

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Beaufort County

Carmen T. Mullen, Circuit Court Judge

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S.C. Supreme Court

Opinion No. 2012-UP-563 (S.C. Ct. App. filed 10/24/2012)

2010-GS-07, 598-599, 602 & 634.

THE STATE,

RESPONDENT,

V.

MARION BONDS,

PETITIONER

Appellate Case No. 2013-000119

APPENDIX

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**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.

Marion J. Bonds, Appellant.

Appellate Case No. 2011-182146

Appeal From Beaufort County
Carmen T. Mullen, Circuit Court Judge

Unpublished Opinion No. 2012-UP-563
Submitted October 1, 2012 – Filed October 24, 2012

AFFIRMED

Appellate Defender Elizabeth A. Franklin-Best, of
Columbia, for Appellant.

Attorney General Alan Wilson, Chief Deputy Attorney
General John W. McIntosh, Senior Assistant Deputy
Attorney General Salley W. Elliott, and Staff Attorney
Julie Kate Keeney, all of Columbia; and Solicitor Isaac
McDuffie Stone, III, of Beaufort, for Respondent.

PER CURIAM: Marion Bonds appeals his convictions of assault and battery of a high and aggravated nature, unlawful possession of a handgun by a person convicted of a crime of violence, trafficking in crack cocaine (more than twenty-eight grams but less than one hundred grams) and possession with intent to distribute crack cocaine within a one-half mile radius of a school, arguing the trial court erred in (1) denying his motion to suppress evidence obtained during a search of the residence where Bonds was arrested and (2) admitting testimony that the victim identified him as the perpetrator in a photographic line-up although the victim knew and was related to Bonds. We affirm¹ pursuant to Rule 220(b) and the following authorities:

1. As to whether the trial court erred in denying Bonds's motion to suppress evidence obtained during a search of the residence where police officers arrested Bonds: *State v. Laux*, 344 S.C. 374, 376, 544 S.E.2d 276, 277 (2001) ("The test of whether a third party has sufficient status to consent to a search is whether the third party possesses common authority over or has some other sufficient relationship to the premises or effects searched."); *id.* ("Common authority is defined as mutual use of the property by persons generally having joint access or control for most purposes, so that it is reasonable for officers to believe the person granting consent has the authority to do so.").
2. As to whether the trial court erred in admitting testimony that the victim identified Bonds as the perpetrator in a photographic line-up although the victim knew and was related to Bonds: *State v. Gambrell*, 274 S.C. 587, 589-91, 266 S.E.2d 78, 80-81 (1980) (standing for the proposition that evidence regarding pre-trial identifications that are not the product of unconstitutional procedures is admissible).

AFFIRMED.

FEW, C.J., WILLIAMS and PIEPER, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

THE STATE,

RESPONDENT,

V.

MARION BONDS,

APPELLANT

Appeal from Beaufort County

Carmen T. Mullen, Circuit Court Judge

Opinion No. 2012-UP-563

Appellate Case No. 2011-182146

PETITION FOR REHEARING

On October 24, 2012, this Court affirmed Appellant's convictions for assault and battery of a high and aggravated nature, unlawful possession of a handgun by a person convicted of a violent crime, trafficking in crack cocaine, and possession with intent to distribute crack cocaine within one-half mile radius of a school. State v. Marion Bonds, 2012-UP-563 (Ct. App. filed Oct. 24, 2012).

Concerning Appellant's first issue that the trial judge erred in admitting evidence obtained during a warrantless search of his bedroom, this Court cited State v. Laux, 344 S.C. 347, 544 S.E.2d 276 (2001). The language cited by this Court concerned the authority of a third person to consent to

a warrantless search. While Appellant agrees with this Court's implicit holding that Appellant had a reasonable expectation of privacy, Appellant respectfully disputes this Court's holding that the police obtained consent to search the bedroom from a third person with apparent authority. The record does not support this Court's holding that the evidence seized during the warrantless search was admissible because a third person with apparent authority over the premises consented to the search.

On February 17, 2010, law enforcement entered a home owned by Richard Lewis's mother without a warrant. R. 365, l. 25 – R. 63, l. 14; R. 367, ll. 1-2. Officers found Appellant in a bedroom closet of the residence and placed him under arrest. After searching the residence, including the bedroom where Appellant was found, officers seized multiple items, including crack cocaine, that were introduced against Appellant at his trial. R. 53, ll. 9-21.

During a pretrial hearing concerning Appellant's motion to suppress the evidence seized during the warrantless search, Officer Kelleher testified regarding the sequence of events during the arrest and search. According to Kelleher, he believed officers received consent from the homeowner or renter to enter the house. R. 37, ll. 6-8; R. 38, ll. 18-21. On this point, Kelleher testified he believed Fraser obtained a written consent to search. R. 39, ll. 20-25. When asked if he would not have entered except for consent, Kelleher responded "Not necessarily." R. 40, ll. 1-3. He made clear that he was assuming that consent had been obtained because a search warrant had not. R. 40, ll. 10-15.

Officer Brian Chapman also testified. Chapman testified that he entered the residence without a search warrant. It was his understanding that Fraser had asked for verbal consent to search from Lewis. R. 42, ll. 6-18. Chapman conceded that law enforcement went to that particular residence because they knew that Appellant had stayed there in the past. R. 44, ll. 15-18. When

asked specifically if he entered the residence because of consent, he answered that he entered for officer safety and he was not aware of the substance of the conversation between Fraser and Lewis. R. 52, l. 25 – R. 53, l. 5.

Officer Fraser also testified that he knew that Appellant stayed at that location based on his prior experience as an officer patrolling the area. R. 75, l. 10 – R. 76, l. 2. Fraser conceded that Lewis told him that Appellant stayed with him and that he knew which bedroom Appellant stayed in because of his prior dealings with that household. R. 76, l. 11- 77, l. 21. Fraser also testified that Lewis did not give consent to enter the bedroom. R. 88, ll. 13-15. In fact, Fraser testified that law enforcement did not really obtain consent to search, so much as they just followed Lewis into the house. R. 89, ll. 7-21.¹

Appellant testified that he stayed at the house, and had given Lewis \$40 to stay there for the entire week. He also testified that he had a key to the residence. R. 98, ll. 1-17. He further testified that he kept all of his clothes, including his underwear at Lewis's house. R. 99, ll. 2 - 15. He also kept his toothbrush and his deodorant at that address. R. 99, lines 16 -- 20.

Defense counsel objected to the search, and argued that Lewis did not have the authority to consent to the search. R. 105, l. 1 – R. 112, line 3. The prosecution argued that Appellant did not have any expectation of privacy in the bedroom. R. 112, ll. 5 - 17. After lengthy argument, the trial court judge found that appellant did not have any expectation of privacy:

Well, respectfully I think there was no expectation of privacy. I think Richard Lewis gave permission and he was the only one home and I'm not going to suppress the results of that search or the results of that arrest.

R. 117, ll. 18-23.

¹ At trial, Lewis testified that "Yes. They came in with me. They were supposed to wait at the door but as we were coming in someone knocked the screen out my window in front and they all rushed the house the same time." R. 372, ll. 4-7.

The trial court judge erred because Appellant had a reasonable expectation of privacy, and law-enforcement and could not reasonably have believed that Lewis had the authority to consent to the search of the bedroom occupied by Appellant, or that Lewis in fact so consented. By holding that the warrantless search was proper based upon consent by Lewis, this Court implicitly held that Appellant had a reasonable expectation of privacy in the home, and specifically in the bedroom.² However, this Court misapprehended the facts and the law in determining law enforcement entered based upon consent.

The South Carolina Supreme Court adopted the test regarding third-party consent articulated in U. S. v. Matlock, 415 U.S. 164 (1974):

In Matlock, the test devised for determining whether a third party had sufficient status to consent to a search was whether the third party possessed common authority over or had some other sufficient relationship to the premises or effects searched.

State v. Middleton, 266 S.C. 251, 258-59, 222 S.E.2d 763, 766 (1976).

Common authority is defined as “mutual use of the property by persons generally having joint access or control for most purposes, so that it is reasonable” for the searching officers to believe that the person granting consent had the authority to do so. State v. Moultrie, 271 S.C. 526, 248 S.E.2d 486 (1978); see also Illinois v. Rodriguez, 497 U.S. 177 (1990). In Moultrie, the South Carolina Supreme Court found that the owner of the home had common authority and a sufficient relationship to the premises to consent to a search. The Court also noted that the defendant was a

² Evidence obtained as a result of an unlawful search constitutes a violation of the Fourth Amendment and is inadmissible at trial. State v. Nelson, 336 S.C. 186, 192 n. 3, 519 S.E.2d 786, 789 n. 3 (1999). When a defendant has a reasonable expectation of privacy in the property being searched, Fourth Amendment rights apply. Minnesota v. Olson, 495 U.S. 91, 95-96 (1990). A reasonable expectation of privacy exists when the defendant has a relationship with the property or property owner. State v. Missouri, 352 S.C. 121, 129, 572 S.E.2d 467, 470-471 (Ct. App. 2002). Appellant’s argument concerning the lack of consent in this Petition in no way waives his argument that he had an expectation of privacy in the dwelling and specifically in the bedroom.

guest in that home. Id. at 528-29, 248 S.E.2d at 488. However, in Georgia v. Randolph, 547 U.S. 103, 106 (2006), the United States Supreme Court held that when a physically present co-occupant expressly refuses to consent to a search, law enforcement may not search the area without a warrant even if a co-occupant granted consent. In Randolph, officers arrived at the home of a married couple in response to a domestic dispute. The wife complained of the husband's drug use and consented to the search of the home. The husband unequivocally refused. Id. at 107. Officers searched the residence recovered cocaine. Husband was indicted for possession of cocaine. Id.

Testimony by law enforcement officers demonstrated their awareness that Appellant spent a significant amount of time at the home where Lewis resided, including spending nights there. Therefore, law enforcement understood that Appellant had an expectation of privacy in that home. Additionally, when the officers entered the bedroom, it was evident the room was occupied by Appellant. It was not reasonable for them to believe that Lewis could grant consent to search the property. As a result, law enforcement was obligated to secure a warrant before they entered Appellant's bedroom. Their failure to do so rendered the search and seizure illegal. The trial court judge erred when she found that appellant did not have a reasonable expectation of privacy in that home, especially in light of Appellant's testimony that he paid money to Lewis for the privilege of staying there. This Court erred in concluding Lewis consented to the search or even had the authority to consent to a search.

Regarding Appellant's second issue that the trial judge erred in admitting testimony that the victim identified Appellant in a photographic line-up as the perpetrator although the victim knew and was related to Appellant, this Court cited State v. Gambrell, 274 S.C. 587, 266 S.E.2d 78 (1980) for the proposition that photographic identifications that are not the product of unconstitutional procedures are admissible.

Appellant is related to the accuser. Nevertheless, law-enforcement, in connection with this investigation, presented a photo lineup to the accuser to see if he could identify his assailant. At the pretrial hearing, defense counsel objected to the introduction of the six-pack photo identification on the basis that it constituted improper bolstering because the parties knew one another. The State argued that it was not bolstering, but was part of the investigation, "just another piece of evidence." Trial counsel likened the introduction of the photo identification to that of a prior consistent statement. R. 27, l. 1 – R. 28, l. 25. The trial court judge ruled that it would be admissible. R. 29, lines 4-5.

The trial court judge erred when she allowed the State to introduce this evidence, because it improperly bolstered the testimony of the accuser. See State v. Foster, 354 S.C. 614, 582 S.E.2d 426 (2003) (improper admission of statement that was insufficient to invoke Rule 801(d)(1)(B) improperly bolstered the witness's testimony). As an introduced piece of evidence, this photo lineup was sent back to the jury for their consideration, even though it lacked any probative value. Admission of this photo lineup unduly emphasized the accuser's testimony that he claimed appellant, his relative, committed this crime. It was improper, and Appellant was prejudiced. State v. Gullledge, 277 S.C. 368, 287 S.E.2d 488 (1982); State v. Plyler, 275 S.C. 291, 270 S.E.2d 126 (1980).

Respectfully, appellant asks this Court to rehear the matter..

Respectfully submitted,


 Susan B. Hackett
 Appellate Defender

This 8th day of November, 2012.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Beaufort County
Carmen T. Mullen, Circuit Court Judge

THE STATE,

RESPONDENT,

y.

MARION BONDS,

APPELLANT

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Petition for Rehearing in the above-entitled case has been served upon Julie Kate Keeney, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, and Marion Bonds, # 293431, at Broad River Correctional Institution, 4460 Broad River Road, Columbia, SC 29210, this 8th day of November, 2012.

Susan B. Hackett
Susan B. Hackett
Appellate Defender

ATTORNEY FOR APPELLANT

SWORN TO BEFORE ME this 8th day
of November, 2012.

_____(L.S.)
Notary Public for South Carolina
My Commission Expires: October 2, 2013.

The South Carolina Court of Appeals

The State, Respondent,

v.

Marion J. Bonds, Appellant.

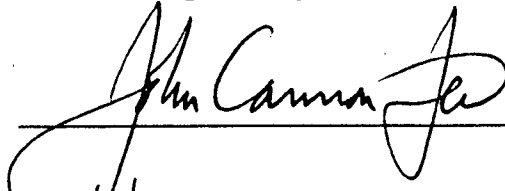
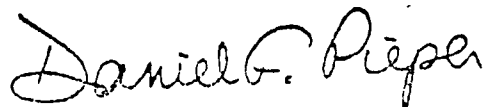
Appellate Case No. 2011-182146

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SC OFFICE OF
APPELLATE DEF.

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

 C.J.
 J.
 J.

Columbia, South Carolina

JULIE KATE KEENEY
 SUSAN BARBER HACKETT

FILED
 18 Dec 2012

19632

Volume I of II

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY

Carmen T. Mullen, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

MARION BONDS,

APPELLANT

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

COURT OF GENERAL SESSIONS
2010-GS-07-598,599, 602& 634

STATE OF SOUTH CAROLINA,
Plaintiff

VS

MARION BONDS,

Defendant

TRANSCRIPT OF RECORD
VOLUME 1

DECEMBER 13, 2010
BEAUFORT COUNTY,
SOUTH CAROLINA

B E F O R E:

HONORABLE CARMEN T. MULLEN, Judge.

Deborah E. Everett
Official Court Reporter

A P P E A R A N C E S

ANGIE TANNER , Attorney at Law
Solicitor for the State of South Carolina

IAN DEYSACH, Attorney at Law
Attorney for the Defendant

1 (Whereupon Pre-trial Motions began at 2:08 P.M on
2 December 13, 2010)

3 BAILIFF: All rise. The Honorable Judge Carmen
4 Mullen.

5 THE COURT: Thank you. Please be seated. All
6 right. We have at least two motions, Mr. Deysach, is
7 that correct?

8 MR. IAN DEYSACH: Yes, at least two, I would say
9 is an accurate characterization. I think the
10 appropriate one to start with is the motion to sever.
11 It's something that we did broach -- something that we
12 broached in chambers, Your Honor.

13 At this point the jury has already heard all of
14 the charges that Mr. Bonds is intended to be tried on
15 by the Solicitor. But I would ask Your Honor to sever
16 the -- the -- sever the armed -- Attempted Armed
17 Robbery, Assault and Battery with Intent to Kill and
18 Possession of a Pistol by a Person Convicted of a Crime
19 of Violence portion of this trial from the Trafficking
20 in Crack Cocaine portion of this trial, which also
21 includes a Distribution within a School Zone charge --
22 in accompanying with a school zone charge.

23 And the authority that I am citing for the Rule
24 that---

25 THE COURT: The City of Greenville versus Chapman

1 case. And its progeny State v. Tate and State v. Perry
2 where it's got to arise out of a single chain of
3 circumstances by proof of the same evidence are the
4 same general nature and there's no real right of the
5 defendant that is jeopardized. So that's final ---

6 MR. DEYSACH: That is the Rule. I've found it in
7 State v. Rice which is 629SC7393. That is the same
8 role, the chain of circumstances, the same evidence,
9 the same general nature, and no real right of the
10 defendant has been prejudiced. And so, I think the
11 only way you can read that is if all of these
12 conditions have to be met in order---

13 THE COURT: Well, let's go ahead and let the
14 Solicitor address that. Ms. Tanner, let's talk about -
15 - I don't think there's a question they arise out of a
16 single chain of circumstances. Why don't you go ahead
17 and put the facts on the record of this case so we can
18 show that. And then we will go to the next ---

19 MS. ANGIE TANNER: That's correct, Your Honor.
20 Mr. Bonds is on trial. He is charged with Assault and
21 Battery with Intent to Kill, Attempted Armed Robbery,
22 and a gun charge occurred, approximately, 07:00 a.m. on
23 the 17th. He is developed as a suspect. They also
24 developed some locations where he may be hiding out.
25 They go to those locations. The third location they go

1 to, they actually do find him hiding in the closet.

2 Inside the closet where he is removed, arrested for the
3 Assault and Battery with Intent to Kill, Armed Robbery
4 and gun charge, they locate items that are related to
5 this crime including a jacket that was described by the
6 victim. They find a shoe right under the jacket that -
7 - or right next to the jacket ---

8 THE COURT: In the closet ---

9 MS. TANNER: --- that was in the closet where he
10 was hiding that contained the bulk of crack cocaine.

11 This is not a house he lived in at the time. He
12 had lived there previously. But the homeowner gave
13 them consent to come in and they do arrest him there.
14 There would be no way to try the drugs later without
15 mentioning the fact that he was being arrested for the
16 assault battery and armed robbery at the time the drugs
17 were found. So that leads to that.

18 He is taken to the detention center on the assault
19 and battery, armed robbery, and gun charge. He's
20 booked in for that first. The drugs were turned over
21 to members of the drug task force for processing and to
22 get warrants. Before the drug charges are served on
23 him, he makes a phone call from the jail back to the
24 house where he was arrested trying to get the homeowner
25 to grab the drugs. He doesn't know law enforcement has

1 found them yet. He is telling him to hide the drugs,
2 "I'll need them when I get out." Homeowner tries to
3 tell him, "No, they found drugs that were in the closet
4 with you." He says, "Well, I got some more in the
5 trash can, check the trash can." Officers intercept
6 those phone calls, send another officer back to the
7 scene, they hold that while getting a search warrant to
8 locate the drugs that he mentions on the phone call in
9 the trash can -- from the trash can.

10 So they're all one chain of event, it's one thing
11 after another. The arrest of one thing leads to the
12 discovery of number two and then the arrest and placed
13 in the detention center leads to the location of the
14 number three.

15 THE COURT: All right. So it sounds to me that
16 just the proof of the jacket that was identified in the
17 earlier attempted arm robbery is what's found in the
18 closet.

19 MS. ANGIE TANNER: That's correct.

20 THE COURT: Okay. Which, I think probably goes to
21 -- even though I understand the drugs were found in the
22 shoe -- goes to the trafficking and possession of the
23 drugs found in the closet. Okay.

24 Well, I do think they are proved by the same
25 evidence. Let's talk about are they the same general

1 nature. Mr. Deysach, sit down.

2 MS. ANGIE TANNER: They do flow from one to the
3 other and I believe, just in conversations in Chambers,
4 the defense and the shooting is going to be that it was
5 over some type of drugs or some drug deal or something.
6 He made comments that there were -- it's a folk on a
7 folk shooting. I think that he is going to try to use
8 some type of bases of the drug trade for that. So I
9 think that---

10 THE COURT: Someone help me out. Because I don't
11 know the circumstances arising from the ABWIK and the
12 attempted armed robbery. Where did that occur?

13 MS. ANGIE TANNER: This occurs at the victim's
14 residence. The State is going to put up evidence that
15 the defendant knocked on the door of the victim. They
16 are cousins. He opens the door for the defendant. The
17 defendant comes in, he's got a pistol. There is a
18 second man with him, with a long gun, who just stands
19 by.

