
8 tried valiantly, but I think my opinion doesn't
9 matter. The Court of Appeals states specifically
10 they did not adequately preserve the issue; and I
11 think as such, they were ineffective in that regard
12 and I believe that ineffectiveness specifically led
13 to Mr. LeCroy's case being affirmed on appeal and as
14 such leads to his being incarcerated today. For
15 that reason I'd ask that you grant him a new trial
16 based on ineffectiveness assistance of counsel.

17 THE COURT: All right. Mr. Corney.

18 MR. CORNEY: Your Honor, with all due
19 respect to Mr. FitzSimons, I don't think I'm
20 confusing the issue at all. I think we make the
21 issue quite clear that the Strickland v. Washington
22 standard is not just deficiency, but resulting
23 prejudice as well. He's done a great job of
24 bringing up deficiency throughout the entirety of
25 the course of this hearing, has not once pointed to

1 the fact that had this been reviewed on appeal the
2 conviction would have been overturned. And in fact,
3 turning to the prejudice prong, I kind of have a
4 two-fold way of looking at prejudice here. First,
5 there's no reasonable likelihood that the outcome of
6 trial would have been different had the Jackson v.
7 Denno been successful in the first place. Even if
8 it had been kept out, there's sufficient evidence to
9 find him guilty when he's the only one in the room
10 with drugs, the drugs are found in his pocket on his
11 person, and it's him and his mother in the house.
12 All the drugs were contained in the house under his
13 dominion and control at that point in time so that's
14 kind of an off shoot tangent to say even in the
15 unlikely case of Jackson v. Denno was even kept out
16 there's no reasonable likelihood the outcome of the
17 trial would have been different. Kind of brief
18 focusing the fact in on what we — the testimony we
19 brought in today. The standard is deficiency and
20 the resulting prejudice, and resulting prejudice is
21 a reasonable likelihood that but for counsel's
22 deficiency there would have been a different outcome
23 at trial, or would have been different outcome on
24 this case which means the Court of Appeals would
25 have overturned the decision and said that Judge

1 Childs committed an error of law or abuse of
2 decision in admitting the statement. That's why I
3 honed in so keenly on Sergeant Poole's testimony at
4 the Jackson v. Denno.

5 I just review briefly and I know it's in
6 the record, Your Honor, and I don't want to belabor
7 the point; but Sergeant Poole testified that Mr.
8 LeCroy was not under the effects of the stun gun at
9 the time that he decided to question him and have
10 him waive his rights. 30 minutes after the stun gun
11 was administered on him there's testimony from the
12 officers they'd been under the effects of a stun gun
13 before and it doesn't last 30 minutes. He was
14 evaluated by EMS before in between the tazing and
15 the questioning started. EMS checked him out, said
16 he was fine to go. Sergeant Poole asked him at
17 least three times, is his testimony, he was okay to
18 talk to him, you know, he was of clear mind, he was
19 okay to have discussion at that point. Each time
20 Mr. LeCroy said he was. His testimony was that Mr.
21 LeCroy did not appear to be under the influence of
22 drugs or alcohol at that time. He had an 11th grade
23 education, could read, could write.

24 Sergeant Poole testified that Mr. LeCroy
25 was able to give a succinct appropriate definition

1 of the word coercion which Sergeant Poole testified
2 that 90 some odd percent of the defendants he comes
3 across or suspects he comes across are unable to do
4 that so that was a little bit out of the ordinary to
5 show that he was thinking clearly.

6 Sergeant Poole testified he believed that
7 Mr. LeCroy understood his rights and that he signed
8 the waiver of rights form. James Abraham, another
9 officer, witnessed the signature and waiver of
10 rights form. Sergeant Poole testified he didn't
11 threaten, coerce, promise, or use any force against
12 Mr. LeCroy to get him to give a statement, said that
13 he wrote the statement for him, dictated it as he
14 read it back to him. Mr. LeCroy signed the
15 statement at the end for accuracy and completeness
16 and truthfulness. I mean, at that point in time the
17 only issue we're looking at is admissibility. We're
18 not looking at whether the jury is gonna believe the
19 testimony. That's — the jury, once it's admitted
20 it's a very low threshold to admit it, and then it
21 goes to the jury to decide what weight they want to
22 afford to that, whether they believe the testimony
23 that's come in, whether they think there was
24 coercion, whether they think there was any issues
25 with it.

1 In short, Your Honor, I hate to belabor
2 the point, but in short, the applicant has done
3 nothing to prove resulting prejudice; that had this
4 been preserved for appeal, brought it to the Court
5 of Appeals, they would have found that Judge Childs
6 committed error of law or abuse of discretion in
7 allowing the statement in. The Jackson v. Denno
8 testimony prior to trial on pages 87 through 115
9 it's very clear this is voluntary, intelligent,
10 knowing waiver of rights and statement to law
11 enforcement that was clearly admissible. As I said,
12 Mr. FitzSimons has done a great job pointing
13 deficiency but cannot prove resulting prejudice. I
14 ask the application be denied. Thank you very much.

15 THE COURT: All right, anything further?

16 MR. FITZSIMONS: Your Honor, as they say,
17 if you don't have law, argue the facts. Mr. Corney
18 can give us an awful lot of examples of things that
19 don't really matter in this case. What matters in
20 this case is that if this evidence had not been
21 before the jury we'd have to argue credibility and
22 it would have been -- it would have been suppressed
23 if the Court of Appeals had ruled that it should
24 have been suppressed, and the Court of Appeals did
25 not rule that it should have been suppressed because

1 these gentlemen failed to preserve that issue.
2 Nothing else matters. He can say, well, it was his
3 house. He can say it was his room. What matters
4 is, Court of Appeals didn't have a chance to rule on
5 this. They specifically declined to rule on this;
6 and by declining to rule on this, they had said this
7 is an issue that's important but we can't talk about
8 it. That's all I have, Your Honor. Thank you.