20 THE COURT: When you say with him, with the
21 defendant or the cousin?

22 MS. ANGIE TANNER: The defendant, with the
23 defendant.

24 THE COURT: Okay.

25 MS. ANGIE TANNER: Cousin lets him in. Defendant

1 demands money from his cousin. Cousin says, "What
2 money?" He makes statements that tells him, "I know
3 you got more money than that". At that point, the
4 victim was able to tackle or push the defendant. He
5 runs for the door. Trips just outside of his
6 residence. At which point, he looks up. The defendant
7 shoots him once. It just hits him in the arm. He's
8 able to run to another cousin's house. And the
9 defendant and his cohort flee the area.

10 There are no drugs found on the victim. The State
11 does not allege that this is drug related but I believe
12 that based on comments made by the defense, that may be
13 an area that they go to. So I don't know how... All
14 the officers involved, they'll be the same officers
15 testifying, oddly enough. The initial responding
16 officer to the shooting is still on duty and is the
17 officer sent back to the residence where they found the
18 drugs. It's a different residence but it's the same
19 officer. He's still on the same shift and he is sent
20 to hold the homeowner while they did the search warrant
21 the second time for the drug evidence.

22 So it's all the same witnesses, all the same
23 investigators -- again -- it would be hard to go back
24 and try the drug case without involving the assault and
25 battery charges or without mentioning it in some way.

1 THE COURT: So that's how---

2 MR. IAN DEYSACH: I do have a response Your Honor.
3 I think that given the -- the litany of the facts --
4 certainly I'm not going to challenge each fact but I do
5 want you to understand some of the facts that she
6 stated, I will be challenging. But I think that what
7 she described was how the -- really meant more to prong
8 two, how to prove same evidence and kind of gave short
9 shrift to the arise out of a single chain of
10 circumstances.

11 I certainly do not--the defense is not that
12 because drugs were involved that somehow that means
13 that Marion Bonds would be not guilty. I don't think
14 that is a defense, to be honest with you. And they're
15 saying that -- I'm not trying to allege that there were
16 drugs involved at the first incident location, the ■
17 EttingsWhite location -- I'm not -- that doesn't have
18 anything to do with the drugs that were found. And so
19 when we talk about out of the chain of circumstances,
20 it is the same chain of circumstances for the police.
21 But as far as the charges themselves, there is not a
22 relationship between the drugs found and the assault
23 and battery, attempted armed robbery. And once he
24 said, "Well, we couldn't try the drugs without bringing
25 up the attempted armed robbery", you can certainly try

1 the attempted armed robbery without bringing up the
2 drugs. There's no reason that the Jury would have to
3 hear about drugs in an attempted arm robbery case.

4 THE COURT: I'm a little more concerned about -- I
5 didn't realize -- that the simple chain of
6 circumstances -- I think you've got to prove most of
7 all, by the same evidence, are the same general natures
8 where investigated a bit different. One is drugs and
9 you know, one is a crime, a violent crime, against a
10 person. So that will be, I think, where you need to
11 focus.

12 MR. IAN DEYSACH: Well, certainly Your Honor. I
13 mean, if you look at the code, you've got the crimes
14 against the person and 16 -- Article 16, Chapter 16 --
15 I'm getting it mixed up. But they're at completely
16 opposite ends of the code, offenses against a person
17 versus offenses having to do with controlled
18 substances. They really -- the nature of these
19 offenses is -- I can't think of criminal offenses that
20 are more different in nature, to be honest with you.

21 And so I think that without proving -- without
22 making any type of a showing on this prong -- that
23 trying the two cases together would be a mistake and
24 that really, what we are doing is kind of bringing up
25 more bad facts for the Jury to consider as opposed to

13

1 whether or not there is proof beyond a reasonable doubt
2 based on the evidence in the case and along the case as
3 you would charge it. And so with these being such
4 different types of offenses in nature then certainly,
5 the rule is very clear.

6 MS. TANNER: Your Honor, if I may. The test is
7 not whether or not the charges are different because
8 you've got Assault and Battery with Intent to Kill and
9 a felony possession of a gun. Those have different
10 elements. They're different charges. But there's no
11 question -- there's no arguing those shouldn't be
12 together. The test is not about whether or the
13 charges are different. It's clearly shooting someone
14 and trafficking drugs, two different charges. The
15 question is, is there a chain of circumstances that tie
16 them together, the same evidence will be used to prove
17 both cases. The same witnesses will be used to prove
18 both cases. And finally the last prong is, there's no
19 prejudice to the defendant if they're tried together.
20 In fact, there's more prejudice if they're separated,
21 because as discussed, there's a violent offense in each
22 one of the cases.

23 If we broke it down, we could actually have three
24 separate trials for found offenses. At the end of it,
25 if the State was successful in all three, it's life

1 without parole, automatically. There is much more
2 prejudice to give the State an opportunity to do that
3 or we can try these all together, bunker down all, at
4 once, through this chain of circumstances that are all
5 tied together.

6 THE COURT: Counselor?

7 MR. IAN DEYSACH: Certainly, you know when the
8 Solicitor said the question isn't whether or not they
9 are the same general nature and her example of
10 possessing a gun being not of the same nature as
11 shooting somebody, that it rings hollow and it doesn't
12 make common sense. I would-- I certainly would try to
13 focus on prongs that are more favorable to me too, but
14 there is this one that sits right in the middle of the
15 rule that must be satisfied before the cases can be
16 tried together and that's the one that's-- when asked
17 about whether or not these cases are the same general
18 nature, the Solicitor jumped to the other prongs and
19 the question is whether or not this prong has been
20 satisfied and it must be satisfied in order for these
21 cases to be tried together.

22 THE COURT: Anything further, you all? Well, I
23 would say obviously as you stated, arising out of a
24 single chain of circumstance, clearly this case is.
25 They are proved by the same evidence, clearly this case

1 is by the same general nature. I think, certainly an
2 argument can be made that I think is valid is that
3 involved in drug trafficking includes the hearing and
4 bonds.

5 Additionally, while I think as lawyers, we can all
6 sit here and say that the Attempted Armed Robbery and
7 ABWIK is very different than trafficking in a drug, I
8 think we all still agree it is all a part of criminal
9 activity and drug activity. And as a result, I think
10 it is of by the same general nature as is required from
11 the City of Greenville case and State v. Tate and
12 State v. Perry. No real right of the defendant has
13 been jeopardized.

14 And certainly we don't look at whether or not the
15 defendant's rights have been jeopardized on the side of
16 the State and what they think. But I think the
17 Solicitor does make a point that there is some possible
18 prejudice to it. And certainly, I'm not going to
19 question Mr. Deysach's strategy in this. He's
20 obviously a very good lawyer and he's thought this
21 through. But I don't think there's any real and
22 obvious jeopardy to the defendant as a result of this.
23 And if he is convicted, it's likely he will come out
24 better on the end anyway, certainly. So respectively,
25 Mr. Deysach, I'm denying that motion to sever. What's

1 your next motion, sir?

2 MR. IAN DEYSACH: I do have a motion to suppress
3 but that is the meatiest of the motions. And I was
4 thinking that maybe I would hit some of the other ones
5 that don't require ---

6 THE COURT: Sure -- Okay.

7 MR. IAN DEYSACH: We also broached the subject in
8 chambers about whether or not a stipulation to Marion's
9 status as a person who is prohibited from carrying guns
10 under the -- the law that he's been charged with the --
11 umm ---

12 THE COURT: Why -- Is it because he has prior
13 convictions for burglary in the second-degree
14 nonviolent; is that correct?

15 MR. IAN DEYSACH: Correct.

16 THE COURT: Okay.

17 MR. IAN DEYSACH: The section is 162330. That
18 prohibits people, not only who are convicted of crimes
19 of -violence, but also under 21 -- under 18 now, I
20 guess -- of being -- of possessing a pistol. And so
21 just because you fall under that statue doesn't
22 automatically mean that you've been convicted of a
23 crime of violence. I think that it would be
24 appropriate if Mr. Bonds were to stipulate that he has
25 been convicted of a crime of violence. And I know that

17

1 sometimes there's terms that are different --
2 differences between a violent crime and a crime of
3 violence, and while the burglary that he was convicted
4 of is not a violent crime, it is defined as a crime of
5 violence in this statute that refers to--they give the
6 definition in this chapter but of the statute.

7 THE COURT: How would you like it couched? He is
8 being convicted of a crime of violence.

9 MR. IAN DEYSACH: I would like it couched that he
10 is--he is prohibited by law from possessing a pistol.

11 THE COURT: Okay.

12 MR. IAN DEYSACH: He is in the class of persons
13 prohibited from possessing a pistol. That way the Jury
14 won't have to decide whether or not he has been
15 convicted of a violent crime. I couldn't, obviously,
16 argue that he isn't in that class of people prohibited
17 from possessing a pistol. And they would simply decide
18 whether or not he possessed the pistol.

19 THE COURT: The problem is that one of the
20 elements that has to be proven by the State is that he
21 is previously been convicted of a crime of violence.

22 MR. IAN DEYSACH: I ---

23 THE COURT: You know, you want me to stipulate--Do
24 you want me to charge him, in fact, he did have a gun.
25 You're not conceding that, are you?

1 MR. IAN DEYSACH: No. Separate element -- ya'
2 know, separate element to the offense and I think that
3 the possession of a pistol element is the one I'm
4 asking them to prove. Whether or not he has been
5 convicted of a crime of violence, is an element I would
6 not require them to prove if the Jury were to be
7 prevented from hearing what the crime of violence was.
8 I mean, it's--the strategy is fairly transparent. What
9 I'm saying is I don't want them to think that just
10 because he's been convicted of a crime of violence or
11 that they know he is convicted of a burglary that
12 therefore, he must be a bad guy and he must have done
13 this. I just want them to decide whether or not he's
14 possessed a pistol. And if he has, he would be by
15 stipulation, one of the people who is prevented by the
16 statute for possessing that.

17 THE COURT: You can speak, Solicitor. I have a
18 hard time though. Whether or--if you're choosing, it's
19 two different charges of whether or not just possession
20 of a pistol or ---

21 MS. ANGIE TANNER: Yes, Your Honor. I think -- I
22 think, as you know, I don't have to stipulate. I can
23 put up my evidence and prove that he's been convicted
24 of a violent crime. I can put up evidence that he's
25 been convicted of however many burglaries that are on

1 his record as part of my case; However, I did offer in
2 Chambers not to do that but the language has to be so
3 that all the elements of my statute to follow is that
4 he is a felon convicted of a crime of violence and is
5 prohibited from possessing a firearm. All that
6 language has to be in there for the elements to be met.
7 Otherwise, I get to put up evidence to prove it.

8 THE COURT: You allege that he's a felon convicted
9 of a crime of violence ---

10 MS. ANGIE TANNER: And therefore, prohibited from
11 possessing a firearm.

12 THE COURT: Okay. The only thing that I have a
13 problem with and I can tell you that I'm assuming you
14 would object to. I don't think we need to say that
15 he's a felon. If he has been convicted of a crime of
16 violence and therefore, prohibited from possessing a
17 gun, he is, in fact a felon. So it's just saying it
18 twice is all we're saying. So I don't think you need
19 to say that he is a felon. I think you could just say
20 the defense stipulates that the defendant has been
21 convicted of crime of violence and therefore,
22 prohibited from possessing a gun at the time of this
23 alleged incident, okay?

24 MS. ANGIE TANNER: Okay.

25 MR. IAN DEYSACH: I would ask for--I do want to

1 clarify and make sure I understand what we are talking
2 about. We're talking about telling the Jury that he is
3 convicted of a crime of violence but not letting them
4 know what it is?

5 THE COURT: Right. Unless your guy takes the
6 stands. If Mr. Bonds takes the stand that's fair game.

7 MR. IAN DEYSACH: Right.

8 THE COURT: Okay. I think it's relevant. I
9 assume it is. I assume she is going to use it for
10 impeachment purposes. I don't know but I'll just take
11 a wild guess. So, that is what we will stipulate to.

12 MS. ANGIE TANNER: And with that stipulation in, I
13 wouldn't parade his prior record to prove that event.

14 THE COURT: Right.

15 MR. IAN DEYSACH: I certainly was asking the Court
16 to do it my way, so I still have an objection.

17 THE COURT: I still don't know what your way is.
18 You're going to go ahead and stipulate that he is what?

19 MR. IAN DEYSACH: He is in the class of people
20 prohibited by section 162330, prohibited from
21 possessing a pistol.

22 THE COURT: I would have to define it. I would
23 have to define the statute. That's so nebulous. I
24 think the way it is done. I mean, I quite frankly
25 could elaborate on it and put it up but she has agreed

1 not to so we're going to stick with that he is
2 convicted of a crime of violence and therefore
3 prohibited from possessing a gun at the time of this
4 incident, alleged incident. Okay. What's the next
5 thing we're hearing now?

6 MR. IAN DEYSACH: There is--well, I'll skip that
7 one. Use a renewed discovery motion to make a motion
8 to sequester ---

9 THE COURT: Any objection to the sequestering the
10 witnesses other than your case officer and the victim?

11 MS. ANGIE TANNER: No, ma'am.

12 THE COURT: Okay.

13 MR. IAN DEYSACH: I would--I do--I see Officer
14 Kelleher here. I guess while as the case is unfolding,
15 that I wasn't sure if there was one or two lead
16 investigators. And I was going to asked them to pick
17 one but if it's Officer Kelleher then it's Officer
18 Kelleher. And I---

19 THE COURT: And you are so electing?

20 MS. ANGIE TANNER: Yes, ma'am.

21 MR. IAN DEYSACH: I guess, we have a --- we do
22 have a Neil v. Biggers motion. There's an eye witness
23 ID. I was asked, Your Honor, to hear testimony from
24 the officers so that the State -- if they wish to
25 introduce it, meet their burden of showing lack of

1 suggestivity.

2 THE COURT: All right. Let's go ahead. If we
3 are gonna have a Neil v. Biggers hearing let's go.

4 MS. ANGIE TANNER: Your Honor, I would first point
5 out that the victim knew the defendant so actually the
6 hearing is not required. And that would be under Emory
7 Robert D. The hearing is not necessary if the victim
8 knows the defendant.

9 THE COURT: That would be for an ID. What I
10 thought that you were talking about is a separate --
11 you told me that there was a six-pack lineup back in
12 Chambers and who was that subsequent ID by?

13 MS. ANGIE TANNER: The victim. They-- the night
14 of the incident, victim gives law enforcement his name,
15 Marion Bonds. The next day they come back with a six-
16 pack, show it to the victim to confirm they're talking
17 about the same guy.

18 THE COURT: Okay. If you intend on introducing
19 that the night of the incident he's going to say when
20 he looked up the person that was pointing a gun and
21 shot at him was Mr. Bonds. But then additionally later
22 on that night he had came back with six photos for him
23 to ID. Then we do need a Biggers hearing of the six
24 photos.

25 MS. ANGIE TANNER: Okay.

1 THE COURT: If you want to get that second
2 subsequent ID in.

3 MS. ANGIE TANNER: Sure.

4 MR. IAN DEYSACH: Is there a burden on this?

5 THE COURT: She just needs to put up her
6 investigator and maybe he needs to bring his photo ID
7 lineup with him.

8 MS. ANGIE TANNER: The state calls John Kelleher.

9 THE COURT: And you did receive this, Mr. Deysach,
10 right?

11 MR. IAN DEYSACH: I have.

12 THE COURT: You have a copy of it?

13 MS. ANGIE TANNER: Yes, ma'am. He has a copy of
14 it.

15 First being duly sworn, **JOHN**
16 **KELLEHER** testified as follows:

17 THE COURT: Sir, will you just spell your last
18 name for my Court Reporter?

19 THE WITNESS: Sure. That's Kelleher, K-e-l-l-e-h-
20 e-r.

21 **DIRECT EXAMINATION**

22 BY MS. ANGIE TANNER:

23 Q. Good afternoon, Investigator Kelleher.

24 A. Good afternoon, ma'am.

25 Q. Where are you employed?

1 A. Beaufort County Sheriff's office.

2 Q. And in your employment at the Sheriff's Office,
3 were you working on February 17, 2010?

4 A. Yes ma'am.

5 Q. And were you part of the investigation to a
6 shooting of victim Reginal Holmes

7 A. Yes, I was.

8 Q. As part of your investigation, did you interview
9 Mr. Holmes about the circumstances of the
10 shooting?

11 A. Yes, I did.

12 Q. As part of your interview, were you able to
13 develop a suspect?

14 A. Yes.

15 Q. And where did the suspect's name come from?

16 A. The victim told me the suspect's name.

17 Q. And did the victim also tell you how he knew this
18 person?

19 A. Yes, he did. He said he was related to him.

20 Q. And what name did he give you?

21 A. Marion Bonds Jr.

22 Q. Did he give you any other information about Marion
23 Bonds?

24 A. He stated that it was his cousin. I believe he
25 also stated that he lives across the street from

1 him, where his family lives.

2 THE COURT: Did he also say what degree of cousin
3 he was?

4 THE WITNESS: No.

5 BY MS. TANNER:

6 Q. Based on that information, did you ever come back
7 to Mr. Holmes to question him further about the
8 suspect identity?

9 A. The victim?

10 Q. The victim.

11 A. Yes.

12 Q. All right. And when did you next speak with Mr.
13 Holmes?

14 A. It was the day after the actual incident. That
15 afternoon I went to the victim's residence and I
16 presented him the photo lineup.

17 Q. Okay. And this photo lineup, did you prepare the
18 photo lineup?

19 A. I did not prepare it, no.

20 Q. All right. How was that photo line up prepared?

21 A. It's prepared by a Beaufort County Sheriff's
22 Intelligence Division.

23 Q. And how is that done?

24 A. It's done by a photo lineup with a crew of six
25 individuals that are on their database.

1 Q. And what criteria is used to pick those photos?

2 A. The person that does it similar of race, the skin
3 color, hair style, clothing, makes everyone very
4 similar.

5 Q. And was that done with this photo lineup?

6 A. Yes, it was.

7 Q. And do you have that with you?

8 A. Yes, I do.

9 Q. Now once you have that prepared, what do you do
10 with it?

11 A. I take the photo lineup to the victim's residence
12 and that's when I met with him the next day.

13 Q. And what do you tell the victim about this photo
14 lineup?

15 A. I read the back of the photo lineup, there's a
16 statement there. He signs it. Then I flip the
17 paper over. He takes a look at it and he
18 immediately pointed out the individual I circled.

19 Q. What did you say to him prior to him picking out
20 anyone in that photo lineup?

21 A. Something to the effect of, can you tell me who is
22 the person that shot you yesterday, is he on this
23 photo lineup?

24 Q. Did you make any suggestions to Mr. Holmes before
25 he picked him out?

27

1 A. No.

2 Q. And once he picks out the subject, what does he
3 do?

4 A. The picture and the number is circled. I fill
5 out the back of the form, and I turn it in to
6 evidence.

7 Q. I have no further questions regarding the issue.

8 THE COURT: Okay.

9 CROSS EXAMINATION

10 BY MR. IAN DEYSACH:

11 Q. Officer Kelleher, when you took the photo lineup
12 to Mr. Holmes to view, did you know that Marion
13 Bonds was in the photo lineup?

14 A. Yes, sir, I did.

15 Q. Did you know which one he was?

16 A. Yes, sir, I did.

17 Q. Now when he-- where did this take place, this
18 procedure, at the police department or at Reggie's
19 home?

20 A. The viewing of the photo book?

21 Q. Correct.

22 A. As I stated, it happened at Reggie's home.

23 Q. And the first thing you did, was read the back,
24 correct?

25 A. Yes.

1 Q. And you said that you don't fill the back out
2 until after the person has already viewed the
3 photo lineup?

4 A. Correct.

5 Q. So you read the back but it's left blank and then
6 you show the photos to Reggie, correct?

7 A. Correct.

8 Q. And you were the one that circled the photo face?

9 A. I'm not sure if I circled it or he circled it that
10 day. I'm not real sure.

11 Q. Okay. So if you said--you just said that you
12 circled it and you're actually revising that, that
13 maybe he circled it?