9 THE COURT: All right, thank you very
10 much, counsel. How much time do you need for
11 proposed orders?

12 MR. FITZSIMONS: Monday is a holiday.
13 I've got a TPR all next week. Ten days?

14 THE COURT: 30 days?

15 MR. FITZSIMONS: Thirty days, that's fine.

16 MR. CORNEY: Thank you very much, Your
17 Honor.

18

19

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

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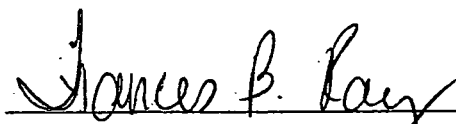
C E R T I F I C A T E O F R E P O R T E R

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE }

I, FRANCES BAKIS-RAY, Registered
Professional Reporter (RPR), court reporter for the
State of South Carolina, Twelfth Judicial Circuit,
do hereby certify that the foregoing proceeding was
transcribed for Elizabeth Harris through
computer-aided transcription; that the foregoing
transcript contains a true record of the proceedings
to the best of my ability.

I further certify that I am neither
counsel for, nor related to nor employed by any of
the parties connected to the action, nor am I
financially interested in the action.

Witness my hand at Florence, South
Carolina, this 20th day of October, 2013.


FRANCES BAKIS-RAY, RPR

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Steven M. Lecroy, #282554,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

2012-CP-40-03271

ORDER OF DISMISSAL

JEANETTE M. McBRIDE
C.F. & G.S.

2013 MAR -8 PM 3:32

FILED

PROCEDURAL HISTORY

This matter comes before the Court by way of an application for Post-Conviction Relief (PCR) filed May 8, 2012. An evidentiary hearing into the matter was convened on Thursday, January 17, 2013, at the Richland County Courthouse before this Court. Applicant was present at the hearing with counsel, Bob FitzSimons, Esquire. Respondent was represented by Robert D. Corney of the South Carolina Attorney General's Office.

At the hearing, Applicant did not testify on his own behalf. However, testifying were Applicant's former trial attorneys, J. Rhodes Bailey, Esquire, and James "Jay" Cooper, Esquire (hereafter collectively referred to as "counsel"). This Court also had before it a copy of the transcript of the proceedings against Applicant, the records of the Richland County Clerk of Court, the relevant documents from Applicant's direct appeal and Applicant's records from the South Carolina Department of Corrections.

The records before this Court indicate that Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. Applicant was true bill indicted at the December 2007 term of the Richland County Grand Jury for Possession of a Controlled Substance - 2nd Offense, Trafficking.

 1

Methamphetamines (10 to 28 Grams) – Third Offense and Possession of Marijuana – 2nd Offense (2007-GS-40-01329 through -01331). Applicant first proceeded to jury trial with counsel on August 28, 2008, which resulted in the granting of a mistrial due to a state's witness inadvertently publishing the "degree" of the offenses to the jury.

On February 24, 2009, the matter was called again for trial before the Honorable J. Michelle Childs. At the start of the trial, the court granted the state's motion to proceed *in absentia* as Applicant did not appear at that time. After a two (2) day trial, the jury found Applicant guilty of all charges as indicted and Judge Childs entered a sealed sentence. On September 19, 2009, Applicant appeared before Judge Childs, at which time the sentence was unsealed and imposed. Applicant received twenty-five (25) years imprisonment for Trafficking Methamphetamines – 3rd Offense, and one (1) year imprisonment for each Possession of a Controlled Substance and Possession of Marijuana. All sentences were set to run concurrently.

A notice of appeal was filed and an appeal perfected. Applicant was represented by LaNelle DuRant of the South Carolina Office of Appellate Defense on the appeal. By order dated October 11, 2011, the South Carolina Court of Appeals affirmed the convictions and sentences. The remittitur was issued October 28, 2011.

In the current application for post-conviction relief, Applicant alleges he is being held in custody unlawfully for the following reasons:

(a)	<u>INEFFECTIVE ASSISTANCE OF COUNSEL</u>
(b)	<u>NO NOTIFICATION OF TRIAL DATE</u>
(c)	<u>PRIVATE COUNSEL BELIEVED</u>

11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) DRAYTON V. EVATT, 312 S.C. 4, 430 S.E.2d 517 (1993) SEE ATTACHED
 - (b) THE ORIGINAL ATTY (LANE DANIELSEN) WAS NOT NOTIFIED OF DATE
 - (c) I WAS NOT GIVEN COUNSEL OF CHOICE. 14th AMEND. VIOLATED

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

In a post-conviction relief action, the Applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). The Applicant must

overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

Failure to Preserve Suppression of Applicant's Statement For Direct Appeal

Applicant alleges counsel was ineffective for failing to pose a contemporaneous objection to the introduction of his statements at trial, thereby failing to preserve the question of admissibility for direct appeal. The record reflects a pretrial Jackson v. Denno hearing was held on counsel's objection to the admissibility of the statement, during which the sole witness called was Richland County Sheriff's Department Narcotics Investigator Sergeant Michael Poole (hereafter "Poole"). At the close of the pretrial hearing, the trial judge found the statement admissible, finding the state had met its burden in proving the statement was voluntary based on the preponderance of the evidence. (Trial Tr. pp. 114, l. 23 – p. 115, l. 4). Counsel posed no contemporaneous objection to the introduction of the statement during Poole's subsequent trial testimony. (Trial Tr. p. 213, ll. 6 – 13).