14 A. Possibly, yes.

15 Q. So then you go to the back and you fill out the
16 date, time, and your initials at that time?

17 A. Correct.

18 Q. And you did Reggie's signature there?

19 A. Reggie signs it, once he reads the statement, he
20 signed it first.

21 Q. But--okay, but before he makes the pick?

22 A. Correct.

23 Q. And he did, in fact, sign it in your presence?

24 A. Yes, he did.

25 Q. With his right hand?

1 A. I don't remember which hand he used, whatever hand
2 the pen was in.

3 Q. Okay.

4 MR. IAN DEYSACH: I don't have any further
5 questions Your Honor.

6 THE COURT: Anything further Solicitor?

7 MS. ANGIE TANNER: Nothing Your Honor.

8 THE COURT: Anything further from the State?

9 MS. ANGIE TANNER: Not unless you want to hear
10 arguments.

11 THE COURT: I was just going to ask Mr. Deysach if
12 he had any arguments to put up. Mr. Deysach?

13 MR. IAN DEYSACH: Your Honor, obviously, the
14 alleged victim and the defendant know each other by
15 name and sight through a family connection, they know
16 what each other look like. And so the idea of putting
17 the--I think that the Solicitor is right. If no photo
18 lineup were done that there is law in place where
19 Reggie could come up on the stand and point out ---

20 THE COURT: In Court identification.

21 MR. IAN DEYSACH: Do an In Court identification.
22 But for them to introduce a six-pack photo ID seems
23 like improper bolstering of what he's already --
24 already testified to. So even though I don't think
25 it's suggestive, I ask that you suppress their six-pack

1 photo lineup identification procedure for that reason.
2 I don't think it's necessary. I don't think is
3 relevant. I don't think--I think it's improper
4 bolstering.

5 THE COURT: Well, if the victim identified a
6 second person in the middle--let's say you for a second
7 as Mr. Bonds--that a photo ID, he had circled somebody
8 else and then he came back into court and said no I was
9 wrong it was Mr. Bonds. That certainly would be
10 admissible.

11 MR. IAN DEYSACH: As a prior inconsistent
12 statement, Your Honor?

13 THE COURT: Absolutely.

14 MR. IAN DEYSACH: But this is a prior consistent
15 statement.

16 THE COURT: Solicitor?

17 MS. ANGIE TANNER: Your Honor, it's part of the
18 investigation, it was for the law enforcement officers
19 purposes, not for Mr. Holmes purposes, and it will
20 cover any law enforcement officer's testimony, not Mr.
21 Holmes. So it's not bolstering. It's part of the
22 investigation, just another piece of evidence.

23 MR. IAN DEYSACH: Something being part of the
24 investigation does not -- doesn't mean it's
25 automatically admissible, Your Honor. They investigate

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1 lots of things that the Jury should never hear. Saying
2 something is part of the investigation just kind of
3 ignores the rules of evidence.

4 THE COURT: Respectively, I think they can enter
5 it. So that's admissible. What is your next motion?

6 MR. IAN DEYSACH: I guess we should do the
7 suppression motion Your Honor.

8 THE COURT: Okay.

9 MR. DEYSACH: Since it's my motion, I guess I'm
10 the moving party. I will go ahead and call the
11 witnesses.

12 THE COURT: Please.

13

14

15 MR. IAN DEYSACH: I guess I would ask Officer
16 Kelleher to be the first witness.

17 THE COURT: Come on back up. I'm going to remind
18 you that you are still under oath, sir.

19 THE WITNESS: Yes, ma'am.

20 THE COURT: Take a seat. Whenever you are ready,
21 Mr. Deysach.

22 **DIRECT EXAMINATION**

23 BY MR. IAN DEYSACH:

24 Q. Good morning or Good afternoon Officer Kelleher.

25 A. Sir.

1 Q. First question I want to ask you is about -- since
2 this is the motion to suppress for drugs found or
3 items found at ■ Ball Park Road. I want to ask
4 you whether or not a search warrant or arrest
5 warrant existed when the police entered ■ Ball
6 Park Road. Was there -- You arrived at ■ Ball
7 Park Road at around ten o'clock in the morning; is
8 that correct?

9 A. Yes, sir.

10 Q. When you arrived at ■ Ball Park Road, had you
11 applied to the Magistrate for an arrest warrant?

12 A. Not at that time.

13 Q. When you arrived, had you applied to the
14 Magistrate for a search warrant?

15 A. Not at that time.

16 Q. When officers entered ■ Ball Park Road, were you
17 present?

18 A. Yes.

19 Q. And when they entered, there was no arrest warrant
20 nor search warrant in existence at that time,
21 correct?

22 A. Not at that time, correct.

23 THE COURT: I'm sorry. What time did the
24 attempted armed robbery ---

25 THE WITNESS: Approximately, seven o'clock that

1 morning, ma'am.

2 BY MR. DEYSACH:

3 Q. So three hours have passed, you're at ■ Ball Park
4 Road. Would you agree that the Ettings White
5 address, the incident location on Ettings White
6 and Ball Park Road are about two and a half miles
7 apart?

8 A. I--I honestly don't know.

9 Q. Would it surprise you if that's what MapQuest
10 said?

11 A. Being a MapQuest user, no I wouldn't be surprised
12 but it's not always accurate.

13 Q. Okay. But... You had gone to Marion Bonds
14 Senior's house prior to coming to Ball Park Road,
15 correct?

16 A. Correct.

17 Q. And Marion Bonds Senior said he hasn't spoken to
18 Marion Bonds Junior, the person on trial today, in
19 -- he had not spoken to him lately; is that
20 correct?

21 A. Something to that effect, yes.

22 Q. Did you see a room in that household that was
23 identified as Marion Bonds Junior's room?

24 A. Not to my knowledge, no. I -- I think all the
25 talking was done outside.

1 Q. Okay. So you never did go into Marion Bonds
2 Senior's house?

3 A. I don't recall going in, no.

4 Q. When did you apply for an arrest warrant for the
5 attempted armed robbery, the ABWIK, and the
6 weapons charge?

7 A. After he was picked up over at Ball Park Road and
8 a county ticket issue was issued.

9 Q. So you arrest him at Ball Park Road and issue him
10 a ticket?

11 A. Yes.

12 Q. And then, at that time, you hadn't sworn in front
13 of the Magistrate for any type of a warrant?

14 A. Correct.

15 Q. In fact, before you applied for the arrest
16 warrant, you performed a gunshot residue test,
17 didn't you?

18 A. Yes.

19 Q. Do you know what time it was when you got to the
20 warrants to have them sworn out?

21 A. I don't recall off the top of my head, no.

22 Q. Do you know if it was within an hour, within two
23 hours, within three hours of the arrest?

24 A. It was sometime after the arrest but I don't have
25 a time.

1 Q. Do you when Marion was served with the warrants
2 for that?

3 A. Not off the top of my head.

4 Q. Do you know who served him the warrants?

5 A. I believe it was a civil deputy but not sure.

6 Q. Would it help you if you had your report?

7 A. If you have a copy of it.

8 Q. All right. On page 5 of 6, at the very top, does
9 it say that Civil Officer M. Carter served the
10 warrants on Mr. Bonds?

11 A. Yes, sir.

12 Q. Now as the case officer, you maintain the case
13 jacket? I guess you maintain all the evidence
14 that you dig up as part of the case?

15 A. I obtain the evidence that I collect.

16 Q. Let me ask you this, did you -- did Civil Officer
17 Carter turn in her report to you?

18 A. No.

19 Q. Did she turn in the Miranda form that she had
20 gotten filled out along with -- along with service
21 of the warrants that she got filled out by Mr.
22 Bonds?

23 A. I--did she turn into me? No, sir. As I stated as
24 continuing in the fact that her actions and
25 documentation will be noted in her supplement.

1 Q. Okay. So you didn't review her supplement?

2 A. No, not 'til later.

3 Q. I'm going to hand you up a document and ask you if
4 you recognize it?

5 A. Yes, sir.

6 Q. What is it?

7 A. It's a Beaufort County Sheriff Department
8 statement of Miranda Rights.

9 Q. Okay. And what's the date on it?

10 A. The date?

11 Q. Yeah, the date that it was filled out?

12 A. It's February 17th, 15:40.

13 Q. Okay. And so February 17th is the date in
14 question, correct?

15 A. Yes, sir.

16 Q. And 15:40 that refers to 3:40, correct?

17 A. Yes, sir.

18 Q. So if Misty Carter, Civil Officer Carter,
19 Mirandized Marion Bonds at the same time that she
20 served the warrants then she would have served the
21 warrants at 15:40, correct?

22 A. With that statement, yes.

23 Q. Okay. But you're just not sure if she Mirandized
24 him at the same time---

25 A. I don't know who filled this out.

1 Q. Okay.

2 A. It doesn't say who filled it out.

3 Q. Did you see where Marion Bonds signature is?

4 A. I assume that's his signature, yes.

5 Q. All right. Now, were you -- were you present when
6 there was a return to ■ Ball Park Road?

7 A. No.

8 Q. So you had nothing to do with any search warrant
9 that would have been applied for to search that
10 residence, correct?

11 A. After the defendants left that area, I left the
12 area also.

13 Q. Let me ask you this. Did you have prior knowledge
14 that Marion Bonds stayed at that ■ Ball Park Road
15 address?

16 A. Prior knowledge to when?

17 Q. Prior to the 17th?

18 A. No, I found out that morning.

19 Q. Before you arrived?

20 A. Yes.

21 Q. Who did you find out from?

22 A. Investigator Fraser, Investigator Chapman.

23 Q. And they told you that Marion Bonds was known to
24 stay at that address?

25 A. They worked that area. I don't primarily work

1 that area so they know the area and we went
2 through different locations along I guess the
3 trail where they found Mr. Bonds at that location.

4 Q. Okay. And why they thought he was there, you
5 don't know the answer to that question?

6 A. He obviously knows that location. I -- I don't
7 know why.

8 Q. Okay. You never spoke to Marion Bonds as part of
9 this investigation, correct?

10 A. Before I took Marion in to be arraigned?

11 Q. Before you did the whole thing, yeah?

12 A. At ■ Ball Park, I did ask him in the car, when he
13 was in the back of the civil deputy car, if he had
14 a statement.

15 Q. Okay, and he said no?

16 A. He refused to talk to me. I then mirandized him
17 there verbally.

18 Q. Did you ever ask him for his consent to enter ■
19 Ball Park?

20 A. No, I didn't.

21 Q. And to your knowledge, nobody did, correct?

22 A. Asked Mr. Bonds?

23 Q. Right.

24 A. I don't think anybody asked Mr. Bonds, he was in
25 the closet.

1 Q. Nobody asked Mr. Bonds what?

2 A. He was in the closet, I believe.

3 Q. Okay. So he was--but even after he's in the
4 closet, even after he's taken to the patrol car,
5 nobody asks though, do they?

6 A. Nobody asked, I believe, whoever owns the house or
7 the renter of the house. The person that resides
8 at that residence gave consent.

9 Q. So when the room is searched, where are you?

10 A. I was outside.

11 Q. The whole time?

12 A. Not the whole time, no. I did step in the house a
13 little later.

14 Q. When the officers searched the room and find the
15 jacket and the drugs, where is Mr. Bonds at that
16 time?

17 A. I can't tell you, sir. I wasn't in the room.

18 Q. Was he -- so you don't really know when the
19 officers entered the room?

20 A. I don't have an exact time frame, no.

21 Q. In relation to where Mr. Bonds was?

22 A. No.

23 Q. Do you know if they arrested him first, took him
24 into custody and then did the search?

25 A. I would assume so.

1 Q. So when he was in custody, was he in your patrol
2 vehicle or somebody else's?

3 A. He was in one of the other officer's patrol
4 vehicle.

5 -- Q. Okay. So it was after he was detained and in a
6 patrol vehicle, secured in a patrol vehicle, that
7 the officers continued the search?

8 A. I was outside---

9 Q. You're not sure?

10 A. Yeah, I'm not sure.

11 Q. All right.

12 MR. IAN DEYSACH: I don't have any more questions
13 for Officer Kelleher.

14 THE COURT: Solicitor, anything further?

15 MS. ANGIE TANNER: Yes, ma'am.

16 **CROSS EXAMINATION**

17 BY MS. TANNER:

18 Q. Investigator Kelleher, at the time entry is made
19 into the Ball Park Road residence, do you have
20 consent from the homeowner?

21 A. Yes.

22 Q. And that was who?

23 A. Mr. Lewis, better known as -- I know him as Old
24 School, that's how I know him.

25 Q. At the time you enter Ball Park Road residence, is

1 it your intention to arrest Marion Bonds or to
2 find him?

3 A. Yes, yes.

4 Q. And in fact, when you find him at Ball Park Road,
5 is he placed under arrest?

6 A. Yes.

7 Q. And where in the residence do you find him?

8 A. I believe Investigator Fraser located him in the
9 closet. I didn't go in there.

10 MS. ANGIE TANNER: No further questions.

11 MR. IAN DEYSACH: All right. Just a couple
12 follow-ups.

13 REDIRECT

14 BY MR. IAN DEYSACH:

15 Q. You say the homeowner, Richard Lewis, he is -- did
16 you know him to be the home and owner or just
17 somebody who lives there? Do you know that he
18 actually owns the home?

19 A. I don't know, sir.

20 Q. And you made sure you got consent from him because
21 you knew he lived there before you went in,
22 correct?

23 A. Once again, I believe that Investigator Fraser had
24 him fill out a Beaufort County Sheriff's office
25 consent to search warrant.

1 Q. You wouldn't have gone in except you had that
2 consent, correct?

3 A. Not necessarily.

4 Q. But you waited to get the consent before ---

5 A. You mean the actual form or consent?

6 Q. Consent from the -- consent?

7 A. I would have obtained the search warrant later. I
8 would basically secure the residents outside and
9 got a search warrant.

10 Q. If he didn't consent, you would have gotten a
11 search warrant?

12 A. Most likely.

13 Q. But because he consented---

14 A. I'm only assuming because that didn't happen. So
15 I--I'm assuming at this time.

16 Q. Let me you ask you this. When the officers
17 approached the house, there is no way anybody in
18 that house could escape without getting caught,
19 right? The officers surrounded the house?

20 A. Yes, sir.

21 Q. In fact, one person tried to get out and then went
22 back in?

23 A. Yes, sir.

24 Q. That wasn't Mr. Bonds?

25 A. No, I do not think so.

1 Q. You actually saw him slam the door -- slam the
2 window shut?

3 A. Yes.

4 Q. Were you aware that Officer Fraser had to -- well
5 this is going outside of what he's testified to.

6 MR. IAN DEYSACH: So that's all I have Your Honor.

7 THE COURT: Anything further?

8 MS. ANGIE TANNER: Nothing further.

9 THE COURT: You can step down.

10 MR. IAN DEYSACH: I got some more witnesses.

11 THE COURT: Okay.

12 MR. IAN DEYSACH: Officer Chapman.

13 THE COURT: Come on forward, Officer Chapman.

14 First being duly sworn,

15 **Brian Chapman** testified as follows:

16 THE COURT: Please give my Court Reporter your
17 name for the record.

18 THE WITNESS: Chapman, C-h-a-p-m-a-n.

19 THE COURT: Thank you, sir.

20 **DIRECT EXAMINATION**

21 BY MR. IAN DEYSACH:

22 Q. Do you have a copy of your report, Officer
23 Chapman?

24 A. I do, sir.

25 Q. Okay, with you?

1 A. Yes, sir.

2 Q. When you -- when you entered [REDACTED] Ball Park, it was
3 without a search warrant or an arrest warrant,
4 correct?

5 A. That's correct, sir.

6 Q. To your understanding, Investigator Fraser had
7 asked for consent from Richard Lewis to enter,
8 correct?

9 A. Correct.

10 Q. And you didn't enter until after that, at least,
11 verbal consent was obtained, correct?

12 A. Correct.

13 Q. Because there is a written consent that exist,
14 correct?

15 A. Correct.

16 Q. But you may not have waited until that was filled
17 out before you actually entered?

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

19 Q. So if you had not gotten his consent, you would
20 have applied for a search warrant, correct?

21 A. Most certainly, yes. We went with what was there,
22 he gave his consent.

23 Q. Okay. When you went to [REDACTED] Ball Park Road, you
24 were checking for the last known addresses for
25 Marion Bonds, correct?

1 A. Correct. The information we received where he
2 possibly could be.

3 Q. One of the residences you were provided was a
4 residence across from the Brown Medical Clinic on
5 Ball Park Road. You wrote that in your report,
6 correct, on page 105?

7 A. That's correct.

8 Q. And in fact, it was the alleged victim in the case
9 who let you know that Marion may be staying near
10 the Brown Medical Clinic, correct?

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

12 Q. And the Brown Medical Clinic is on Ball Park Road,
13 correct?

14 A. Yes, sir.

15 Q. And in fact it's directly across the street from
16 ■ Ball Park Road, correct?

17 A. Yes, sir.

18 Q. And when Mr. Holmes, the alleged victim, when he
19 told you about the clinic on Ball Park, a
20 residence near there, you knew right then that it
21 was Richard Lewis's house that should be checked,
22 correct?

23 A. I did not know who lived there at the time. I
24 knew where the clinic was and just from working
25 the area, I knew that there was a residence across

1 from there.

2 Q. Right. And we're talking about a neighborhood
3 though, correct, on Ball Park Road?

4 A. What type of neighborhood are you referring to?

5 Q. One in which peoples homes and yards are right
6 next to each other.

7 A. In most cases, they're--some of them on Ball Park
8 Road are spread out.

9 Q. But if you're talking about residences in the area
10 of Brown Medical Clinic, you're talking about a
11 number of different residences, aren't you?

12 A. There are several homes in that area, yes, sir.

13 Q. But you guys went straight to [REDACTED] correct?

14 A. Correct.

15 Q. And had Investigator Fraser told you that from
16 prior dealings, he knew that Marion had stayed
17 there?

18 A. I believe so. Yes, sir.

19 Q. All right. Now you said Richard Lewis is the
20 permanent resident there, do you know about how
21 old he is?

22 A. He's a middle-aged gentleman. I don't know his
23 exact age ---

24 Q. They call him Old School so he's a little bit
25 older than everybody else, right?

1 A. That's his nickname, I....

2 Q. Now you -- you were not present on the return trip
3 to ■ Ball Park Road, were you?

4 A. Not initially, no. But I did go there.

5 Q. But as far as this initial entry into ■ Ball Park
6 Road, you heard noise in the bedroom prior to
7 entering the house altogether, correct?

8 A. Yes, sir, we did.

9 Q. And you knew that that was the bedroom that Marion
10 stayed in when he stayed in Ball Park?

11 A. No, sir. I had no knowledge that Marion Bonds
12 actually stayed there. When we got there, we
13 heard the noise in the floor of the house.

14 Q. Okay. So it was Reggie telling you about the
15 clinic and Fraser's prior knowledge that led to
16 the address of ■

17 A. Yes, sir.

18 Q. When you entered the house, who was the first to
19 go to the bedroom?

20 A. That would be Sargent Fraser. We made our way in
21 that--going that direction.

22 Q. Okay. So when you enter, because you heard the
23 noise coming from there, that's the room that you
24 went to first?

25 A. Correct.

1 Q. Okay. Was Fraser able -- was Officer Fraser able
2 to enter that room immediately?

3 A. I did not see him immediately. We encountered an
4 individual coming out of the bathroom.

5 Q. You encountered that individual or both of you
6 guys did?

7 A. We both did. Like I said, Sargent Fraser was in
8 front of myself, and I was behind him, and we
9 encountered the one individual coming out of the
10 bathroom. I then took custody of that person and
11 that was actually in the living room portion.

12 Q. And that person was Larry Holmes?

13 A. Yes, sir. I believe that's who that was.

14 Q. So you take that person out of the house
15 altogether or do you keep him in the house?

16 A. No, sir. I secured him in handcuffs and placed
17 him on the ground.

18 Q. And so while this happens, Investigator Fraser is
19 in a place where you can't see him?

20 A. He's just around the corner. I can see where he's
21 going, but I can't physically see him.

22 Q. Did he immediately enter the room?

23 A. I--again I didn't see him. He was around the
24 corner.

25 Q. Did you hear him shouting commands?

1 A. I did. I heard him give verbal commands for
2 people to come out of the bedroom.

3 Q. Who did he come out of the bedroom with?

4 A. I believe the first person who came out was
5 another individual, not Mr. Holmes.

6 Q. Mr. Thomas, correct?

7 A. Yes, sir. It was Jason Thomas.

8 Q. And when -- and then after Mr. Thomas is secured,
9 Fraser goes back to the room?

10 A. No, sir. I had the first individual down on the
11 ground. Mr. Thomas came out. I had him at
12 gunpoint. Had him lay on the ground just outside
13 of the hallway.

14 Q. Where is Mr. Bonds when you first see him?

15 A. He's being escorted out by Sargent Fraser.

16 Q. So you never see him in that bedroom at all, just
17 once he's emerged?

18 A. Correct.

19 Q. But you heard Mr. Fraser shouting the commands for
20 Mr. Bonds to come out, correct?

21 A. I didn't know it at the time that it was Mr.
22 Bonds. I just heard him give a verbal commands to
23 ---

24 Q. To somebody.

25 A. -- to somebody. Right. Yes, sir.

1 Q. Did you -- what did you do with the subject's
2 next, all three of them?

3 A. The other two individuals were placed in handcuffs
4 and then they were escorted out -- I believe out
5 of the house.

6 Q. So all three have been taken out of the house,
7 correct?

8 A. Yes, sir.

9 Q. And there's no way they can get back into the
10 house, correct, because they're secured?

11 A. Yes, sir.

12 Q. Did you participate -- and they end up in patrol
13 vehicles, don't they?

14 A. Yes, sir, armed patrol vehicle.

15 Q. Did you participate in the search?

16 A. Yes, sir, I did.

17 Q. Where were the individuals when the search took
18 place, locked in the patrol vehicles?

19 A. The individuals that we removed from the house?

20 Q. Yes.

21 A. Yes, they were in patrol vehicles.

22 Q. And where was Mr. Lewis?

23 A. I'm not exactly sure where Mr. Lewis was. I
24 believe he was still outside the house. He stayed
25 outside the entire time.

1 Q. And was there anybody else in the house, when you
2 guys arrived?

3 A. There was a black female. She was probably about
4 the same age as Mr. Lewis.

5 Q. And when the search took place, were any of those
6 individuals inside the house?

7 A. No, sir.

8 Q. Did you -- did you notice a change of clothes in
9 that room?

10 A. I did notice some clothing items. I don't know if
11 they would be a change of clothing. There were
12 some clothing on his bed.

13 Q. Multiple pairs of jeans, correct?

14 A. I don't recall how many pairs of jeans were there,
15 sir.

16 Q. And Mr. Bonds was wearing clothes when he was
17 arrested, correct?

18 A. Yes, sir.

19 MR. IAN DEYSACH: I have pre-marked these
20 for the Defense for identification for the suppression
21 hearing. I would like to approach the witness and show
22 them to him. I'm showing him what's been marked
23 Defense -- Defendant's Exhibit No. 1. I guess I should
24 show them to the Solicitor first, although I did get
25 them from her. There nothing

1 BY MR. IAN DEYSACH:

2 Q. I'm showing you what's marked as No. 1. Can you
3 tell me what that is?

4 A. Yes, sir. That appears to be an unknown brand of
5 steam iron. Looks like GE, by the emblem. A bag,
6 and I think Vaseline.

7 Q. So when the room is searched you guys take
8 pictures, correct?

9 A. Yes, sir.

10 Q. And that's one of the pictures that you took,
11 correct?

12 A. Yes, sir.

13 Q. And what you see in that picture is a steam iron
14 and some lotion, correct?

15 A. Correct.

16 Q. I'm going to show you No. 2. Can you tell us what
17 that is and what's in the picture?

18 A. You can also see the bottle of Vaseline and the
19 blackened colored hat, and at least one pair of
20 jeans.

21 Q. And No. 3?

22 A. This appears to be a night-stand with a container
23 of, possibly, Axe deodorant and then an alarm
24 clock.

25 Q. When you -- I'm going to show you six and seven at

1 the same time. I'm going to ask you to tell the
2 Court what they are?

3 A. Number six is a picture of inside the closet,
4 appears to be at least one pair of jeans. I can't
5 make out what the other is. And then Number seven
6 is a pair of jeans also.

7 Q. These are separate pairs of jeans from the ones we
8 saw on the dresser in the first place, correct?

9 A. To the best of my knowledge, yes.

10 Q. And these jeans were found where?

11 A. That was in-between the mattress and box spring.

12 Q. Do you know the purpose of somebody causing
13 creases in their jeans like that?

14 A. No. I've never seen that done before.

15 Q. Okay. So you returned later in the afternoon,
16 correct?

17 A. Yes, sir.

18 Q. And when you returned, where was Richard Lewis in
19 relation to his residence, inside or outside?

20 A. When I got there?

21 Q. Uh-huh?

22 A. Mr. Lewis was in the back of a patrol vehicle.

23 Q. Was Officer Fraser there?

24 A. Yes, sir. I believe we rode together, if I'm not
25 mistaken.

1 Q. Okay. All right. Did you have a search warrant
2 with you when you arrived there?

3 A. I do not. No, sir.

4 Q. Did anybody?

5 A. I believe one was being sought by the Drug Task
6 Force but other than that, I don't know. I did
7 not have one with me.

8 Q. And neither did Investigator Fraser to your
9 knowledge?

10 A. No, sir.

11 Q. While you were there, did you enter the house
12 without a search warrant?

13 A. Me?

14 Q. Correct.

15 A. I believe I went in with Mr. Lewis and Sargent
16 Fraser.

17 Q. So the three of you entered the room of the house
18 at that point?

19 A. He -- he told us where the items were located.

20 Q. He let you inside the house, correct?

21 A. Correct.

22 Q. And he pointed out items that appear to look like
23 crack, right?

24 A. Yes, sir.

25 Q. And the only reason that you went in there at that

1 time is because you had Mr. Lewis's consent,
2 correct?

3 A. I went in there with my officer for officer
4 safety, Sargent Fraser. I can't tell you what
5 their conversation was, I wasn't there.

6 Q. All right.

7 A. Sargent Fraser asked me to go with him back inside
8 the house.

9 Q. You saw the alleged crack? Did you see what was
10 pointed out, crack?

11 A. Yes, sir.

12 Q. Was it in the bathroom or in the kitchen?

13 A. I believe it was in the bathroom under the sink.

14 Q. Under the sink in the bathroom?

15 A. Yes, sir.

16 Q. After you saw the crack, what did you do?

17 A. I went back out of the house.

18 Q. Did you pick up the crack?

19 A. No, sir. I did not.

20 Q. Did you take it into evidence?

21 A. I did not.

22 Q. You and Investigator Fraser just basically left it
23 sitting there?

24 A. Yes, sir. The house was secured, yes.

25 Q. And so when you got out of the house, did you tell

1 Officer Rice, who was applying for the search
2 warrant, that you actually seen the crack?

3 A. I did not. No, sir.

4 Q. Did you hear Investigator Fraser do that?

5 A. There was a lot of stuff going on. I couldn't
6 make out Mr. Fraser -- I couldn't exactly make out
7 what he said.

8 Q. So you didn't hear him having conversation with
9 somebody else or you're not -- you don't remember?

10 A. I don't remember.

11 Q. Now, you're the one who listened to -- who
12 listened to the phone calls that were being placed
13 from the detention center?

14 A. Yes, sir.

15 Q. And you wrote in your report that when those phone
16 calls are placed, the caller gets a warning that
17 the phone calls are recorded?

18 A. Yes, sir. I believe that's also posted on the
19 phones.

20 Q. Have you seen it posted on the phone?

21 A. I -- I personally haven't, no, sir.

22 Q. And you have never placed a phone call from that
23 phone, have you?

24 A. No, sir. I've never been incarcerated there to
25 make a phone call.

1 Q. You never had to make a phone call while you were
2 there?

3 A. Correct.

4 Q. And so you've never actually heard that prompt
5 from the automatic phone system, have you?

6 A. From inside the jail?

7 Q. Correct.

8 A. No, sir. When you -- when you listen to the
9 system it tells us from start to finish. It tells
10 them that your phone calls are being recorded.

11 Q. So you've heard that just not from the same phone
12 that somebody would have to call from in jail?

13 A. Correct.

14 Q. Those phone calls that you listened to were at
15 14:05 o'clock, correct?

16 A. I don't recall the actual time but it...

17 Q. Did you note it in your report on page 35?

18 A. Yes, sir, it is. It says at 14:05 that was the
19 phone number the call was placed to.

20 Q. And then do you see, half way down that, another
21 phone call at 14:11, right above the next summary?

22 A. Yes, sir.

23 Q. Okay.

24 A. About the second phone call.

25 Q. And then a third phone call that takes place again

1 shortly after the second one?

2 A. Correct.

3 Q. And so they all--when you say 14:05 and 14:11,
4 we're talking about 2:05 and 2:11?

5 A. Yes, sir. The 14:05 is just military time.

6 Q. Just like -- so at this point you have know way of
7 knowing whether or not an arrest warrant has been
8 served on Marion Bonds?

9 A. No, sir.

10 MR. IAN DEYSACH: I don't have anything
11 further for Investigator Chapman. I would call
12 Investigator Fraser next but ---

13 MS. ANGIE TANNER: I have a couple of
14 questions.

15 MR. DEYSACH: Okay. I'm sorry. Out of order.

16 THE COURT: That's okay.

17 CROSS EXAMINATION

18 BY MS. ANGIE TANNER:

19 Q. Investigator Chapman, prior to going into Ball
20 Park Road residence, did you check other
21 residences looking for Mr. Bonds?

22 A. Yes, ma'am.

23 Q. And where did you go?

24 A. We went to Marion Bonds Senior's house and then we
25 also went to Marion Bonds' grandmother's house.

1 Q. And did you have information that those were
2 places he also stayed?

3 A. Yes, ma'am.

4 Q. Now when you arrive at Ball Park Road, can you
5 kind of describe for the Court -- what happens
6 first? You guys knock on the door and then what?
7 Who comes to the door?

8 A. Well, when we first got there, it was Sargent
9 Fraser, myself, Investigator Kelleher. We got
10 there and we started walking around what would be
11 the right side of the trailer and as we were
12 walking by we could hear noise in the room. It
13 sound like shuffling, people moving around in
14 there. Mr. Lewis uses the back door as his front
15 door. We went, I believe if I'm not mistaken,
16 Corporal Kelleher stayed by the corner where we
17 heard the noises. I went about half way up to the
18 door and then Sargent Fraser opened the door and
19 made contact with Mr. Lewis.

20 Q. And were you able to determine if Mr. Lewis was
21 the primary resident?

22 A. Yeah. Sargent Fraser knew that Mr. Lewis had
23 lived there and then he said he did stay there.

24 Q. Now when you guys actually get consent and enter
25 the residence, where is Mr. Thomas taken from?

1 A. I believe it's from the same room. Again, I was
2 securing Mr. -- Mr. Holmes on the ground at the
3 time and then Mr. Thomas came around the corner.
4 I put him immediately at gunpoint and pushed him
5 on the ground.

6 Q. And did you get information from the other
7 investigators that he attempted to leave through a
8 window in the bedroom?

9 A. Yes, ma'am, after we secured everyone.

10 Q. And Mr. Deysach showed you photographs of the
11 bedroom. In this bedroom, do you locate any
12 underwear?

13 A. I don't recall any underwear?

14 Q. How about shirts?

15 A. I don't recall any shirts.

16 Q. So you got a couple pairs of jeans, some lotion,
17 and some deodorant?

18 A. Right.

19 MS. ANGIE TANNER: No further questions.

20 THE COURT: Anything further, Mr. Deysach?

21 MR. IAN DEYSACH: Just briefly, Your Honor. I
22 haven't marked this one yet. I will mark it. It's
23 Defense ID No. 9.

24 **REDIRECT**

25 BY MR. IAN DEYSACH:

1 Q. I'm actually going to show you what is marked as
2 Defendant's Exhibit No. 4. Do you see a bag in
3 that?

4 A. I see a large clear bag, yes, sir.

5 Q. Does that appear to be a bag of clothes?

6 A. From this picture, I couldn't tell you what's in
7 there, sir.

8 Q. Here's No. 5. Can you tell from that picture what
9 is in there?

10 A. Again, it's a--it's a bag. I can't tell you what
11 is in the bag, sir.

12 Q. The plaid material?

13 A. Let me look it up.

14 Q. Back to No. 4, does the plaid material look like
15 underpants there?

16 A. I--again, I can't tell you if that's underwear,
17 that's pants, or if that's a shirt or jacket. I
18 don't know. I can't tell you.

19 Q. Did you look in the--

20 MR. IAN DEYSACH: I'll leave these up here,
21 Your Honor, if you want to...

22 Q. Did you look in the bathroom?

23 A. Personally, I did not look in the bathroom. I
24 don't believe so.

25 Q. So you wouldn't have seen Mr. Bonds' toothbrush if

1 it were there?

2 A. I -- I -- If I didn't go in there, I wouldn't have
3 seen it, sir.

4 MR. IAN DEYSACH: I don't have anything
5 further Your Honor.

6 THE COURT: Anything further Solicitor?

7 MS. ANGIE TANNER: Nothing further, Your
8 Honor. All right. Please step down, sir.

9 MR. IAN DEYSACH: I would call Fraser if I was
10 going to do it in the order I've asked but Officer Rice
11 is here. I know Fraser, Officer Fraser, is otherwise
12 engaged. I can though go ahead and ask Investigator
13 Rice some questions.

14 MS. ANGIE TANNER: I need a restroom break.

15 THE COURT: Five minute break, absolutely.
16 Now, we're going to go ahead and change that to a ten
17 minute break.

18 (Whereupon the Court took a break at 3:17 P.M.)

19 (Whereupon Court resumed at 3:29 P.M.)

20 THE BAILIFF: All rise.

21 THE COURT: Please be seated.

22 MS. TANNER: Investigator Fraser is on the stand
23 in the other courtroom.

24 THE COURT: He can be in two places at one time.
25 I understand. You can call Investigator Rice.

1 MR. DEYSACH: Certainly, Your Honor.

2 THE COURT: Come on, Investigator Rice.

3 First being duly sworn,

4 **ANDREW RICE** testified as follows:

5 THE COURT: I assume your last name is spelled R-
6 I-C-E?

7 THE WITNESS: Yes, ma'am.

8 THE COURT: All right. Whenever you are ready,
9 Mr. Deysach.

10 **DIRECT EXAMINATION**

11 BY MR. IAN DEYSACH:

12 Q. Good afternoon, Investigator Rice. When you got
13 invited to ■ Ball Park Road by Investigator
14 Fraser or Kelleher after they found drugs at that
15 residence; is that correct?

16 A. Yes.

17 Q. Because you're a member of the Drug Task Force,
18 right?

19 A. Yes, sir.

20 Q. And so because there are drugs, they thought that
21 maybe this was the case that you should help them
22 on?

23 A. Yes, sir.

24 Q. And so when they find the drugs, they actually ask
25 you to take custody of them?

1 A. Yes, sir.

2 Q. So as part of that -- what time was it when you
3 showed up at ■ Ball Park?

4 A. The first time around, I never actually made it
5 all the way there. I was coming from a pretty
6 good way. I met them at their office to receive
7 the drugs.

8 Q. Okay. So you didn't even come to Ball Park. You
9 came to investigations?

10 A. Yes, sir.

11 Q. Here across Ribaut Road from the courthouse?

12 A. Yes.

13 Q. All right. And they had in their custody drugs
14 they had seized?

15 A. Yes.

16 Q. Handed them off to you, correct?

17 A. Yes.

18 Q. You developed a report as part of your work on
19 this case, right?

20 A. Yes, sir.

21 Q. I mean, you developed a couple of reports, didn't
22 you?

23 A. Yes, sir.

24 Q. But you didn't develop the report based on
25 receiving those drugs from the call you got from

1 Investigators Fraser and Chapman, correct?

2 A. Yes.

3 Q. Do you have a copy of it?

4 A. Not with me, no, sir.

5 Q. Do you mind if I hand you a copy of it?

6 A. No, sir.

7 Q. That's one of your reports, correct?

8 A. Yes, sir.

9 Q. On the third page of your report, you indicate
10 that statements of the homeowner, Richard Lewis,
11 indicated that Bonds often stayed inside of the
12 bedroom where he was arrested, correct?

13 A. Yes.

14 Q. So really the only place that he would have gotten
15 that information was from Investigators Fraser and
16 Chapman?

17 A. I do not recall.

18 Q. Had you talked to the homeowner at this point?

19 A. I believe I had but I don't remember.

20 Q. So you're not sure if the homeowner told you that
21 Marion Bonds often stayed in that bedroom or if
22 one of the other officers told you that?

23 A. I believe I heard it from both places that he had
24 stayed there off and on.

25 Q. You wrote often, correct?

1 A. Yes, sir.

2 Q. Now you also were the one who applied for the
3 search warrant, for the later search in the day,
4 at Ball Park Road, correct?

5 A. Yes, sir.

6 Q. You applied for it and you executed it, correct?

7 A. Yes, sir.

8 Q. So in order to get a search warrant, you have to
9 swear an affidavit out to the Magistrate, correct?

10 A. Yes, sir.

11 Q. And you have to put the reasons that you believe
12 that the property sought is on the subject
13 premises, correct?

14 A. Yes, sir.

15 Q. And the property sought was drugs, correct?

16 A. Yes, sir.

17 Q. And other evidence of drugs and drug dealing?

18 A. Anything of a drug nature, illegal drugs, ledgers,
19 and also weapons were being sought.

20 Q. Anything that could possibly be connected with
21 drugs would be covered by the search warrant,
22 correct?

23 A. Yes, sir.

24 Q. All right. One of -- now you knew that the room
25 had already been searched, correct?

- 1 A. Yes, sir.
- 2 Q. And you also knew that no guns were found in that
3 room, right?
- 4 A. Yes.
- 5 Q. As part of your reason for the belief that drugs
6 would be on that premises was -- one of the reason
7 was that you found drugs -- drugs had been found
8 earlier that day, correct?
- 9 A. Yes, sir.
- 10 Q. That's number one that an estimated 66.4 grams of
11 crack had been found there earlier that day?
- 12 A. Yes.
- 13 Q. Number two was that -- do you have a copy of the
14 search warrant?
- 15 A. Not with me, no, sir.
- 16 Q. Okay. I'm going to hand this to you. Is that a
17 copy of your search warrant?
- 18 A. Yes.
- 19 Q. Number two was further investigation revealed an
20 additional quantity of suspected crack, right?
21 That's how number two starts?
- 22 A. Yes, sir.
- 23 Q. But you never swore, to the Magistrate, what that
24 further investigation was?
- 25 A. No, sir.

1 Q. Did you know what it was?

2 A. Yes, sir. I knew what it was.

3 Q. What was -- was it the phone calls?

4 A. The phone calls placed from Mr. Bonds to Mr.
5 Lewis.

6 Q. Okay. Now when you applied for this right to
7 search, the second quantity of drugs had already
8 been located in the house, correct?

9 A. As I was applying for the search warrant, I don't
10 believe it had. I believe that it was just the
11 phone call saying that it was there.

12 Q. In number two, does it go on to say that Lewis
13 with the benefit of Miranda admitted to hiding the
14 suspected crack under the kitchen sink and pointed
15 it out to Investigator Fraser?

16 A. Yes, it does. I apologize.

17 Q. Okay. So the drugs that are seized pursuant to
18 the search warrant had already been visually seen
19 by one of the officers in there?

20 A. Yes.

21 Q. And number three is kind of a boiler plate
22 language that you put in pretty much all the
23 search warrants that you apply for?