At the PCR hearing, Applicant's lead trial attorney, J. Rhodes Bailey, Esquire, ("Bailey") testified he was appointed to represent Applicant in May of 2008 by Judge Doyet A. Early, III, when Applicant's motion to relieve prior retained counsel was granted. Bailey said prior to the

court's granting of mistrial when the case was called the first time, several pretrial motions were presented on Applicant's behalf, but were all denied. Regarding the admissibility of Applicant's statement at the second trial, counsel testified he believed he and Cooper had done a "good job" preserving the issue for appeal by clearly indicating an intention to do so throughout the course of the trial, but noted the Court of Appeals obviously disagreed with him by later finding the issue not properly preserved. Specifically, in the order affirming Applicant's conviction and sentence, the Court of Appeals found:

2. As to whether the circuit court erred in admitting Lecroy's statement claiming ownership of the drug evidence found at his residence: State v. Mitchell, 330 S.C. 189, 193 n.3, 498 S.E.2d 642, 644 n.3 (1998) (finding "a ruling in limine is not final, and unless an objection is made at the time the evidence is offered and a final ruling procured, the issue is not preserved for review" (citation omitted)).

On cross-examination, Bailey testified that because Applicant was the only person in his room where the drugs were found when the police entered, the only other person in the house was Applicant's mother who clearly had no involvement in the drugs, and there were drugs found on Applicant's person when he was detained, there was plenty of evidence to conviction Applicant of the charges even without the admission of Applicant's statement at trial. Bailey also noted that while they were going to challenge the admissibility of the statement in pretrial, he and Cooper were "pretty sure" prior to trial that the judge was going to admit Applicant's statement.

Applicant's second-chair attorney James "Jay" Cooper, Esquire, ("Cooper") also testified at the PCR hearing regarding the admission of the statement at trial. Cooper stated he did recall the pretrial Jackson v. Denno¹ hearing held, during which they challenged admissibility of the statement based on Applicant having been tased several times by police prior to the statement

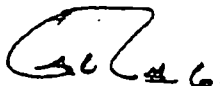
¹ Jackson v. Denno, 378 U.S. 368, 84 S.Ct. 1774 (1964).

G. J. S.

being given. Cooper noted the record did not reflect a contemporaneous objection being made upon introduction of Applicant's statement, but said he was unsure whether he thought the other continuing objections to the statement were sufficient to preserve the issue for appeal. On cross-examination, Cooper recalled the details of Sgt. Poole's testimony during the Jackson v. Denno hearing as reflected in the record. Cooper also noted that during pretrial hearings on admissibility of evidence, it is the trial judge's duty to weigh witness' credibility and that credibility findings are given great deference on appeal since an appellate court does not have the opportunity to examine the witness.

Based on a thorough review of the record and testimony presented, this Court finds the current application for post-conviction relief must be denied and dismissed. Specifically, this Court finds no "reasonable probability" that but-for counsel's failure to preserve the admissibility of Applicant's statement for direct appeal review by contemporaneous objection, the ultimate outcome of Applicant's case would have been different.

First, this Court would note there is no "reasonable probability" that had the statement been suppressed at trial *altogether*, the jury would have returned a verdict of "not guilty" to the charges. The record and credible testimony of counsel indicate Applicant was the *only* person in the room where the drugs were found, and the only other person present in the house was Applicant's mother, who was in her 70's or 80's and had no involvement in the drugs. In the left front pocket of the pants Applicant was wearing, law enforcement found a plastic ziplock bag containing a white crystal-like substance which later tested positive as 7.57 grams of methamphetamine. Another 4.09 grams of meth were found in a metal tin on Applicant's computer desk in his room, where law enforcement also recovered various pill bottles containing GHB, Xanax, Valium, Diazepam, Flexeril, and Ambien.



While this Court cannot speculate as to the jury's reasoning for returning the verdict as it did, the record and credible testimony clearly establish Applicant likely would have been convicted on the charges even *without* his statement to law enforcement under the theory of constructive possession. "To prove constructive possession, the state must show a defendant had dominion and control, or the right to exercise dominion and control, over the [drugs]...Constructive possession can be established be circumstantial as well as direct evidence". State v. Hudson, 277 S.C. 200, 202, 284 S.E.2d 773, 774 – 775 (1981). The evidence presented at trial as to where and in what matter the drugs were found clearly establishes Applicant alone had the right to exercise dominion and control over the drugs. Therefore, even without Applicant's statement expressly admitting ownership of the drugs, there is no reasonable probability the jury would have returned a verdict finding Applicant not guilty of the charges.

More importantly, this Court finds no reasonable probability that had counsel posed a contemporaneous objection or undertaken some other step to preserve the issue for direct appeal, the Court of Appeals in reviewing the claim on its merits would have found the trial judge abused her discretion in admitting the statement. "The admission of evidence is within the discretion of the trial court and will not be reversed absent an abuse of discretion." State v. Pagan, 369 S.C. 201, 208, 631 S.E.2d 262, 265 (2006). The testimony presented at the pretrial Jackson v. Denno hearing by Sgt. Poole clearly establishes the custodial statement by Applicant admitting to ownership of the drugs was given freely, intelligently and voluntarily after Applicant was fully and adequately advised of his Miranda rights, which he freely waived. "In order to secure the admission of a defendant's [custodial] statement, the State must affirmatively

show the statement was voluntary *and* taken in compliance of Miranda².” State v. Middleton, 288 S.C. 21, 25, 339 S.E.2d 692, 694 (1986).

During the pretrial hearing, Sgt. Poole testified he took the statement complained of from Applicant while Applicant was handcuffed, sitting on a couch in the den area. Poole stated Applicant had been tased by officers three (3) times roughly forty-five (45) minutes earlier, but did not seem to be suffering from the effects of that tasing at the time he gave the statement. Poole testified Applicant explicitly said he was not still suffering from the effects of the taser at that time either. Poole noted Applicant had been examined and cleared by EMS between the tasing and the statement. He testified he asked Applicant at least three (3) times prior to starting the interrogation whether Applicant was suffering from any discomfort or pain, to which Applicant replied each time he was not. He also stated Applicant did not appear to be under the influence of drugs or alcohol at the time, and Applicant appeared to understand what was going on.