24 A. Yes, sir, if it applies.

25 Q. If there's nothing specific to [REDACTED] Ball Park Road

1 other than to list that address again because
2 that's the premises to be searched?

3 A. Yes, sir.

4 Q. So when you arrived, you are -- you served the
5 search warrant. You executed the search warrant?

6 A. Yes, sir.

7 Q. Would you say you're in charge of executing the
8 search warrant?

9 A. In a -- in a way, yes.

10 Q. Is somebody else in charge?

11 A. There is a supervisor that's present but you are
12 the case officer per se that would be able to call
13 the shots as we call it.

14 Q. Okay. So if anybody needed any shots called,
15 they'd come to you?

16 A. Yes.

17 Q. And you develop a report as a result of this
18 activity of executing the search warrant, correct?

19 A. Yes.

20 Q. And one of the things you do is assign --
21 different tasks are assigned to different people,
22 correct?

23 A. Yes.

24 Q. And somebody was assigned the task of taking video
25 and pictures of the execution of the search

1 warrant?

2 A. Yes, sir.

3 Q. Do you know who that was?

4 A. It was Bluffton police department's Detective
5 Mitchell.

6 Q. Did you ever -- what happened to the video?

7 A. I'm not sure. I don't know -- know what happened
8 to it.

9 Q. Do you know a video was taken?

10 A. Yes, sir, it was. I witnessed it. I observed him
11 videoing it.

12 Q. But to this day, you have no idea what happened to
13 that video?

14 A. No, sir.

15 Q. Were pictures taken?

16 A. Yes.

17 Q. Who took the pictures?

18 A. The same, Detective Mitchell.

19 Q. Those pictures have been recovered?

20 A. Yes, sir.

21 Q. You don't have the video but you do have the
22 pictures?

23 A. Yes.

24 Q. Now who is it that located the suspected crack
25 cocaine? Do you know the answer to that question?

1 A. It would be ultimately Investigator Fraser to
2 begin with but then it was recovered by Detective
3 Mitchell and myself.

4 Q. So you fill out a search warrant inventory,
5 correct?

6 A. Yes, sir.

7 Q. And that was everything that you find that you are
8 going to seize as a result of the search warrant?

9 A. Yes, sir.

10 Q. Do you have a copy of that?

11 A. No, sir, not with me.

12 Q. It's a little light copy. But can you tell The
13 Court what number one is?

14 A. It's suspected crack cocaine that was located in
15 the bathroom cabinet by Detective Mitchell at
16 17:05 hours.

17 Q. Okay. But for a couple other drug related things,
18 everything is found by Detective Mitchell pursuant
19 to the search warrant, correct?

20 A. Yes, sir.

21 Q. And Detective Mitchell is no longer with the DTF,
22 the Drug Task Force?

23 A. No, sir.

24 Q. You knew he was fired for lying or you didn't know
25 that?

1 A. I knew he was fired.

2 Q. You didn't know why?

3 A. I don't know the details of it. No, sir.

4 Q. You didn't know it was for lying?

5 A. No. I didn't know it was for lying.

6 Q. So if he locates the drugs, what does he do with
7 them?

8 A. He would turn them over to me as the case officer.

9 Q. So he takes them from the bathroom and gives them
10 to you?

11 A. Yes.

12 Q. Were you in the bathroom when this happened?

13 A. Yes.

14 Q. Okay. So you're just kind of over his shoulder?

15 A. Yes. It was the most important piece of evidence
16 that needed to be collected. It was also, if you
17 could see the photograph, in pieces. I actually
18 held the evidence bag open as he -- and we kind of
19 use the card to scrape up the remnants and pieces
20 to put into the bag and without getting it all
21 over our hands.

22 Q. I know I'm jumping around a little bit. Back to
23 the search warrant. Number one reasons for
24 affiants belief that property sought is on the
25 premises.

1 A. Okay.

2 Q. You're talking about the 66.4 grams of suspected
3 crack cocaine that was found that morning at
4 about 10:10, correct?

5 A. Yes.

6 Q. And the -- you swear to the Magistrate that the
7 Investigators, J. Fraser and B. Chapman, obtained
8 consent to search the residence in an attempt to
9 recover evidence of this shooting?

10 A. Yes.

11 Q. That the reason they went in there was because of
12 consent?

13 A. Yes.

14 Q. And that's information you got from them, correct?

15 A. Yes, sir.

16 MR. IAN DEYSACH: I don't have any further
17 questions, Your Honor.

18 THE COURT: Solicitor?

19 MS. ANGIE TANNER: I don't have any questions,
20 Your Honor.

21 THE COURT: You may step down, sir.

22 MR. IAN DEYSACH: My next witness will be
23 Investigator Fraser.

24 THE COURT: Come forward, sir.

25 First being duly sworn,

1 JEREMIAH FRASER, testified as follows:

2 DIRECT EXAMINATION

3 BY MR. IAN DEYSACH:

4 Q. Did you spell your name for the record? Will you
5 please spell your name for the record, state your
6 name and spell your name?

7 A. Investigator Jeremiah Fraser, F-r-a-s-e-r.

8 Q. Good afternoon, Investigator Fraser. We're here
9 talking about February 17, 2010, the investigation
10 surrounding Marion Bonds. You got involved in
11 this case when you interviewed the alleged victim,
12 Reggie Holmes, at the hospital, correct?

13 A. Yes, I interviewed the victim.

14 Q. And it was during that interview that he did tell
15 you that Marion Bonds and somebody named Jason had
16 done this, correct?

17 A. Yes, sir.

18 Q. When you left the hospital, where did you go?

19 A. I met with Investigator Kelleher who was on scene,
20 I believe. I began helping him.

21 Q. On Ettings White Road?

22 A. I think we met and then went Ettings White Road.
23 I don't recall specifically how we met up but
24 that's what we did.

25 Q. Now when you spoke with Mr. Holmes, he told you

1 that Marion might be in the area of the Brown
2 Clinic?

3 A. Yes, sir. That was one of the places, yes.

4 Q. Did you check any of the other places that you
5 thought he might have been?

6 A. I did.

7 Q. And was he there?

8 A. At any of the other places?.

9 Q. Correct?

10 A. No.

11 Q. Did you enter any of those other places?

12 A. Yes, sir.

13 Q. Which places did you go into?

14 A. His great-aunt, I believe, his father, both of
15 those were consensual. We went to Jason Taylor's
16 mother's house. Then we went to Mr. Lewis' house.

17 Q. So you're talking about Jason Thomas, I think?

18 A. Thomas. I'm sorry.

19 Q. Now when you went to these places, were you with
20 Investigator Kelleher?

21 A. Yes and Investigator Chapman.

22 Q. So all three of you went to Marion's dad's house?

23 A. I believe so, yes, sir.

24 Q. Did you see a room in his house that looked like
25 it was Marion's?

1 A. I couldn't be sure.

2 Q. Did his dad tell you that he hadn't seen Marion
3 lately?

4 A. Yes, he did.

5 Q. What about great-aunt, did you see a place for
6 Marion to sleep in that house, Marion's room?

7 A. I mean, they could of, it was hard to tell. She
8 said that he did stay there from time to time.

9 Q. Okay.

10 A. I couldn't tell which room specifically.

11 Q. I got you. So by the time you've gone to the
12 scene and gone to these two places, there were
13 actually three places counting Jason Thomas's
14 mom's house, is it about ten o'clock by the time
15 you make it to Richard Lewis' house?

16 A. Sounds right, I couldn't tell you for sure.

17 Q. Would you say that Richard Lewis' house is about
18 two and a half miles from the Ettings White
19 address?

20 A. Yeah. Yes, sir, I believe.

21 Q. At the time, did the victim say that the people
22 who had shot him got away in a car?

23 A. I don't recall.

24 Q. Did he tell you they got away on foot?

25 A. Again, I don't ---

1 Q. Not sure. When you end up at ■ Ball Park Road,
2 you do not have an arrest warrant or a search
3 warrant, correct?

4 A. No, sir.

5 Q. And the information you've gotten from Reggie was
6 that the house was near the clinic, right?

7 A. Yes, sir.

8 Q. And there's lots of houses near the clinic, right?

9 A. Yes, sir.

10 Q. But you knew to go to ■ Ball Park Road, Richard
11 Lewis' house, correct?

12 A. Yes, sir.

13 Q. That's because from previous dealings, you know
14 that Marion occasionally stayed with Old School in
15 the past who is Richard Lewis at ■ Ball Park
16 Road?

17 A. Yes, sir.

18 Q. And that's the place that happens to be right
19 across from the clinic?

20 A. Yes, sir.

21 Q. So you had your prior knowledge plus what Reggie
22 had told you already, before you ended up at ■
23 Ball Park Road?

24 A. My prior knowledge of...

25 Q. Any of your previous dealings ever result in you

1 knowing where Marion occasionally stayed?

2 A. Yes, sir.

3 Q. When you approach the residence you heard movement
4 in the bedroom nearest to the driveway, correct?

5 A. Yes, sir.

6 Q. We're talking about a trailer here. I mean to say
7 it's perfectly rectangular, right?

8 A. Yes, sir.

9 Q. And it's not that big from front to back?

10 A. Yes, sir.

11 Q. And when you hear this movement, you know that
12 that's the bedroom Marion occupied when he stayed
13 with Richard?

14 A. I -- I don't know that I know that.

15 Q. Did you write that in your report?

16 A. I may -- I may have. I don't recall.

17 Q. Would you have written that in your report if it
18 weren't true?

19 A. No, I wouldn't of.

20 Q. Do you have a copy of your report?

21 A. Not in front of me, I don't.

22 Q. Okay. I'll hand you one?

23 A. Thanks.

24 Q. You're welcome.

25 A. Which page am I looking at?

- 1 Q. Page 304.
- 2 A. Yes, sir.
- 3 Q. About four lines down.
- 4 A. Yes, sir. I see it. That's correct.
- 5 Q. That this is the bedroom Marion occupied when he
- 6 stayed with Richard?
- 7 A. Yes, sir.
- 8 Q. And that's something you would know from your
- 9 previous dealings not from what Reggie told you?
- 10 A. Right.
- 11 Q. Richard tells you that Marion still comes by the
- 12 house and stays with him?
- 13 A. Occasionally.
- 14 Q. He told you that that day?
- 15 A. Yes, he did.
- 16 Q. That the last time Marion had stayed the night was
- 17 about a week ago?
- 18 A. Yes, sir.
- 19 Q. And that when Marion stayed he stayed in that back
- 20 bedroom where he was located, correct?
- 21 A. Yes, sir.
- 22 Q. All right. You took the pictures -- let me back
- 23 up. You're the one who obtains consent from
- 24 Richard Lewis to enter ■■■ Ball Park, correct?
- 25 A. Yes, sir.

1 Q. And did you get written consent before you went in
2 or just verbal and then later written?

3 A. I think we got verbal and then we went in.

4 Q. And when you went in, did you go straight to that
5 bedroom?

6 A. Yes, sir.

7 Q. Was it open?

8 A. When I came in, someone came out of the bathroom.
9 Right there I had to deal with him immediately.

10 That's when I heard the bedroom window slam open.

11 And the officers that I had called in started
12 screaming "show me your hands", "Sheriff's office,
13 show me your hand".

14 Q. So you enter. You see somebody coming out of the
15 bathroom. Is this the same bathroom where the
16 drugs were later found?

17 A. Yes, sir.

18 Q. That person was Larry Holmes?

19 A. Yes, I believe so.

20 Q. Investigator Chapman is with you, right?

21 A. Yes, sir.

22 Q. When you encountered Mr. Holmes, were you able to
23 see in the bedroom that you're headed towards?

24 A. When I encounter Mr. Holmes?

25 Q. Yes.

- 1 A. No. The door was shut.
- 2 Q. Door was shut. And then you hear the opening of
- 3 the window?
- 4 A. Yes, sir. I heard it slamming.
- 5 Q. You heard yelling from a police officer outside?
- 6 A. Yes, sir.
- 7 Q. And you heard the slamming shut of the window
- 8 after that?
- 9 A. Yes, sir.
- 10 Q. So from that you could tell that the person had
- 11 not gone outside that they had stayed in?
- 12 A. Yes, sir.
- 13 Q. And you don't know which that person was?
- 14 A. No, sir.
- 15 Q. So when you go to the door, are you just able to
- 16 walk in?
- 17 A. After I pushed the door open. Yes, sir.
- 18 Q. Did you force the door open?
- 19 A. Yes, sir.
- 20 Q. So you had to force the door open?
- 21 A. Yes, sir. It was an immediate reaction because of
- 22 what I had heard. And because I knew it was a
- 23 good possibility that they were still armed.
- 24 Q. Well, were they armed?
- 25 A. No, sir.

1 Q. Did you find guns in the room?

2 A. No, sir. But at the time I didn't know that.

3 Q. And so you didn't ask if you could enter the room?

4 A. Correct.

5 Q. The door was shut and you had to force your way
6 in?

7 A. Yes, sir. But I -- yes, sir.

8 Q. And when you force the door open, you encounter
9 Mr. Thomas first?

10 A. Yes, sir.

11 Q. Do you see him hitting on top of the bed?

12 A. No. He's coming back at the door at me.

13 Q. And what you do to him?

14 A. I bring him out of the room and give him to
15 Investigator Chapman.

16 Q. Did you have to use force or was he compliant with
17 your command?

18 A. He was compliant.

19 Q. You had the gun drawn?

20 A. Yes, sir.

21 Q. And you were wearing a bullet-proofed vest?

22 A. Yes, sir.

23 Q. You said you passed him off to Investigator
24 Chapman?

25 A. Yes, I believe so.

1 Q. And once he is secured by Investigator Chapman
2 then you turn your focus back to the door to the
3 bedroom?

4 A. Yes, sir.

5 Q. And do you actually enter the bedroom?

6 A. No, sir.

7 Q. Do you shout commands?

8 A. Yes, sir. I did.

9 Q. And obviously this is not playing around time that
10 you're fairly forceful with these commands that
11 you're shouting. And as a result you see hands
12 coming out from the closet?

13 A. Yes, the floor. Yes, sir

14 Q. On the floor? I want to -- this is a rough sketch
15 of the residence and I don't know if it would be
16 helpful or not but I'm going to pass you a copy.
17 We are talking about bedroom one, correct, or I
18 don't know if you can tell? I know you didn't
19 make this sketch.

20 A. Well, it's missing a bathroom.

21 Q. Where is the missing bathroom?

22 A. There's two listed as bedroom one.

23 Q. There's bathroom one and then bedroom one.

24 A. Sorry. Yeah, it would be bedroom one, I think.

25 Q. So where is the closet in bedroom one? Do you

1 know? Can you remember?

2 A. Yes, sir. As soon as you come in the door it's
3 right -- it's directly in front you.

4 Q. So you're walking straight into the closet?

5 A. Yes, sir. The door is facing -- if I'm walking in
6 this way, the door is facing out that way.

7 Q. The hinge on the closet door?

8 A. Yes, sir.

9 Q. Pulls outward. Would the two doors hit if they
10 were both open?

11 A. No, sir.

12 Q. There's enough space there?

13 A. Yes, sir. But the closet door swings the other
14 way, I remember.

15 Q. When you first entered and got Thomas out of
16 there, the closet door was closed?

17 A. No, it wasn't.

18 Q. Could you see in the closet?

19 A. No, I couldn't. I didn't know he was in the
20 closet until his hands came out of the closet.

21 Q. And so he just comes out of the closet but you
22 can't see into the closet you can just see that's
23 where he's coming from?

24 A. That's where his hands are.

25 Q. And then the rest of his body follows?

1 A. He came -- I came -- when his hands came out, I
2 could see his hands. That's why I entered the
3 room. That's when we went in and took custody of
4 him.

5 Q. Did he come out to you?

6 A. Out of the closet? Yes, sir.

7 Q. And so he comes out of the closet then what did
8 you do?

9 A. I took him into custody.

10 Q. When you took him into custody, where did you take
11 him, outside?

12 A. Into the living. It was still, I mean, we didn't
13 know if anybody else was around. It was still a
14 tense situation at that point.

15 Q. Was there anybody else in that bedroom?

16 A. No, sir.

17 Q. Did you -- then -- at some point you take Jason,
18 and Marion, and Larry, and Richard, they all exit
19 the home, correct?

20 A. Yes, sir.

21 Q. And there's another female guest that's there?

22 A. Yes, sir.

23 Q. And so before you search, you take everybody out
24 of the house?

25 A. I believe I did, yes.

1 Q. In fact, if you open your report on page three or
2 four at the bottom of the opening paragraph, you
3 wrote that all three individuals were searched and
4 placed in patrol vehicles and then began a search
5 of the bedroom where Marion and Jason were hiding
6 correct?

7 A. Yes, sir.

8 Q. So you secure the defendants and then you search?

9 A. I didn't -- I did not secure them. There were
10 several officers on scene. They were secure.

11 Q. I guess as I read it, all three individuals were
12 then searched. I guess it doesn't say that you
13 actually did the search.

14 A. That's right.

15 Q. And placed in the patrol vehicles -- that you wait
16 until they are placed in the patrol vehicle before
17 you do the search?

18 A. I'm still in the house when they take them out,
19 yes.

20 Q. You'd agree that your report indicates, "I then
21 began the search of the bedroom", correct,
22 indicating that it's after they are taken into
23 custody and put in the patrol vehicles?

24 A. I'm not sure of the wording, sir.

25 Q. But you wrote it, right?

1 A. Right.

2 Q. All right. And so the first thing you do is start
3 taking the photographs? Have you reviewed the
4 photographs that since you've taken them? I have
5 exhibits one through nine and they are a little
6 bit out of order, could you look at them and tell
7 if these are the photographs that you took?

8 A. I could. Yes, sir.

9 Q. All right, so is... I just want to make sure I'm
10 not trying to pull a fast one and show different
11 pictures or anything. But these are the photos
12 that you actually take and that you can tell from
13 these photos that there are extra shoes in the
14 room other than the ones that he's wearing?

15 A. Yes, sir.

16 Q. There are a bag of clothes in the closet?

17 A. Yes, sir.

18 Q. There is deodorant on the night stand?

19 A. Vaseline.

20 Q. Well, there's lotion, correct, on the dresser, an
21 iron on the dresser, correct?

22 A. Yes, sir.

23 Q. There's a pair of jeans on the dresser?

24 A. Yes, sir.

25 Q. A lot of clothes are there, correct, three pairs

1 of jeans.

2 A. I -- I...

3 Q. You don't think there's a lot? You don't want to
4 say there's a lot?

5 A. Right. There's three pairs of jeans.

6 Q. Three pairs of jeans and a bag of clothes, a
7 couple of hats, some jackets.

8 A. I'm sorry, some?

9 Q. There is the camouflage jacket. There's one on
10 the bed. I mean, I'm giving you a picture that
11 demonstrates it. One hanging out of the closet.

12 A. Okay.

13 Q. There are jeans being pressed underneath the
14 mattress. Are those in the pictures?

15 A. No, they're not. I mean, yes, they are.

16 Q. An alarm clock on the night stand?

17 A. Yes, sir, very similar to a hotel.

18 Q. Okay. And from prior dealings with Richard Lewis,
19 is that the way he runs this room?

20 A. No, sir. I mean, not that I know of.

21 Q. Not that you would know of. And so after you take
22 the pictures, is it true that the jacket that you
23 see on the floor in the closet has importance to
24 you?

25 A. It is, right.

1 Q. Because Reggie describes Marion as wearing a
2 camouflage jacket?

3 A. That's right.

4 Q. And so, at this time, you move the jacket?

5 A. Yes, sir. I picked it up.

6 Q. You picked it up? The point being to keep it for
7 evidence, correct?

8 A. Right.

9 Q. And it was after you pick up that jacket that you
10 say that you see the crack in the shoe?

11 A. Yes, sir.

12 Q. Let me hold those pictures real quick. I'm
13 showing you number four and number nine and
14 they're both similar pictures. I'll flip them out
15 in front of you to look at. That is the jacket
16 before you move it; is that correct?

17 A. Yes, sir.

18 Q. And so from that picture you cannot see any crack?

19 A. No, sir.

20 Q. Do you know -- there's a shoe ---

21 A. The shoe was covered up by the jacket.

22 Q. So there's a shoe that you can see, right?

23 A. Yes, sir.

24 Q. But obviously shoes come in pairs, correct, and
25 that the other shoe is underneath the jacket?

1 A. Yes, sir.

2 Q. So it's only after you seize that jacket that you
3 could possibly see the crack?

4 A. Yes, sir.

5 Q. And that picture represents how you first
6 encountered that closet?

7 A. Yes, sir.

8 Q. You hadn't moved anything back when you took that
9 picture?

10 A. No, sir.

11 MR. IAN DEYSACH: You can be putting these up
12 or if you want to hold them.

13 Q. All right. Did I ask you this, that you went in
14 the bedroom without consent from Richard Lewis?

15 A. That's correct.

16 Q. I'm going to shift to the afternoon. You respond
17 back to ■ Ball Park, correct?

18 A. Yes, sir.

19 Q. Officer Green is there?

20 A. Yes, sir.

21 Q. Richard Lewis is in a patrol car when you arrive;
22 is that correct?

23 A. Yes, sir.

24 Q. You talk to Richard Lewis again?

25 A. Yes, sir.

1 Q. And is he in the patrol car when you talk to him?

2 A. No, sir.

3 Q. He's out?

4 A. Yes, sir.

5 Q. Is he cuffed?

6 A. I believe so.

7 Q. At that point do you get consent again to go into
8 his house?

9 A. I Mirandized him and told him why we were there
10 and asked him where the crack was. He said it was
11 under the sink in the bathroom.

12 Q. And so were you -- you did enter the house, right?

13 A. Yes, sir.

14 Q. Did you do that because you had already gotten
15 consent earlier in the day?

16 A. No, sir.

17 Q. Did you do it because you got consent right ---

18 A. No. He took us in the house.

19 Q. So you don't really come out and ask him for
20 consent but you follow him in as he leads you in?

21 A. Yes, sir.

22 Q. And he points out the ---

23 A. He's still in handcuffs at this point.

24 Q. Still handcuffed, but he shows you where the drugs
25 are?

1 A. Yes, sir.

2 Q. And then you called Investigator Rice?

3 A. We had already called.

4 Q. Did you call him to let him know that you've seen
5 this crack again -- or did you call to let him
6 know that you found that crack again -- that you
7 found this crack in the bathroom?

8 A. I'm sorry. You lost me.

9 Q. It was not an artful question. I want to know if
10 you called Investigator Rice after you find the
11 crack?

12 A. I called him before we even left the office.

13 Q. So how would you have found out about the crack?

14 A. Marion Bonds was talking about it on the jail
15 phone.

16 Q. But if you were to put that Investigator Fraser
17 went in and observed the crack at Richard Lewis'
18 house that afternoon, he wouldn't have gotten that
19 information from you?

20 A. Yeah. I told him when I got there that I had seen
21 it. It was under the...

22 Q. When he got there?

23 A. No. I think -- yeah, I think it was him. I'm not
24 sure. I believe I called him on the phone. I'm
25 not -- I don't recall specifically.

1 Q. Because did you ever generate a report about this
2 second visit?

3 A. No. I don't think I did.

4 Q. And so you don't have one of those to refer to
5 that would help you remember what happened?

6 A. No, I don't.

7 Q. The first time you talk to Rice was when he
8 appears with a search warrant?

9 A. I don't -- we spoke to Investigator Rice before we
10 even left the Sheriff's office. He knew what was
11 going on. There were several others at the office
12 listening to the phone call.

13 Q. You listened in on the phone call?

14 A. I did.

15 Q. Did you have anything to do with the application
16 for an arrest warrant for Marion?

17 A. I did not.

18 Q. Did you know whether or not an arrest warrant was
19 even in existence when you were listening to these
20 phone calls?

21 A. I -- I think there was. I know he was
22 incarcerated. I know Investigator Kelleher was
23 working on it.

24 Q. But he was secured from the moment you got him out
25 of the bedroom, right?

1 A. Yes, sir.

2 Q. He went straight to jail from there as far as you
3 know or do you know?

4 A. I don't know. I think Investigator Kelleher went
5 to interview him. I'm not sure.

6 Q. You're telling me you're not sure whether or not
7 warrant was in existence or if a warrant had been
8 served on Bonds when you were listening in on
9 these phone calls?

10 A. I don't know.

11 Q. When you were talking to Richard Lewis at any time
12 did you indicate to him that he might bear some
13 criminal responsibility for the drugs that are
14 found in his house?

15 A. Yes.

16 Q. Yes?

17 A. Yeah.

18 MR. IAN DEYSACH: I don't have anymore
19 questions, Your Honor.

20 THE COURT: Solicitor?

21 MS. ANGIE TANNER: Just briefly, Your Honor.

22 **CROSS EXAMINATION**

23 BY MS. ANGIE TANNER:

24 Q. Investigator Fraser, Ball Park Road, that was the
25 third or fourth location where you went looking

1 for Mr. Bonds?

2 A. I believe it was the fourth.

3 Q. And when you arrive, who do you come in contact
4 with first?

5 A. I came in contact with Mr. Lewis.

6 Q. And what were you able to determine about who
7 lived in that location?

8 A. Mr. Lewis told me that he was the only one who
9 lived there at that time. I had spoken to his
10 mother, Ms. Bond. She said that he was the only
11 one supposed to be there.

12 Q. And that Mr. Lewis' mother?

13 A. Yes, ma'am.

14 Q. Who does the property actually belong to?

15 A. Mr. Lewis's mother.

16 Q. At the time you enter the first time around ten
17 o'clock on the 17th, did you have consent from
18 Richard Lewis?

19 A. I did.

20 Q. And at the time you went looking for Marion Bonds,
21 was it your intention to arrest him?

22 A. Yes, it was.

23 Q. In fact he was arrested from that residence?

24 A. Yes, he was.

25 Q. And at that residence where did you find him?

1 A. In the closet -- at the base of the closet in the
2 bedroom nearest the driveway.

3 Q. And this closet, what would be the size of it?

4 A. Very small. Smaller than -- about the width of
5 this box.

6 Q. Would everything in the closet be within arms
7 length?

8 A. Yes, ma'am.

9 Q. And what did Mr. Lewis tell you about the last
10 time Marion Bonds had been inside the residence?

11 A. He said that he had been there a week ago. He had
12 been in that room a week ago. He said he had
13 moved him out, months back.

14 Q. He actually moved him out months ago but he had
15 been by a week ago?

16 A. Right.

17 Q. And once Mr. Bonds is placed under arrest for the
18 Assault and Battery, Armed Robbery, and the gun
19 charge, are you there reviewing the phone calls
20 from the detention center?

21 A. Yes, ma'am. I am.

22 Q. And based on your review of that, you go back to
23 Ball Park Road?

24 A. I did.

25 Q. And at that time is Mr. Lewis cooperative?

1 A. Yes, he is.

2 Q. And does Mr. Lewis consent to allow you back into
3 the home?

4 A. Yes, he does.

5 Q. Prior to Investigator Rice arriving with the
6 search warrant, are you collecting evidence from
7 that residence?

8 A. No, I don't.

9 Q. What is your purpose for going in the residence
10 with Mr. Lewis?

11 A. Essentially to ensure that he hadn't destroyed the
12 evidence that we heard him talking about on the
13 phone, that there was no further danger of any
14 other evidence being destroyed.

15 MS. ANGIE TANNER: No further questions.

16 MR. IAN DEYSACH: Just briefly.

17 **REDIRECT**

18 BY MR. IAN DEYSACH:

19 Q. Now when you arrive Mr. Lewis was in the back of
20 the patrol car handcuffed, right?

21 A. Yes, sir.

22 Q. There wouldn't be any way he could have destroyed
23 the evidence from there; is that right?

24 A. There's also another female who had been around.

25 Q. Was she ---?

1 A. I believe she was still there.

2 Q. Was she inside the residence?

3 A. Not when I got there.

4 Q. So when you go in, there's nobody else in the
5 residence?

6 A. No, sir.

7 Q. So there wouldn't have been anybody there to
8 destroy the evidence?

9 A. It could have been.

10 Q. So did you look for people first or did you look
11 for the evidence first?

12 A. He showed us where the evidence was first.

13 Q. You did listen to the tapes? Nothing on the tapes
14 said anything about anybody trying to destroy the
15 drugs, correct?

16 A. No. He was trying---

17 Q. The opposite.

18 A. --keep the drugs, yeah.

19 MR. IAN DEYSACH: No further questions for
20 Investigator Fraser.

21 THE COURT: Do you have anything further,
22 Solicitor?

23 MS. ANGIE TANNER: One more quick question.

24 RECROSS

25 BY MS. ANGIE TANNER:

1 Q. Investigator Fraser, when you arrested Marion
2 Bonds, did he have a key to this residence?

3 A. Not that I'm aware of, no.

4 Q. Thank you.

5 MS. ANGIE TANNER: No further questions.

6 MR. IAN DEYSACH: I don't have any further
7 questions for Investigator Fraser.

8 THE COURT: Mr. Deysach, do you any other
9 witnesses?

10 MR. IAN DEYSACH: Your Honor, for purposes of
11 testimony about when he stayed and what the
12 arrangement was between Mr. Lewis and him, I would
13 put Marion Bonds, call him to the stand to testify
14 to that relationship.

15 THE COURT: You're on Mr. Bonds.

16 First duly sworn, **MARION BONDS**
17 testified as follows:

18 THE COURT: I'm going to ask you to speak up
19 for my Court Reporter. Please state your name.

20 THE WITNESS: Marion Bonds.

21 **DIRECT EXAMINATION**

22 BY MR. IAN DEYSACH:

23 Q. Marion, will you please tell the Court, what the
24 arrangement was between you and Richard Lewis, Old
25 School, for him to allow you to stay there?

1 A. Every time I stay there Mr. Old School tell us to
2 always give him cash anywhere from thirty to fifty
3 dollars to stay there because he never let -- he
4 never let me stay for free.

5 Q. So on this day, had you given Richard Lewis any
6 money to stay there?

7 A. Yes, sir.

8 Q. How much did you give him?

9 A. I gave him \$40.

10 Q. How long were you expecting to stay?

11 A. A whole week. I stay there.

12 Q. How many nights a week you think you stay there?

13 A. Four or five times a night.

14 Q. When was the last time you had stayed there?

15 A. On Monday, on Monday before this past Wednesday.

16 Q. Had you ever had a key?

17 A. Yes.

18 Q. When you're not staying at Old School's, where do
19 you stay?

20 A. I sleep at my girlfriend's house.

21 Q. Who does she live with?

22 A. She lives with her mother.

23 Q. Is it just her and her mother?

24 A. Her mother and her family.

25 Q. Why would you need another place to stay besides

1 her and her family's house?

2 A. Because that's -- that's like her mothers house
3 and that's their family and I can't stay there.

4 Q. What all items did you keep there?

5 A. At my girlfriend's or...

6 Q. At Richard Lewis' house?

7 A. All of my clothes, underwear, everything I got to
8 use every day.

9 Q. What were you doing with those jeans underneath
10 the mattress?

11 A. I was keeping it creased because I just had got
12 them from the cleaners.

13 Q. So when were you planning on wearing them?

14 A. I just had put them underneath there because I had
15 just -- I wore them on Valentines Day.

16 Q. Did you have a toothbrush in the -- did you keep
17 anything in the bathroom?

18 A. Toothbrush.

19 Q. Anything else?

20 A. Deodorant, rag.

21 Q. Was the deodorant, and the Vaseline lotion yours?

22 A. Yes. Everything was mine in the room.

23 Q. How often do you have to use that lotion?

24 A. Everyday if it was cold, winter.

25 Q. So did you have a key at the time?

1 A. I had the key but I just had lost the key and I
2 was going to get another one made. I just had
3 lost the key like New Year's night. I lost it
4 that night when I went out for New Year's.

5 Q. So you had been making some other arrangements?

6 A. Yeah. He would leave the door open for me. Being
7 that he knew I had lost my key, he would leave the
8 front door open for me at all times.

9 Q. Would he allow you to bring guests?

10 A. Yes.

11 Q. Would he have let Holmes or Thomas in the home
12 without you?

13 A. No.

14 Q. Did any of them stay over there?

15 A. No.

16 MR. IAN DEYSACH: That's all I have, Your
17 Honor.

18 MS. ANGIE TANNER: Just briefly.

19 **CROSS EXAMINATION**

20 BY MS. ANGIE TANNER:

21 Q. Mr. Bonds, prior to you coming over to the Ball
22 Park Road residence on February 17th, didn't you
23 call Mr. Lewis and ask him if you can come over
24 and freshen up?

25 A. No.

1 Q. You didn't?

2 A. No.

3 Q. If I showed you phone records where you called Mr.
4 Lewis, you going to deny calling him?

5 A. I never called him to tell him I was coming to
6 freshen up.

7 Q. What did you call to tell him?

8 A. I always call to make sure either he's home.

9 Q. And when you arrived, you knocked on the door and
10 he let you in?

11 A. Yes, I went to the back -- I went to the back door
12 because he was home. So he had the front door
13 locked. Normally, when he not there he'll leave
14 it open for me, but when he there he'll have it
15 locked and if it's locked, I go to the back door.

16 Q. And wasn't he upset with you because you showed up
17 with two fellows and not just you freshening up?

18 A. No. Not to my knowledge, he wasn't.

19 Q. So he didn't say anything to you about you know
20 all these people aren't supposed to be here?

21 A. No.

22 Q. And months prior, wasn't it his mother who told
23 you you had to get out?

24 A. No. That was when Mr. -- when Mr. Old School got
25 locked up. I used -- okay, when I was there

1 before like months ago, like the beginning of the
2 middle of the year, I used to pay his mother
3 through a rental agreement \$50 every week. I was
4 staying there, me and my girlfriend. Then we
5 moved out because Richard Lewis got locked up in
6 Beaufort County. So we moved out because he got
7 locked up. His mom say that she didn't want us
8 over there. When he got out, that's when I moved
9 back. And my girlfriend stayed at her mother
10 house and that's when I moved back with Richard
11 Lewis.

12 Q. Isn't it true that after you moved out, he would
13 let you come back and it was because you would
14 provide him with crack?

15 MR. IAN DEYSACH: I object to that on fifth
16 Amendment's ground, Your Honor.

17 THE COURT: He needs to claim it.

18 MR. IAN DEYSACH: I think by not answering,
19 he's remaining silent, Your Honor.

20 A. I didn't understand. What you had said?

21 BY MS. TANNER:

22 Q. I asked you isn't it true that after you moved
23 out, Mr. Lewis let you come back to his house and
24 hang out there occasionally in exchange for you
25 giving him crack?

1 A. No. I always gave him cash every time I come
2 there.

3 Q. And isn't it true that prior to this date, you
4 hadn't stayed there for over a week?

5 A. No. I just had stayed there Monday night. I just
6 had stayed there Monday night because -- well,
7 Sunday night because Valentine's Day was that --
8 that Sunday. So I was there Monday and Sunday.

9 Q. But you weren't there Tuesday or Wednesday?

10 A. Tuesday or Wednesday? No, I came back there
11 Wednesday morning.

12 Q. Do you get any bills, like telephone bills,
13 medical bills? If you were to get bills in the
14 mail, where would that go?

15 A. I would get a bill in the mail and give it -- sent
16 to my mother's address.

17 Q. And how about your driver's license? What address
18 is on your driver's license?

19 A. ■ Etting White Road. My mother's address.

20 Q. Not Ball Park Road?

21 A. I get everything goes to ---

22 Q. Because that's not your home?

23 A. That's where I stayed at, yes. That's where I
24 stayed at but I had all my mailing like all my
25 legal work, I would have them mail it to mother's

1 house.

2 Q. Because you also stayed at your mother's house
3 some?

4 A. No. I don't stay at my mother's house.

5 Q. You stay at your dad's house some?

6 A. At my dad house? My dad stay with my mother. I
7 don't stay there.

8 Q. And at your aunt's house, you stay there some too.

9 A. That's my grandmother. I just be over there
10 during the day, but I don't stay there.

11 Q. And your girlfriend's house, you live with her
12 too?

13 A. No. I don't live with her. I can get to be there
14 some nights with her and my kids but I spend most
15 of my time instead at Mr. Lewis' house.

16 MS. ANGIE TANNER: No further questions.

17 MR. IAN DEYSACH: Nothing from me, Your Honor.

18 THE COURT: Anymore witnesses, Mr. Deysach?

19 MR. IAN DEYSACH: I do not have anymore
20 witnesses, Your Honor.

21 THE COURT: Solicitor?

22 MS. ANGIE TANNER: No other witnesses, Your
23 Honor.

24 THE COURT: Okay. Argument?

25 MR. IAN DEYSACH: I've got some of that, Your

1 Honor. I guess I'll start with a general rule which
2 is that it is unconstitutional-- it is unconstitutional
3 to conduct a warrantless arrest of somebody where they
4 enjoy a reasonable expectation of privacy and that's
5 Payton v. New York that's the Supreme Court. And we
6 know that there is no arrest warrant or any search
7 warrant in existence at this time. So I think probably
8 the threshold question is whether or not in this
9 bedroom that we've been talking about, whether or not
10 Marion Bonds enjoys protection of the Fourth Amendment
11 when he is there.

12 And I think that based on what we've gotten from
13 the police department -- well I guess I'll -- let me
14 back up. That the Supreme Court has told us in
15 Minnesota v. Olsen that, I'm really citing Jones, that
16 a person can have a legally sufficient usage in a place
17 other than his own home so the Fourth Amendment
18 protects him from unreasonable government intrusion
19 into that place. So it's not a question of what's on
20 his driver's license, where his bills go, or what have
21 you. I know that until I actually -- first, until I
22 bought a house all my legal mail would go to my
23 parent's house also. And so I don't think that that's
24 to determinative really of anything.

25 The question is whether or not according to State

1 v. Missouri which is the South Carolina case from 2004
2 and Raycus v. Illinois, the U.S. Supreme Court case,
3 that the defendant must show that they have a
4 legitimate expectation of privacy and the expectation
5 is one that society recognizes as reasonable. We think
6 that society would recognizes a houseguest as a
7 legitimate expectation of privacy. That's the Supreme
8 Court in Minnesota v. Olsen also.

9 And so I think that when you look at who's the
10 owner, and his clothes, his lotion, his ironing board,
11 his pants being creased, that is very clear. The
12 police -- whether it's a week or a couple days before
13 that he stayed there overnight, he's still in the
14 category of houseguest or overnight guest. So there's
15 no question but that he enjoys that Fourth Amendment
16 protection.

17 Now I think the question then turns to whether or
18 not Richard Lewis can himself consent to a warrant
19 less, not just search, but a warrantless arrest of Mr.
20 Bonds when he is in his own room, his own bedroom
21 because it is different. You know, I have not found,
22 and I probably have sold myself a little short, Your
23 Honor, because the testimony of Mr. Bonds is that he is
24 indeed not just a guest but a tenant. And I think that
25 even Investigator Fraser took note that the place

1 looked like a hotel room more than it did just some
2 empty room. Obviously there was lots of items -- I
3 don't wanna -- so the relationship that he has with
4 that room goes well beyond what is the bare minimum
5 required by the Supreme Court Juris Prudence and the
6 Constitution itself.

7 But it is my position that Old School cannot
8 consent to the arrest of somebody in their own bedroom.
9 The question is if there's one whether or not consent
10 could be given in such an incidence. I think it's all
11 pretty clear in this scenario, he can't. But you
12 cannot -- I rely on a State v. Cannon, which is the
13 South Carolina case that has in its opinion. It's a
14 CDV case in which the ability for an officer to make a
15 warrantless arrest is kind of hinging on the CDV and
16 how it stands by the CDV statute, but the Court's very
17 clear that the focus here should be on the person's
18 arrest, not the manner in which the arresting officer
19 enter's his home. And so, when we talk about consent
20 this but it is consent for two different things and the
21 idea that one person can consent to the arrest of
22 another person, I couldn't find a case where that
23 actually, to be honest with you, occurred. Now I
24 looked in South Carolina cases and Supreme Court cases.
25 I didn't look in other jurisdiction.