Poole then went on to testify as to his reading of Applicant’s Miranda rights and Applicant’s subsequent written waiver of those rights. Poole stated Applicant had an eleventh (11th) grade education and could read and write. He testified Applicant understood what the word “coercion” meant and gave an appropriate definition of that word to Poole, a definition Poole said “most people” he interrogated could *not* give. Poole said Applicant signed the advisement of rights form after each right was explained, noting that Applicant did in fact understand those rights. Thereafter, Poole said, he read Applicant a waiver of rights form which Applicant said he understood and signed, indicating his willingness to waive his rights and give a statement. Applicant then gave an oral statement which Poole transcribed; at the end of the statement, Poole read the statement back to Applicant aloud, who then signed each of the three (3) pages

² Miranda v. Arizona, 384 U.S. 436, 86 S.Ct. 1602 (1966).

GR 48

indicating the statement was truthful and accurate. Poole finished by stating there were no threats, promises, inducements, rewards or coercion used to elicit the statement from Applicant.

Based on this testimony during the pretrial hearing, it is clear Judge Childs properly found the statement to have been given freely and voluntarily after Applicant was adequately advised of and knowingly waived his Miranda rights. Therefore, this Court finds no reasonable probability that had the issue been preserved for appeal, the Court of Appeals would have found the trial judge erred in admitting the statement, thereby changing the outcome of Applicant's case. Accordingly, this Court finds no resulting prejudice can be proven from any alleged deficiency in this regard.

Having found Applicant clearly failed to prove resulting prejudice, this Court need not evaluate the "objective reasonableness" of counsel's performance in attempting to preserve the issue for appeal. "[A] court need not determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies...If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, which we expect will often be so, that course should be followed." Strickland v. Washington, *supra* at 698, 104 S.Ct. at 2070.

Applicant's Trial in Absentia

Applicant also contends counsel was ineffective for failing to provide him with sufficient notice that his case was being called to trial, thereby forcing Applicant to be tried *in absentia*. Applicant did not testify at the PCR hearing to provide this Court with his version of the facts regarding his receipt of notice or knowledge of the trial. Regardless, this Court would note any contention set forth by Applicant that he was unaware his case was proceeding to trial in February of 2009 is not credible.



Bailey testified that shortly after taking over the case, he notified Applicant the state intended to call the case to trial fairly soon. Thereafter, Bailey said, Applicant was present when the case was called, but the case was mistried at that time. Following that mistrial, Bailey said he told Applicant to stay in touch as the matter would be called to trial again soon thereafter. Between the August mistrial and the subsequent February retrial, Bailey testified, he called Applicant several times to discuss plea offers and the ensuing trial. On September 16, 2008, Bailey called Applicant to discuss the case, at which time he received a message that Applicant was not taking calls at that number. He said when Applicant called him back on September 24, 2008, he was able to relay the state's plea offers to Applicant. Bailey said Applicant rejected the offer, but Bailey asked Applicant to come see him to discuss the retrial. He also said Applicant provided him with the phone number of a friend where he could be reached. Bailey said from that point forward, he called that number several times to speak with Applicant no avail.

Bailey plainly stated he told Applicant in their discussions after the mistrial that the matter would be coming back up for trial very soon and Applicant was very well aware of that. He also noted he had previously been concerned with Applicant not showing up for trial, so had discussed in depth with Applicant the state's ability to try him in his absence if he did not appear. Bailey said in January of 2009, he received an email from the prosecuting solicitor, Ted Lupton, stating that Applicant was in California based upon an unpaid parking ticket sent to Applicant's South Carolina address. At trial, Bailey said, he made continuous objections to the trial proceeding in Applicant's absence and thought he made strong arguments to that end, but said the solicitor was adamant about pursuing the trial despite Applicant's absence, which the Court agreed with. In short, Bailey said, it was a "physical impossibility" for him to meet with and/or

locate Applicant as Applicant refused to stay in contact with him, but said Applicant was well aware the case would be called to trial and would continue with or without his presence.

Based on a review of the record and testimony presented, this Court finds Applicant has failed to carry his burden in proving counsel was ineffective in this regard. This Court finds Bailey's testimony in this regard to be credible and persuasive. Counsel undertook reasonable and diligent efforts to continually reach out to Applicant with details of his case, but Applicant made the independent decision to sever any and all lines of communication with counsel. Counsel's credible testimony reflects Applicant was well aware that his case was being called to trial and that he had the right to appear, but he made the voluntary and informed decision to waive that right knowing the trial would proceed in his absence. Further, the record reflects Applicant signed a bond form indicating he was prohibited from leaving the state of South Carolina during the pendency of his charges, which he willfully violated by absconding to California. The record also reflects counsel sent a letter to Applicant's last known address informing him a bench warrant had been issued for his arrest and the matter was proceeding to trial.

"The right at issue is the right to be present, and the question becomes whether that right was effectively waived by [defendant's] voluntary absence." Taylor v. United States, 414, U.S. 17, 94 S.Ct. 194 (1973). "The deliberate absence of a defendant who knows that he stands accused in a criminal case and that his trial will begin during a specific period of time indicates nothing less than an intention to obstruct the orderly processes of justice." Ellis v. State, 267 S.C. 257, 261, 227 S.E.2d 304, 306 (1976). This Court finds counsel's performance was in no way "objectively unreasonable" as he undertook sufficient and diligent efforts to have Applicant appear at the trial. Applicant, knowing the trial was going forward in his absence, made the

voluntary decision to flee the state to avoid prosecution. Further, counsel continued his reasonable representation in this regard by vehemently objecting to the case proceeding *in absentia* throughout the course of the trial, properly preserving the issue for direct appellate review.³ Applicant's claim that his absence, alone, resulted in ineffective assistance of counsel is wholly without merit as well. *Id.* ("A defendant who waives his right to be present at trial cannot assert his absence resulted in the ineffective assistance of counsel."). For all of these reasons, this court finds no deficiency in counsel's representation.

Further, this Court finds Applicant has failed to prove any resulting prejudice from his being tried *in absentia*. Bailey ensured the jury was instructed numerous times on their inability to consider Applicant's absence in any way during their deliberations, and Applicant has failed to provide this Court with any evidence to prove his presence at the trial would have a "reasonable probability" of changing the outcome of the case. Therefore, this claim is denied.

CONCLUSION

Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post conviction relief must be denied and with prejudice.

Except as discussed above, this Court finds that the Applicant failed to raise all additional allegations set forth in his application at the hearing and has, thereby, waived them. A waiver is a voluntary and intentional abandonment or relinquishment of a known right. Janasik v. Fairway Oaks Villas Horizontal Property Regime, 307 S.C. 339, 415 S.E.2d 384 (1992). A waiver may be express or implied. "An implied waiver results from acts and conduct of the party against whom the doctrine is invoked from which an intentional relinquishment of a right is reasonably

³ Applicant has made no allegation appellate counsel was ineffective for failing to raise this issue on direct appeal.

GL 12

inferable." Lyles v. BMI, Inc., 292 S.C. 153, 158-59, 355 S.E.2d 282 (Ct. App. 1987). The Applicant's failure to address these issues at the hearing indicates a voluntary and intentional relinquishment of his right to do so. Therefore, any and all remaining allegations are denied and dismissed.

This Court notes Applicant must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCR, provides that if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 8 day of March, 2013.



G. THOMAS COOPER, JR.
Presiding Judge
Fifth Judicial Circuit

Columbia, South Carolina.

ARREST WARRANT

I-898176

STATE OF SOUTH CAROLINA
County/ ☒ Municipality of

Richland / Lykesland Magistrate

THE STATE CASE 07012175-25

Steven Michael Lecroy

Address: Columbia, SC 29223-

Phone: SSN: 290

D: SC DL #: 290

Agency ORI #: 04000

Prosecuting Agency: Richland County Sheriff Department

Prosecuting Officer: Anthony Branham - 739

Offense: Drugs / Poss. of other controlled sub. in Sched. I to V - 1st offense

to V - 1st offense

Offense Code: 0179

Code/Ordinance Sec: 44-53-0370(d)(2)

This warrant is CERTIFIED FOR SERVICE in the

County/ ☐ Municipality of

is to be arrested and brought before me to be

dealt with according to the law.

Signature of Judge

RETURN

A copy of this arrest warrant was delivered to

defendant Glen M. LeCroy

on 01-29-07

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

Richland General Sessions

1701 Main Street

P O. Box 192

Columbia, SC 29202

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

County/ ☒ Municipality of

Richland / Lykesland Magistrate

Personally appeared before me the affiant Anthony Branham

being duly sworn deposes and says that defendant Steven Michael Lecroy

did within this county and state on or about 01/25/2007

State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Richland / Lykesland Magistrate)

in the following particulars:

DESCRIPTION OF OFFENSE Drugs / Poss. of other controlled sub. in Sched. I to V - 1st offense

I further state that there is probable cause to believe that the defendant named above the crime set forth and that probable cause is based on the following facts:

That on or about JANUARY 25, 2007 while at

County, one STEVEN MICHAEL LECROY did commit the crime of POSSESSION OF SCHEDULE IV DRUGS, is believed the defendant committed the crime because he did have in his possession and control, six pills, (4 pills of Alprazolam; one pill of Ambien and one pill of Valium 10mg) which have been identified as Schedule IV narcotics. The defendant has given a sworn statement admitting ownership without a doctor's prescription. This was found in the defendant's bedroom during a lawful search warrant at his residence.

RCSD Case #07012175-25

Affiant and others are witness to prove the same.

Signature of Affiant

STATE OF SOUTH CAROLINA

County/ ☒ Municipality of

Richland / Lykesland Magistrate

Affiant's Address 5623 Two Notch Road

Columbia, SC 29223-

Affiant's Telephone (803)576-3000

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 1/25/2007

defendant Steven Michael Lecroy

did violate the criminal laws of the State of South Carolina (or ordinance of

County/ ☒ Municipality of Richland / Lykesland Magistrate) as set forth below:

DESCRIPTION OF OFFENSE: Drugs / Poss. of other controlled sub. in Sched. I to V - 1st offense

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 01/29/2007

Judge's Address 1403 Caroline Road

Columbia, SC 29209-2609

Judge's Telephone (803)576-2500

Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

8

Name of Surety:

Judge

on

Decision:

Judge

20

by

Disposition:

Sentença:

JURORS

Name:

Address: -

Telephone:

Telephone:

Name: _____

Address:

Telephone:

Nama:

Address:

Telephone:

Name:

Address:

Telephone:

Name:

Address:

Telephone:

Name: _____

Address:

Telephones:

Name:

Address:

Telephone:

Name:

Address:

Telephone:

CODEFENDANTS

WITNESSES

(S) A. BRANHAM - RCSD

DOCKET NO. 2007-GS-40-1329

The State of South Carolina

County of Richland

COURT OF GENERAL SESSIONS

DECEMBER TERM 2007

18

ARREST WARRANT NUMBER

I-898176

THE STATE
vs.

STEVEN LECROY

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury Date: DEC 12 2007

VERDICT

Indictment for
POSSESSION OF A
CONTROLLED SUBSTANCE
2ND OFFENSE

SC Code: 44-53-370(d)(2)

CDR Code: 0180

Class MIS/c

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.FILED TRUE COPY
OPTIONAL FILED
C.C.F. & G.S.
RICHLAND COUNTY
SOUTH CAROLINA

Defendant

Witness:

C.C.C. PLS. AND G.S.