1 THE COURT: There's nothing in any case law
2 that it states what a hot pursuit of a fleeing felon
3 is, correct? I mean I cannot find any.

4 MR. IAN DEYSACH: Even if you could, you know,
5 hot pursuit, I think, would at least require the police
6 to see somebody go into the house. They would require
7 a chase, you know, as oppose to three hours later
8 showing up at a last known address. I think that would
9 pretty much twist the hot pursuit idea.

10 THE COURT: What about the eminent destruction
11 of evidence?

12 MR. IAN DEYSACH: Well, if you're talking
13 about drugs, it's one thing. But if you're talking
14 about a gun and a jacket which is the only thing they
15 could have been looking for, you know, that's not
16 flushable and it's not -- it can't go down the toilet.
17 How do you destroy a gun?

18 THE COURT: Well it can certainly go in a lake
19 or in some other body of water somewhere where it's
20 never to be found. I've had plenty of cases where the
21 gun was never recovered.

22 MR. IAN DEYSACH: There's no lake in Richard
23 Lewis' house, you know. They have him cornered in the
24 bedroom. And so if they wanted to -- they can't arrest
25 in Richard Lewis' bedroom to prevent him from going to

1 a lake and throwing the jacket and gun away.

2 In fact, like we said, there's no gun ever even
3 found. But, you know, so the eminent destruction of
4 evidence doesn't make any sense for a reason to arrest
5 him. Because that didn't exist at the time. I have
6 other cases a landlord may not consent to a tenants
7 room, a hotel manager may not consent to a person's
8 room, a person's room at a hotel which is kind of an
9 analog where you've got a tenant in this situation that
10 doesn't stay a whole month. I guess it's what makes it
11 like a hotel room.

12 And Georgia v. Randolph, a 2006 case, tells us
13 that a co-tenant may not consent to search when another
14 co-tenant objects. So even if we do get Richard Lewis'
15 consent with a present co-tenant where they have to
16 force their way into a room, they haven't gotten that
17 consent from Mr. Bonds. We've got the slamming of the
18 window. We've got the locking of the door and what
19 other powers that is gun strong and the rest is police
20 work at the time. And there's certainly no way that
21 Richard Lewis could legally consent to or
22 constitutionally consent to the arrest of Marion Bonds
23 in his bedroom in this scenario.

24 And then certainly we can come back and try and
25 think of the destruction of evidence and things like

1 that. The whole reason the police said they went in
2 was because they had consent. And Investigator Fraser
3 who went into the bedroom to do the arrest said he
4 would not have gone in if he didn't have consent. And
5 so if we want to give them some other -- this is not
6 what the police were thinking at the time.

7 I have bifocated my arguments not only as to the
8 arrest but then also the search that comes afterwards
9 because the testimony was that the people in the house
10 are secured. And then we go back and photograph and
11 then search. Investigator Rice in his search warrant
12 application indicates that's a consent search. I think
13 Mr. Fraser indicated that that was consent that he was
14 using as a bases for that. But we've got the same
15 problem an objecting present co-tenant who had a gun
16 drawn on him but never given any consent to the room or
17 he obviously does not want the officers to be in;
18 otherwise, he wouldn't have made it so they had to
19 force open the door. And so for them to use that
20 consent to search, yet again. It's still the same
21 problem. You can't consent where there's a -- a
22 landlord can't consent. It's the same thing for
23 consenting to arrest that I've named but you can't have
24 a landlord consenting to a tenant's -- a search of a
25 tenant's house. You can't have a hotel manager do the

1 same.

2 And so it's the same problem and I kind of through
3 testimony tried to bring out why we can't say search
4 incident to arrest because they're in a patrol car.
5 They're not in a place where they could grab evidence
6 or destroy it or anything like that. And so a search
7 incident to arrest, not that they even brought that up
8 as a justification, is not appropriate for -- is not
9 appropriate for a reason to search. And it is a
10 search. It's not a plain view situation because
11 they've taken pictures of the jacket as it's covering
12 up the -- what they find the drugs and they have to
13 seize that jacket and manipulate that jacket, seize it-
14 - is really what I've got Investigator Fraser to admit
15 to -- before they can even look in that shoe. And so
16 it's -- even to get that jacket, they need a warrant or
17 valid consent which they can only get from the person
18 who's room it obviously is. And it really is a little
19 bit disconcerting to try and hear the police say well
20 we don't think it's his room or this or that. The
21 whole reason that they go there in the first place is
22 because they know it's his room and which house they're
23 talking about. Nobody has to say ■ Ball Park for them
24 to know this is where we're going to find Marion Bonds.
25 And even when they hear the rustling in the room, they

1 know that that's the room that he stays in and so the
2 police definitely know that's his room. They tell us
3 in the report.

4 THE COURT: Solicitor?

5 MS. ANGIE TANNER: Your Honor, first of all,
6 the State's position is that Mr. Bonds has absolutely
7 no expectation of privacy in his bedroom. He does not
8 live there. He hasn't live there for months. The fact
9 that he might have stayed overnight one night a week
10 prior to that still does not give him an expectation of
11 privacy on the day this occurred. Because there are a
12 couple pair of jeans in that room does not indicate
13 someone lives in that room. There's no underwear,
14 there's no shirt. The fact that some lotion is left
15 behind, that is not indication that he was living in
16 this room. That he stops by, maybe, but stopping by
17 does not create an expectation of privacy.

18 Beyond that, when officers arrive at this scene,
19 this is the fourth location they search. They aren't
20 told this where he lives and that's where they go
21 immediately. This is the fourth location they check
22 because it is given in a list of places where he might
23 be hanging out, not that this is his one residence. So
24 when they go there this is the fourth place they check.

25 When they arrive, the homeowner answers the door

1 and tells them yeah. They give the motion, he's in
2 there but they didn't want him to hear it. He gives a
3 head nod. He's down there. He gives consent to go in.
4 Under protective sweep, the officers had every right
5 under the homeowner's consent to go in and do a
6 protective sweep. Upon the protective sweep of that
7 room, they find Jason Thomas trying to jump out of the
8 window and Marion Bonds hiding in the closet. They
9 were looking for Marion Bonds to arrest him for assault
10 and battery with intent to kill, attempted armed
11 robbery, and possession by a felon of a firearm.

12 Under U.S. v. Robinson, a custodial arrest based
13 on probable cause and a search for a person, the area
14 within it's immediately control, the weapons and
15 destructable evidence is a reasonable intrusion and
16 requires no additional justifications.

17 So search incident to arrest, at a minimum they
18 can search that closet, because that's where he's
19 found. Officer Fraser testified that everything within
20 that closet is within arms length. That's where he
21 finds the jacket. It matches the description of the
22 shooter. They also find the drugs. It's in the shoe
23 right beside the jacket. Under State v. Fryberger, it
24 is not necessary that he was under arrest at the time
25 of the search, only that he was going to be under

1 arrest. And he absolutely was going to be under
2 arrest. That's why they're looking for him, that's why
3 they did a protective search.

4 First, we don't believe he had any expectation of
5 privacy period. The consent to search by Richard Lewis
6 is fine enough to search everything in that home.

7 Secondly, if there's any doubt about that, there's no
8 question the State has a right to go into a protective
9 sweep. They heard the noises in the trailer. They
10 knew what direction the noises were coming from. They
11 were looking for a subject who had just committed an
12 armed robbery. They had every right to produce a
13 protective sweep of that room. They locate him, they
14 arrest him. Search incident to arrest, they can search
15 that closet.

16 MR. IAN DEYSACH: I have a couple of
17 responses whenever you are ready, Your Honor. I think
18 that the -- I guess I'll go with the second first. The
19 search incident to arrest does not work once you've
20 removed the person from the area that was searched.
21 The testimony was that they removed Marion Bonds,
22 secure him in the patrol vehicle. And the picture you
23 see after that is the untouched closet. So the closet
24 is not searched until after these guys are removed from
25 that area. The search incident to an arrest, the

1 justification for it, is to prevent the eminent
2 destruction of evidence or possibly officer safety. So
3 that somebody who could reach into the door and pull
4 out a gun to resist an arrest as easy as they can reach
5 into their pocket.

6 When they are taken out to the car, they no longer
7 have that justification for a search incident to
8 arrest. I rely on *Chamel v. California*, that's at 395
9 US 752 *State v. Brown* is a South Carolina case that
10 stands for the same thing. *Arizona v. Gant* is a
11 similar case where you can't do a search incident to
12 arrest of a vehicle, if you've already arrested the
13 person out of it. So I think the idea that it's a
14 search incident to arrest doesn't stand up to what the
15 law is, the constitutional juris prudence is.

16 Also, I guess, to go with the first point last or
17 second is that we can't do a search incident to arrest
18 unless the arrest is valid at first. You cant do an
19 illegal arrest of somebody -- unconstitutional arrest
20 of somebody and then justify the search of the area
21 where they were by search incident to arrest. That
22 search is only as constitutional as the underlining
23 arrest.

24 Protective sweep, there is no --I don't understand
25 -- one thing I guess I would point out is that the

1 police did not tell you that they were doing a
2 protective sweep. They told you they were going in
3 because they had consent. And that they clear the room
4 of all the people. You know, they get all the people
5 in the house outside, before they do the search. And
6 you can tell by looking into that picture that
7 Investigator Fraser took, that there's not a person in
8 that --- a protective sweep is for people. There's not
9 a person in that closet. And so if we're doing a
10 protective sweep -- you know, the jacket is not going
11 to hurt anybody. You know, the protective sweep is for
12 somebody who might jump out and you know, so they've
13 already swept by the time they get back in there and do
14 that search.

15 Obviously, the Solicitor is relying -- she's
16 trying to revise some of the reasons and find some
17 reasons why it would be constitutional even though this
18 is not what was testified to as far as the reasons the
19 officers gave for going in.

20 It is, you know, we have a law requirement. And
21 there's some exceptions but they didn't have any here.
22 And that's why these drugs and the jacket and I've got
23 some other things that are fruit of this poisonous
24 arrest and search that also should be suppressed but I
25 don't want to go all into the phone calls and the

1 second search right this second because some of those
2 arguments are based on what the ruling would be on
3 this first search.

4 THE COURT: Yes.

5 MS. ANGIE TANNER: Clearing the room for
6 people, that is a protective sweep, so using different
7 language doesn't change it. I'm not inventing --
8 that's what they did. So if you're advising me as
9 making that up now, is wrong. They cleared the room.
10 They grabbed individuals, that's the protective sweep.
11 They move the guy out of the bathroom, they move Jason
12 Thomas from the window, they find him in the closet--
13 protective sweep, yes they move them. They get them
14 where it's safe. And then they have the right search
15 incident to arrest to look in that closet. There's
16 just -- I don't know what else to say about that.
17 That's clear constitutional law.

18 THE COURT: All right. Well, respectfully I
19 think there was no expectation of privacy. I think
20 Richard Lewis gave permission and he was the only one
21 home and I'm not going to suppress the results of that
22 search or the results of that arrest. What is your
23 next motion?

24 MR. IAN DEYSACH: Your Honor, I understand
25 your ruling, but I do want to put the cases that I'm

1 relying. I think Minnesota v. Olsen 495 US 91 ---

2 THE COURT: Defendant was actually hiding in
3 the closet that case, too.

4 MR. IAN DEYSACH: Right. And he had a
5 legitimate expectation of privacy.

6 THE COURT: Of course the facts are different,
7 I believe. It was in fact his girlfriend's house if I
8 am correct?

9 MR. IAN DEYSACH: Correct.

10 THE COURT: Anything else you need to put on
11 the record?

12 MR. IAN DEYSACH: So if we don't reach the
13 threshold of reasonable expectation of privacy, then
14 you haven't --- you don't even rule on whether it's a
15 search incident to arrest, or protective sweep, or
16 eminent destruction of evidence, or anything like that?
17 You don't even reach that. Nothing more on this but I
18 would continue to -- I do want to put some things on
19 the record as to the next time they come back to the
20 house. The ---

21 THE COURT: The conversation ---

22 MR. IAN DEYSACH: The phone calls.

23 THE COURT: Okay.

24 MR. IAN DEYSACH: The phone calls are -- I
25 know that you ruled that this arrest was

1 constitutional. If it were not constitutional---

2 THE COURT: Any subsequent information they
3 would find would have been ---

4 MR. IAN DEYSACH: Would be fruit of the
5 poisonous tree. And I would object to the introduction
6 of those phone calls because he hadn't even been served
7 with the warrants as far as we can tell at this time.
8 We don't even know if warrants are in existence at this
9 time. And so the phone calls are, clearly, fruit of
10 the poisonous tree and then you take that and that's
11 what ends up in the search warrant, the phone calls --
12 which, I'm objecting to, the arrest I'm objecting to
13 and the search that I'm objecting to from early in the
14 morning, are reasons for the beliefs that the drugs
15 would be found in the second visit to ■ Ball Park
16 Road. And so there's some more fruit in that search
17 warrant. And the search warrant alleges that the drugs
18 are underneath the kitchen sink when they're in fact in
19 the bathroom. And that the drugs are actually found
20 before the search warrant even arrives.

21 THE COURT: Let me ask you, what was the
22 actual statement. Did anyone transcribe the actual
23 recorded statement from the jail?

24 MR. IAN DEYSACH: From Mr. Bonds?

25 THE COURT: Yeah.

1 MR. IAN DEYSACH: I did not transcribe it.

2 THE COURT: What was said that allowed the
3 police officers to go and believe that there were still
4 drugs left at the house?

5 MR. IAN DEYSACH: Without playing it for Your
6 Honor, I would have to admit that the, you know, the
7 content of what's on the phone call, I mean, I think
8 it's -- If you know -- especially if you know that
9 there are -- they've already found the drugs in the
10 shoe and the content of the phone call, I think it's --
11 it's basically clear. I can see why they thought that
12 there would be more drugs in the house based on what
13 they were hearing on the phone conversations.

14 I mean I don't want to say too much but I don't
15 want to play the tapes, really, either. I probably can
16 admit that if they did listen to those phone calls that
17 it would give them, at least some sort of suspicion
18 that maybe something was afoot. Whether it would be
19 enough for a search warrant, I'm not going to admit
20 that to you, but there's some stuff there. And they
21 wouldn't have had it if they don't arrest him without a
22 search warrant or without an arrest warrant. That's
23 why I'm objecting to all that. To be honest with you
24 like I said it's found not even by a search warrant.
25 Because even though there was some confusion by

1 Investigator Fraser, the search warrant says the drugs
2 were found before the warrant even arrives. That's
3 what's in number two.

4 THE COURT: There are pill bottles underneath
5 the bed; the mattress?

6 MR. IAN DEYSACH: There are pill bottles
7 underneath the mattress. Certainly, I think, even as a
8 search incident to arrest those are not -- the mattress
9 isn't in the closet.

10 THE COURT: I'm just trying to figure out the
11 different charges. He's charged with trafficking 28 to
12 100 is that for the drugs that were in the shoe and
13 then the trafficking crack. Is that what's found in
14 the pill bottle?

15 MR. IAN DEYSACH: I think they added the pill
16 bottles and the shoe together, and then they came back
17 with the bathroom later.

18 MS. ANGIE TANNER: Your Honor, I can clear it
19 up. There's over 40 grams in the shoe and then inside
20 the two pill bottles, I think it comes out total, with
21 the shoe and the pill bottle, somewhere around 65
22 grams. So it's over 28, just in the shoe but it's also
23 -- the pill bottles are added in.

24 THE COURT: And where did those come from?
25 Where were those found?

1 MS. ANGIE TANNER: The pill bottles were found
2 between the two mattresses.

3 THE COURT: So what's the bathroom then? He
4 said something about the bathroom.

5 MS. ANGIE TANNER: That's the second go round
6 after the phone calls. The phone calls indicate
7 there's more in a trash can, in the kitchen. Mr. Lewis
8 grabs that at the same time officers are coming back to
9 the resident after they've intercepted the phone calls.
10 He throws them into the bathroom under the sink as an
11 officer arrives at his door. That's how they end up in
12 the bathroom, he throws them after he finds them at the
13 direction Mr. Bonds where it would be located.

14 MR. IAN DEYSACH: It is a little bit odd
15 because you take for the first set of charges two --
16 really three separate quantities -- two pill bottles
17 under the mattress and where Jason Thomas was sitting
18 and then stuff them in his shoe. Add that -- all those
19 different quantities together for one trafficking and
20 then basically because the police don't find the rest,
21 get a whole separate trafficking charge. I think at
22 some point, I would ask -- I don't know if it's
23 appropriate for pretrial. But I was thinking at the
24 direct verdict stage, we've got -- these charges need
25 to merge. Marion Bonds is not at the house after he

1 was arrested. It's clear that the drugs were, the
2 police just didn't find them. And whoever the bases of
3 the charges not because he didn't have them at the same
4 time he had this other group of drugs, it was just that
5 the police didn't end up finding them. That's at least
6 the theory that they are going under. I did want to --
7 -

8 THE COURT: Excuse me, Mr. Deysach. What does
9 the case law say about -- don't say anything else --
10 numbers of whatever that whatever and they all added up
11 to equal a trafficking charge? I mean is it the
12 position of the State because they find all these
13 different and can put them all together and charge that
14 person, or that defendant, with trafficking?

15 MR. IAN DEYSACH: I don't have a lot of -- I'm
16 not going to reach into my mental library of legal
17 research here and give you anything that is very well
18 researched.

19 THE COURT: I think you need overnight to look
20 at that. I think that would be your best argument for
21 what I think you are trying to say that they should
22 only be going forward on one. What I'm hearing from
23 you based on the quantities, it sounds like what you
24 are saying is that even if you take the new crack that
25 was found, if you add it to the old, it still doesn't

1 exceed the 28 to 100. So maybe if you could find some
2 case law. I don't know if it requires them to put it
3 all together but if you can find something let me know.

4 MR. IAN DEYSACH: The last thing, I just
5 wanted to do to button up is that as I read the -- and
6 I may have done it during the testimony --read the
7 search warrant. Lewis, with the benefit of Miranda,
8 admitted to hiding the suspected crack cocaine under
9 the kitchen sink. Pointed it out to Investigator
10 Fraser and I think that represents the same crack that
11 is found pursuant to the search warrant. Objecting to
12 -- specifically the drugs, the jacket, the phone calls,
13 the second set of drugs, those are pieces of evidence
14 that I think should be suppressed through the
15 exclusionary rule, through the fruit of the poisonous
16 tree doctrine, through ya' know -- because of an
17 unconstitutional arrest, an unconstitutional search of
18 a bedroom that -- I think it's pretty clear that nobody
19 else has their stuff in there. And that when Mr. Bonds
20 shows up that morning, he doesnot have all his -- all
21 his iron, his deodorant. Those things are still in
22 there from when he was there before. So, I think
23 that's factually --though if you look at the case law -
24 -that he would fall squarely within somebody, a
25 houseguest, who enjoys that reasonable expectation of

1 privacy. And that's of course the whole issue that
2 we've argued this afternoon. That's the bases of my
3 objection, your ruling.

4 THE COURT: Anything else?

5 MS. ANGIE TANNER: No.

6 MR. IAN DEYSACH: Different pretrial motions.
7 One thing that I did want to do, assuming a prior
8 record for lay witnesses. I know that some times the
9 Solicitor's office takes the position and it may be the
10 correct one but they don't have to give it to me until
11 they testify. I would like that as soon as I can get
12 it.

13 THE COURT: Can he get it?

14 MS. ANGIE TANNER: Which one was it?

15 MR. IAN DEYSACH: It's Richard Lewis and
16 Reggie Holmes are the ones that are, I think, they're
17 the only non-police officers.