J. J. Branham
Foreperson of Petit Jury

2/25/09

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INDICTMENT

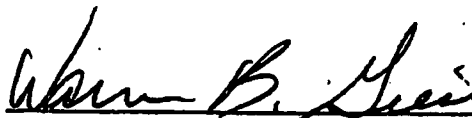
At a Court of General Sessions, convened on December 12, 2007, the Grand Jurors of Richland County present upon their oath:

POSSESSION OF CONTROLLED SUBSTANCE

2ND OFFENSE
County

That Steven Lecroy did in Richland on or about January 25, 2007, possess or attempt to possess a quantity of a controlled substance To wit: Alprazolam and Diazepam, such possession not having been the first offense, under provisions of Section 44-53-370(d)(2) et. Seq., Code of Laws of South Carolina (1976, as amended), such possession not having been authorized by law.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


WARREN B. GIESE, SOLICITOR

STATE OF SOUTH CAROLINA

IN THE RT OF GENERAL SESSIONS

COUNTY OF Richland
STATE VS.

AKA:

Race:

Sex:

Age:

DOB:

SS#:

Address:

City, State, Zip

DL#

SID#

INDICTMENT/CASE#:
07 - GS - 110 - 1329

AW#:

Date of Offense:

S.C. Code §:

CDR Code #:

1898176

1-25-07

44-53-370(d)(2)

0 / 1 / 8 / 0

☐ CASE RESTORED

SENTENCE SHEET

☐ PLEA☒ TRIALIn disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADSTO: Poss. of 2 Controlled Substance 2ndin violation of § 44-53-370(d)(2) of the S.C. Code of Laws, bearing CDR Code # 0 / 1 / 8 / 0☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS (CSC ☐ §17-25-45
w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (Defendant initial)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections, ☐ County Detention Center, for a determinate term of 1 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 07-GS-110-1329☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ set by SCDPPPS

Recipient:

*Fine:

§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)

§35.13 (Public Def/Prob)

§73.3, 1B TP (Law Enforce. Funding)

§33.7, 1B TP (Drug Court Surcharge)

§50-21-114(BUI Breath Test Fee)

§56-5-2942(J) (Vehicle Assessment)

3% to County (if paid in installments)

TOTAL

Jeanette W. McBride
Clerk of Court, Deputy ClerkCourt Reporter: D. McCurdy

PTUP

_____ days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol Testing

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____ beginning

\$ _____ paid to Public Defender Fund

Other: _____

CERTIFIED TRUE COPY
OF ORIGINAL FILED☐ Appointed PD or appointed other counsel, §35.13 TP
Requires \$500.00 paid to Clerk of Court for probation.

PRESIDING JUDGE

Judge Code:

Sentence Date:

RICHLAND COUNTY
SOUTH CAROLINA

Sealed Sentence opened

ARREST WARRANT

1-898175

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Richland / Lykesland Magistrate

THE STATE

CASE 07012175-25

against

Steven Michael Lecroy

Address:

Columbia, SC 29223-

Phone:

SSN:

Sex: M Race: W Height: 5 11 Weight: 200

DL State: SC

DL #:

DOB:

Agency ORI #: 04000

Prosecuting Agency: Richland County Sheriff Department

Prosecuting Officer: Anthony Branham - 739

Offense: Drugs / Trafficking in ice, crack or crack - 10 g or more, but less than 28 g -

Offense Code: 0450

Code/Ordinance Sec: 44-53-0375(C)(1)

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

is to be arrested and brought before me to be dealt with according to the law.

(L.S.)

Date:

Signature of Judge

RETURN

A copy of the arrest warrant was delivered to the defendant on Steven M. Lecroy

RICHLAND COUNTY

SOUTH CAROLINA

JAN 25 2007

Steven M. Lecroy

Law Enforcement Officer

RETURN WARRANT TO:

Richland County Sheriff's Office

1791 Main Street

P.O. Box 198

Columbia, SC 29202

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Richland / Lykesland Magistrate

Personally appeared before me the affiant Anthony Branham

being duly sworn deposes and says that defendant Steven Michael Lecroy

did within this county and state on or about 01/25/2007 violate the criminal laws of theState of South Carolina (or ordinance of ☒ County/ ☐ Municipality of

Richland / Lykesland Magistrate

in the following particulars:

DESCRIPTION OF OFFENSE Drugs / Trafficking in ice, crack or crack - 10 g or more, but less than 28 g -

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

That on or about JANUARY 25, 2007 while at

DRIVE in the DENTSVILLE Magisterial District of Richland County, one STEVEN MICHAEL LECROY did commit the crime of TRAFFICKING IN METHAMPHETAMINE. It is believed the defendant committed the crime because he did have in his possession and control, a quantity of white crystals that weighed than 10 grams but less than 28 grams and field tested positive for methamphetamine. This was found in the defendant's bedroom, and on his person during the execution of a lawful search warrant. The recovered substance was packaged for sale and the defendant gave law enforcement sworn statements admitting to possession and trafficking the methamphetamine.

RCSO Case #07012175-25

Affiant and others are witness to prove the same.

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Richland / Lykesland Magistrate

Affiant's Address 5623 Two Notch Road

Columbia, SC 29223-

Affiant's Telephone (803) 576-3000

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY: I believe

it appearing from the above affidavit that there are reasonable grounds to believe

on or about 1/25/2007

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of

Richland / Lykesland Magistrate

) as set forth below

DESCRIPTION OF OFFENSE: Drugs / Trafficking in ice, crack or crack - 10 g or more, but less than 28 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 01/25/2007

(L.S.)

Signature of Issuing Judge

Michael R Davis

Judge Code: 5458

Judge's Address 1403 Caroline Road

Columbia, SC 29209-2609

Judge's Telephone (803) 576-2500

Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

AFFIDAVIT

Form Approved by
S.C. Attorney General
April 21, 2003
SCCA 618

WITNESSES

Name: _____

Address: _____

Telephone: _____

Name: _____

Address:

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: .

Address:

Telephone: _____

Name: _____

Address:

Talents:

Name: _____

Address:

Telephone: _____

Alonso:

Address:

Telephone:

CODEFENDANTS

BALL set by

Judge

non

Type and Amount:

Name of Surety:

PRELIMINARY HEARING held by

Judge

on

Defendant Attorney: _____

Decision:

DISPOSITION before

Judge

50

by

(Indicate jury trial, bench trial, plea, nol. pros., etc.)

Disposition:

Sentence:

JURORS

1060

1117

WITNESSES

(S) A. BRANHAM - RCSD

DOCKET NO. 2007-GS-40-1330

The State of South Carolina

County of Richland

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

COURT OF GENERAL SESSIONS

I hereby appear in my own proper person and plead guilty to the within indictment or to

DECEMBER TERM 2007

18

ARREST WARRANT NUMBER

1-898175

Defendant

THE STATE

vs.

Witness:

C.C.C. PLS. AND G.S.

ACTION OF GRAND JURY

STEVEN LECROY

TRUE BILL

Date: 11/19/07

FILED

VERDICT

CHAND COUNTY
C.C.C. PLS. AND G.S.
ORIGINAL FILED
11/19/07

Indictment for

TRAFFICKING IN METHAMPHETAMINE

10 TO 28 GRAMS

3RD OFFENSE

SC Code: 44-53-375(c)

CDR Code: 0452

Class FEL/EXEMPT

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INDICTMENT

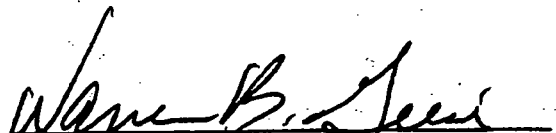
At a Court of General Sessions, convened on December 12, 2007, the Grand Jurors of Richland County present upon their oath:

TRAFFICKING IN METHAMPHETAMINE
OVER 10 GRAMS BUT LESS THAN 28 GRAMS

3RD OFFENSE

That Steven Lecroy did in Richland County on or about January 25, 2007, knowingly sell, manufacture, cultivate, deliver, purchase or bring into this State, or did provide financial assistance or did otherwise aid, abet, attempt, or conspire to sell, manufacture, cultivate, deliver, purchase or bring into this State, or did knowingly actually or constructively possess or did knowingly attempt to become in actual or constructive possession of more than 10 grams but less than 28 grams of Methamphetamine or any mixture thereof, such not being the first offense, all in violation of Section 44-53-375(C) Code of Laws of South Carolina (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


WARREN B. GIESE, SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF Richland
STATE VS.Steven Lecroy

AKA: _____
 Race: _____ Sex: _____ Age: _____
 DOB: _____ SS#: _____
 Address: _____
 City, State, Zip _____
 DL# _____ SID# _____

IN THE CL OF GENERAL SESSIONS

07 INDICTMENT/CASE#: 40-1330
 GS - 40-1330

A/W#: 1898175
 Date of Offense: 1-25-07
 S.C. Code §: 44-53-375(C)
 CDR Code #: 0 / 4 / 5 / 2

☐ CASE RESTORED
 SENTENCE SHEET
☐ PLEA ☒ TRIAL

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADSTO: Trafficking in Methamphetamine 10-20 grams 3rd
in violation of § 44-53-375(C) of the S.C. Code of Laws, bearing CDR Code # 0 / 4 / 5 / 2

☐ NON-VIOLENT ☒ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS (CSC) ☐ \$17-25-45
 w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. _____ (Defendant initial)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST

[Signature]
Solicitor[Signature]
Defendant[Signature] 76/88
Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of 25 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of
 \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years
 and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which
 are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 07-65-40-1339☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ set by SCDPPPS _____

Recipient: _____

*Fine:		\$
§14-1-206 (Assessments 107.5%)		\$
§14-1-211(A)(1) (Conv. Surcharge)	\$100	\$
§14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§56-5-2995 (DUI Assessment)	\$12	\$
§35.13 (Public Def/Prob)	\$500	\$
§73.3, 1B TP (Law Enforce. Funding)	\$25	\$
§33.7, 1B TP (Drug Court Surcharge)	\$100	\$
§50-21-114(BUI Breath Test Fee)	\$50	\$
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)		\$
TOTAL		\$

PTUP _____

days/hours Public Service Employment

Obtain GED _____

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling _____

Random Drug/Alcohol Testing _____

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

CERTIFIED TRUE COPY

☐ Appointed P.D. appointed other counsel, §35.13 TP
 Requires \$500 to be paid to Clerk during probation.

PRESIDING JUDGE [Signature]

Judge Code: _____

Sentence Date: 2-1-07

Clerk of Court/Deputy Clerk

Court Reporter: [Signature]Sealed Sentence Opened
0 2 10

Form 5-100
REV. 10-80

STATE OF SOUTH CAROLINA
UNIFORM TRAFFIC TICKET

CITY OR COUNTY OF RICHLAND VERSUS
FIRST NAME WILLIAM MIDDLE NAME LEWIS LAST NAME COLE

STREET AND NO. 1000 E. COLA ST. CITY RICHLAND STATE SC

STATE LICENSED SC DRIVER'S LICENSE NO. 13 DRI. LIC. CLASS 1

VEH. LIC. NO. SPM3 342 STATE SC MAKE OF VEH. SAAB YEAR 95 COM. VEH. NO AUTO YES TRUCK NO

HAZ. MT. NO MOPED NO MOTORCYCLE NO OTHER NO

YOU ARE SUMMONED TO APPEAR BEFORE THE TRIAL OFFICER

NAME OF TRIAL OFFICER NEWSON - 2500 - PETER A. H. STREET AND NO. 2500 PETER A. H.

DATE OF TRIAL 9/5 TIME OF TRIAL 9:15 CITY RICHLAND STATE SC ZIP CODE 29928

VIOLATION - COURT APPEARANCE REQUIRED YES NO NO VIOLATION SECTION NO. 44-53-340

OWNER OF VEHICLE N/A DATE OF ARREST 8/25/95

ADDRESS OF OWNER N/A DATE OF VIOLATION 8/29/95

BAIL DEPOSITED NO NAME OF ARRESTING OFFICER A. BRANNAN

DESCRIPTION OF ACCUSED KIM L. DOBBINS DOBBS COUNTY RICHLAND NUMBER 739

DATE BIRTH 8/20 BY 739 BADGE 739 DISTRICT 1

CASE BEFORE: MAGISTRATE ☒ JURY COURT ☐ CIRCUIT COURT ☐ FAMILY COURT ☐ FEDERAL COURT ☐

NAME OF TRIAL OFFICER NEWSON TIME OF VIOLATION 0930 PM

DEFENDANT DID NOT APPEAR ☐ APPEARED ☒ DISTANCE IN FEET FROM INTERSECTION 1255

DISPOSITION: GUILTY ☐ AND NO

FORFEITED BOND ☐ RIED NOLO CONTENDERE ☐

TRIAL BY: TRIAL OFFICER ☐ JURY ☒

VERDICT OF TRIAL IF ANY: GUILTY ☐ NOT-GUILTY ☒ DATE OF TRIAL 9/5 MILES 1

JAIL ☐ SUSPENSE ☐ FINE ☐ AMT. COLLECTED ☐ AMT. SUSPENDED ☐ HWY. NO. 101

COMMITTED TO: NO OFFENSE CODE B-A, LEV. 1

CERTIFIED CORRECT NO DATE 9/5 57596 CY

TRIAL OFFICER'S COPY

CERTIFIED TRUE COPY
OF ORIGINAL FILED,
JANET W. M. BRIDE
C.C.C.P.&G.S.
RICHLAND COUNTY
SOUTH CAROLINA

WITNESSES

(S) A. BRANHAM - RCSD

DOCKET NO. 2007-GS-40-1331

The State of South Carolina

County of Richland

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

COURT OF GENERAL SESSIONS

DECEMBER TERM 2007

18

Defendant

ARREST WARRANT NUMBER

57596CY

THE STATE

vs.

Witness:

STEVEN LECROY

C.C.C. PLS. AND G.S.

ACTION OF GRAND JURY

TRUE BILL

Forfeiture of Grand Jury
Date:

DEC 12 2007

RECEIVED

Indictment for

DRUGS/POSS OF MARIJUANA

2ND OFFENSE

SC Code: 44-53-370(d)(3)

CDR Code: 182

Class MIS/C

Forfeiture of Grand Jury
Date:

2/25/09

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

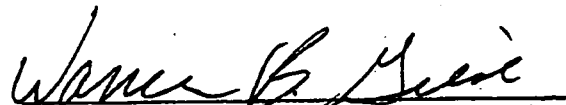
INDICTMENT

At a Court of General Sessions, convened on December 12, 2007, the Grand Jurors of Richland County present upon their oath:

DRUGS/POSS.OF MARIJUANA 2nd OFFENSE

That Steven Lecroy did in Richland County on or about January 25, 2007, possess or attempt to possess a quantity of Marijuana, a controlled substance under provisions of Section 44-53-370 et. Seq., Code of Laws of South Carolina (1976, as amended), such possession not having been authorized by law and such not being a first offense.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


WARREN B. GIESE, SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF Richland
STATE VS.AKA: Steven Lecroy

Race: _____ Sex: _____ Age: _____

DOB: _____ SS#: _____

Address: _____

City, State, Zip _____

DL# _____ SID# _____

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#:

07 - GS - 40 - 1331AW#: 575264Date of Offense: 1-25-07S.C. Code §: 44-53-370(d)(3)CDR Code #: 0 / 1 / 8 / 2☐ CASE RESTORED

SENTENCE SHEET

☐ PLEA☒ TRIALIn disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADSTO: Drugs / Poss. of Marijuana 2nd offensein violation of § 44-53-370(d)(3) of the S.C. Code of Laws, bearing CDR Code # 0 / 1 / 8 / 2☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS (CSC ☐ \$17-25-45 w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. _____ (Defendant initial)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

[Signature]
Solicitor[Signature]
Defendant[Signature] 76145
Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 1 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 07-GS-40-1330☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ set by SCDPPPS _____

Recipient: _____

*Fine: \$ _____

\$14-1-206 (Assessments 107.5%) \$ _____

\$14-1-211(A)(1) (Conv. Surcharge) \$100 \$ _____

\$14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____

\$56-5-2995 (DUI Assessment) \$12 \$ _____

\$35.13 (Public Def/Prob) \$500 \$ _____

\$73.3, 1B TP (Law Enforce. Funding) \$25 \$ _____

\$33.7, 1B TP (Drug Court Surcharge) \$100 \$ _____

\$50-21-114(BUI Breath Test Fee) \$50 \$ _____

\$56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

3% to County (if paid in installments) \$ _____

TOTAL \$ _____

Jeannette W. McBeidel PF
Clerk of Court/Deputy ClerkCourt Reporter: D. McIndy

PTUP

_____ days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol Testing

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____ beginning

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or Appointed other counsel \$35.13 TP

Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE [Signature]Judge Code: RICHLAND COUNTY / BSentence Date: 9-9-07