18 THE COURT: Can you have this for him tomorrow
19 morning at 9 o' clock?

20 MS. ANGIE TANNER: I can give them to him
21 before he leaves today.

22 THE COURT: Thank you.

23 MR. IAN DEYSACH: I did want to, before we got
24 too far, and I know there wasn't consensus, because
25 I've discussed it with the Solicitor's office, the rule

1 or the case law on subsequent drug arrest. I know that
2 this probably -- isn't ripe until and unless there were
3 to be conviction. We've argued whether these properly
4 third and aboves or properly just second offenses that
5 we're dealing with hear that before we get there at the
6 last minute -- I did want to at least tell the State
7 that I'm relying on Robinson v. State 387SC568 and
8 State v. Boyd 288SC206 and they clearly state that when
9 somebody's arrested with multiple different substances
10 as long as its at the same time that those count as one
11 drug offense. It is my understanding from what he had
12 before, marijuana, crack, and powder, all in one
13 arrest. I do have the incident report from that arrest
14 with me in court today and I do have that with me in
15 court today. And I have researched that. I don't want
16 us to -- to have to -- I just wanted to preview that.

17 THE COURT: Thank you.

18 MR. IAN DEYSACH: I guess the only other thing
19 is that I have not -- we've talked about it before the
20 possession of a pistol by a person convicted of a crime
21 of violence. I understand the ruling but I have not
22 yet decided whether or not it would be better for my
23 client to let the Jury know that he has five prior
24 burglaries so they don't think he's murdered somebody
25 or to let them know -- just say he has some crimes of

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

COURT OF GENERAL SESSIONS
2010-GS-07-598,599,602& 634

STATE OF SOUTH CAROLINA

Plaintiff

VS

MARION BONDS,

Defendant

TRANSCRIPT OF RECORD
VOLUME II

DECEMBER 14, 2010
BEAUFORT COUNTY,
SOUTH CAROLINA

B E F O R E:

HONORABLE CARMEN T. MULLEN, Judge.

DEBORAH E. EVERETT
Official Court Reporter

1 (Whereupon Court began at 10:24 A.M.)

2 THE BAILIFF: All rise. Judge Carmen Mullen
3 presiding.

4 THE COURT: Thank y'all. Please be seated.
5 All right. Is the State ready?

6 MS. ANGIE TANNER: The State is ready, Your
7 Honor.

8 THE COURT: Is the Defense ready?

9 MR. IAN DEYSACH: Yes, Your Honor.

10 THE COURT: All right, let's bring the jury
11 in, Al.

12 THE BAILIFF: Yes, ma'am.

13 (Whereupon jury entered at 10:26 A. M.)

14 THE COURT: Good morning, ladies and gentlemen
15 of the jury. Welcome back. Ladies and gentlemen,
16 at this time, what we're going to do is we're
17 going to swear you in as the jurors of this case.
18 I'm going to give you a few short instructions and
19 the attorneys are going to do their opening
20 statements. All right. So if you would.

21 (Swearing in of the jury.)

22 THE COURT: Ladies and gentlemen, what I'm now
23 going to say to you is intended to serve as an
24 introduction to the trial of the case. These
25 remarks are not a charge of the law. I'm going to

1 instruct you on the law that's applicable to this
2 case at the end of the trial before you retire to
3 consider your verdict. This is merely an
4 explanation of the procedures that we're going to
5 follow during the trial so that you can better
6 understand what's going on.

7 Ladies and gentlemen, the defendant in this
8 case, Marion Bonds, is charged by indictments,
9 filed in this court with crimes of assault and
10 battery with intent to kill, attempted armed
11 robbery, possession of a weapon by a felon,
12 trafficking in crack cocaine, more than 28 but
13 less than 100 grams, and trafficking in crack
14 cocaine more than ten but less than twenty-eight
15 grams.

16 Now, ladies and gentlemen, these indictments
17 are simply the charges by which the case was
18 brought into the courtroom and it's not in any
19 sense evidence of any of the allegations that they
20 contain.

21 Ladies and gentlemen, the defendant, Mr.
22 Bonds, has pled not guilty to these indictments.
23 The State therefore, has the burden of proving his
24 guilt on each of the element's in the indictments
25 beyond a reasonable doubt and it's your duty,

1 ladies and gentlemen of the jury, to decide
2 whether the State has met that burden.

3 Now, your purpose as jurors is to find and
4 determine the facts. You are the sole judge of
5 the facts. If at any time I make any comment
6 regarding the facts of this case, you must
7 disregard it and you are only to determine the
8 facts of this case from the testimony you are
9 going to hear, up here on the witness stand, as
10 well as any other evidence that's introduced into
11 the court. Now, it's up to you to determine the
12 inferences which you feel may properly be drawn
13 from the evidence. It's especially important,
14 ladies and gentlemen of the jury, that you perform
15 your duty of determining the facts in the case
16 diligently and conscientiously, because ordinarily
17 there is no way to correct an erroneous
18 determination of the facts by a jury.

19 On the other hand, with equal emphasis, the
20 same law that makes you the judges of the facts
21 makes me the judge of the law. The law that is
22 given by the Court is the only law that you may
23 follow. You must accept and follow it even though
24 you may disagree with it. I cannot tell you what
25 the facts of this case are and you cannot disagree

1 with me about what the law is or should be. Your
2 job is to take the law, as I give it to you, and
3 apply it to the facts as you find them. Again,
4 from the testimony of the witnesses and the other
5 evidence that's introduced into this Court and
6 after doing that, ladies and gentlemen, you will
7 render your verdict, a true and just verdict under
8 the oath you just took as jurors.

9 Now, ladies and gentlemen, until I advise you
10 to begin your deliberations you must not discuss
11 this case with anyone and that includes your
12 fellow jurors, friends, family members, or anyone
13 that's involved in this case. And after the case
14 is submitted to you, you must discuss it only in
15 the jury room with your fellow jurors. The
16 attorneys and parties and witnesses in this case
17 have been instructed that they are not to talk to
18 you. So again if see anyone involved in this case
19 either coming or going from the courthouse, if
20 they don't say hello please understand, they're
21 not being unfriendly they're simply following my
22 orders.

23 Ladies and gentlemen, during the trial of this
24 case you are not to read, listen to, or watch any
25 news reports about the case and this includes anything

1 that may be in the newspapers or on the internet,
2 the radio or television. Ladies and gentlemen,
3 you must not consider anything you may have read
4 or heard about this case outside of the courtroom,
5 whether before or during the trial.

6 Ladies and gentlemen, it is especially
7 important that you keep an open mind and not
8 decide any issue of the case until all the
9 evidence has been presented, the party's have made
10 their closing arguments, and I've instructed you
11 on the law in this case. It is your solemn
12 responsibility to determine the guilt or the
13 innocence of the defendant and your verdict must
14 be based solely on the evidence as it's presented
15 to you in this trial and on the law, as I've
16 instructed you during the close of the trial.

17 Now, ladies and gentlemen, in just a moment
18 the Solicitor is going to make what is called an
19 opening statement in which the Solicitor is going
20 to explain to you the issues in this case, or at
21 least what she believes the issues are in this
22 case. The Attorney for the defendant may also
23 make an opening statement, although he is not
24 required to do so. What these attorneys tell you
25 in their opening statements is not evidence in

1 this case, again it's their contention as to what
2 the issues are. And as I reminded you, and I'll
3 tell you again, the evidence in this case will be
4 presented to you by sworn testimony from here up
5 on the witness stand and any other exhibits that
6 are introduced into evidence.

7 Now, ladies and gentlemen, from time to time
8 during the trial of the case you may hear one of
9 the lawyers say something like, "your honor I
10 believe we have a question of law or a matter we
11 need to take up with you", or "may we approach the
12 bench", or sometimes I, myself, may have to excuse
13 you back to your jury room. I want you to
14 understand something, we're not hiding anything
15 from you. Sometimes when I have to rule whether
16 or not something's admissible under the law, I may
17 make a comment on the facts of this case and again
18 I wouldn't want anything I say to influence you or
19 your decision on the facts. Because, again, I
20 don't have a role in the facts of this case. And
21 again, out of an abundance of caution, I can only
22 excuse you and do it outside of your presence so
23 you can't be influenced.

24 Ladies and gentlemen, in determining what the
25 true facts are in this case you must decide

1 whether or not the testimony of the witnesses is
2 believable. It's my responsibility to rule as the
3 matter of law as to whether certain testimony is
4 admitted or not, but once the testimony is
5 admitted whether or not you believe it, is solely
6 for you to determine.

7 In deciding whether to believe a witness you
8 have the right to consider the interest of any
9 witness, the bias of any witness, the prejudice of
10 any witness. You can look at the opportunity for
11 the witness to have seen the matters and things
12 about which the witness may testify. You can also
13 look at the way the witness acts on the witness
14 stand. You have the right to consider anything
15 that is in the record that will help you evaluate
16 the testimony of the witnesses. That means,
17 ladies and gentlemen, it is your duty to pay close
18 attention to the witnesses, to observe them, to
19 listen to them, so at the very end, when you begin
20 your deliberations, you can accurately recall the
21 testimony as taken during trial. Ladies and
22 gentlemen, because this is going to be relatively
23 short, I am not going to permit you to take notes
24 but if at some point I think it may aid you in
25 some way or it might be necessary, we will provide

1 you pens and pads.

2 At this time, ladies and gentlemen, I just ask
3 that you sit back and pay close attention to the
4 testimony as it's presented to you during the
5 trial, ladies and gentlemen. Now, in order to
6 preserve everyone rights I'm going to ask the
7 attorneys if there is any objection from anyone?

8 MS. TANNER: Nothing from the State.

9 THE COURT: From the defense?

10 MR. DEYSACH: No, Your Honor.

11 THE COURT: All right, ladies and gentlemen,
12 the trial will begin. Solicitor.

13 MS. TANNER: Thank you, Your Honor. May it
14 please the Court?

15 THE COURT: Yes, ma'am.

16 MS. TANNER: Good morning. Welcome to jury
17 duty. Not on your holiday to do list, I'm sure.
18 It's an important role. And I think so far, based
19 on yesterday and what you've seen this morning,
20 you've already learned this is nothing like TV.
21 You have learned this is not CSI and I really hope
22 that all of you understand that is fiction, it's
23 for entertainment purposes. It's not how it
24 works. You can't pull down a screen and use my
25 hand and tell you how many women from Hilton Head

1 wore a read sweater yesterday. It doesn't work
2 like that. In the courtroom what you're going to
3 hear about during your jury duty is about real
4 life, it's not entertainment, it's not fiction,
5 it's about real life. You're going to hear about
6 events that occurred right here in your community,
7 things that happened right here in Beaufort
8 County, real life things.

9 You're going to hear from witnesses, various
10 kinds of witnesses. And you're going to hear from
11 eyewitnesses and you're going to hear from
12 investigators who looked into the case. And
13 you're going to hear from other professionals such
14 as doctors and chemist and through listening to
15 each one of those witnesses, one at a time, you're
16 going to hear about a chain of events and you're
17 going to put the big picture together. And you're
18 going to hear what happened on February 17, 2010
19 this year, right here in Beaufort County.

20 After listening to all the witnesses, you're
21 going to hear the chain of events and you're going
22 to hear about choices that were made. You're
23 going to hear about paths that were taken on that
24 day. And basically, in summary, what you're going
25 to hear, what the State is going to prove to you,

14

1 is that on February 17, 2010, here in Beaufort
2 County, Marion Bonds started out that day by
3 knocking on his cousin's door, his cousin, Reginal
4 Holmes. At seven A.M. he knocks on Reginal's door
5 and that decision changed both their lives. Set a
6 motion in path that brought us here today. Seven
7 A.M. Reginal opens his door, where he is waking
8 up. He sees his cousin Marion so he opens the
9 door. Marion comes in Reginal's home and he is
10 pointing a pistol at him. He demands money. He
11 brings along a friend, some guy we think is named
12 Jason, with a shot gun standing in the background.
13 But Marion points his pistol at Reginal and says
14 "give me the money, give me the money". Reginal
15 hesitates for a moment and then he tries to get
16 out. He pushes into Marion -- pushes into him and
17 tries to run out the front door, trips going down
18 the stairs, lying there he looks up and there is
19 Marion at the top of the stairs pointing that
20 pistol. And he fires. Reginal flinches, luckily
21 Reginal's arm takes the bullet and he's shot in
22 the arm and he was able to scramble up and get
23 away.

24 At the end of the case the Judge will tell you
25 what the law is. She'll give you the law you and

1 what you are to use to base your decision on. Let
2 me tell you in the courtroom and the law, it's
3 about the who, you've got to decide who, the what
4 the where, the how. Those are the facts that you
5 are going to need to decide to make your decision.

6 Now, as humans, we always want to know why.
7 Why would Marion do that? Why would Marion go to
8 his cousin's house and shoot him at seven o'clock
9 in the morning? We don't know and that's not
10 something you have to decide. Because quite
11 frankly, we've all, even all the way back to the
12 ancient Greeks, we've always tried to figure out
13 why humans do what they do. And if during this
14 trial you can figure it out, you'll be the first.
15 So while we all want to know why you are to
16 consider who, what, where, and when. Those are
17 the facts. You can form your opinions about why.
18 Feel free to do that. But the facts are who,
19 what, where and when.

20 So back to that. Marion runs off after
21 shooting Reginal and he ends up at a guy's house.
22 His name is Richard Lewis. You'll hear from
23 Richard. He is going to testify for us as well.
24 In the mean time, Reginal, he's upset, he's been
25 shot, he's mad, and he wants to handle this

1 himself. Eventually he calms down and he
2 cooperates with law enforcement and he tells them
3 what happened. Cousin Marion shot me, gives them
4 his clothing description, and gives them some
5 ideas about where they can go find -- where he may
6 be hiding out and then he goes to the hospital.

7 Marion goes over to Richard Lewis' house,
8 takes a shower. Law enforcement figures out that
9 that could be a place he's hiding. They show up
10 at Richard Lewis' house and knock on the door and
11 Richard answers the door. They want to know if
12 Marion is there and he says, "no", (nodding her
13 head vertically up and down), so law enforcement
14 finds Marion. He's hiding in a closet inside of
15 Richard Lewis's home. He's arrested for the
16 shooting, assault and battery with intent to kill,
17 what you are charged when you shoot somebody.
18 Attempted armed robbery and he's charged, because
19 he's a felon, for possession of a fire arm. He
20 shouldn't even be possessing a firearm because of
21 his past. He's charged with those three things
22 and taken into custody to the County jail.

23 Now, when they find him in the closet they
24 find a couple of other things. They find a jacket
25 that he was wearing that Reginal was able to

1 describe to them. And they find a tennis shoe and
2 stuffed in that tennis shoe was over 40 grams of
3 crack cocaine, in this little closet where Marion
4 was hiding. So they turned those over to the Drug
5 Task Force. They're working on their warrants for
6 that charge, so that's coming. He's going to now
7 be charged with trafficking more than 28 grams of
8 cocaine.

9 However, before he knows that's coming, Marion
10 gets on the phone at the jail and starts making
11 some phone calls. He calls his girlfriend, calls
12 a friend named Larry, and then he calls Richard
13 Lewis and you'll get to hear some of the things he
14 says in his phone call. The gist of it is, "man
15 you gotta hide my dope cause I'm going to need it,
16 so you need to hide it". Not only does he
17 describe the dope they found in the shoe but he
18 gives us another location. Apparently the trash
19 can that has got some dope in it that we don't
20 know about yet. Officers go back out to Richard
21 Lewis' house, make contact with Richard Lewis,
22 who's on the phone with Marion and he's trying to
23 hide the crack they find in the trash can.

24 Okay. Now there are some more charges. That
25 would be conspiracy to traffic cocaine and he's

1 charged with that as well and that's another
2 charge. And finally, drug trafficking. There is
3 a charge -- if you traffic drugs -- if you do it
4 within a half a mile of a school or a park, that's
5 another charge. So he's been charged for that
6 because right around the corner from Richard
7 Lewis's house where first we find 40 grams of
8 crack then we find another 20 grams of crack is
9 St. Helena Elementary School. And as I tell you
10 this started at seven A.M. and he's arrested by
11 ten A.M. Trafficking crack right around the
12 corner from an elementary school.

13 I told you you're going to hear from
14 witnesses, you're going to hear about a chain of
15 events, you're going to hear about decisions made
16 and paths taken. You are now on a path as a
17 juror, you have a juror duty to follow. Your duty
18 is to make a choice at the end of this case based
19 on the evidence you've heard by a verdict. I will
20 tell you the word verdict has a root in Latin
21 comes from vere dictum and it means speak the
22 truth. That's your duty. And at the end of this
23 case that is what I will come back in closing
24 arguments and ask you to do. I'll ask you to
25 speak the truth. I'll ask you to find Marion

1 Bonds guilty for choosing the path and making
2 decisions in committing assault and battery with
3 intent to kill for shooting Reginal Holmes,
4 attempted armed robbery for trying to rob him in
5 his own home and being a felon in possession of a
6 fire arm. Trafficking between 28 and 100 grams of
7 the crack that is found in the tennis shoe in the
8 closet where he was hiding. Conspiracy to traffic
9 between ten and twenty-eight grams from the 20
10 grams of crack found in the trash can that he told
11 Mr. Lewis to hide and finally doing all that
12 within half a mile of an elementary school. Thank
13 you.

14 THE COURT: Thank you. Mr. Deysach.

15 MR. DEYSACH: Thank you, Your Honor.
16 Solicitor Tanner. Good morning. My name is Ian
17 Deysach and I represent Marion Bonds. I've
18 written down notes of a number of things that I
19 want to tell you but this is what I want to start
20 with, I wanted to let you know that sitting in
21 that chair and hearing the Solicitor give a
22 version of facts, that is not evidence, that
23 doesn't come from the witness stand or any
24 exhibits that will be in front of you and to hear
25 things that I disagree with makes me want to hop

1 out of my chair and tell you, "no this isn't what
2 happened, no that isn't what happened, no this is
3 what happened". I'm not going to go bit by bit
4 and get into some little argument or get into an
5 argument with the Solicitor in front of you about
6 she's wrong when she says this fact, she's wrong
7 when she says that fact. I'm going to rely on you
8 to go by what is said from the witness stand and
9 what comes from the exhibits that are going to be
10 admitted into evidence. Because that wasn't
11 evidence and when you hear things differently from
12 the witness stand and proved different from what
13 she just said it will give you a little window
14 into the mistakes that the Solicitor is making
15 when she jumps to the conclusion that she's come
16 to. All right.

17 But this is what I really want to talk to you
18 about, what I want to talk to you about right now
19 are all the concerns that I have about 12 to 14
20 citizens coming off of the neighborhoods and areas
21 of Beaufort -- different areas of Beaufort and
22 what their initial impression would be about
23 what's going on here. Right? I think everybody
24 knows that when somebody gets arrested there is an
25 automatic tendency to think that that person who

1 was arrested must be the guy and he must've done
2 everything that they're accused of. That's not
3 how it works here. What's even worse here is that
4 there's a long list of charges and the more
5 charges that you hear the more you think that he
6 must be a bad guy or that this must have really
7 happened. There's a -- there's a -- a quality to
8 the quantity of charges, I don't know the
9 difference but it sounds kind of stupid when it
10 comes out of my mouth but just because there's so
11 many charges it makes him look worse. But yet the
12 Solicitor's burden to prove beyond a reasonable
13 doubt and all the things that go along with your
14 duty in delivering a verdict none of that changes,
15 and in fact you're supposed to disregard. You're
16 not supposed to think that just because somebody
17 did this that then they must have done that. But
18 in this case we've got two different incident
19 locations. We've got this accusation for seven in
20 the morning and then what's supposed to happen at
21 ten in the afternoon that are separated in this
22 case and yet when you hear about one it sheds the
23 defendant in a negative light -- sets Marion in a
24 negative light as to the other. And I'm asking
25 you to even though as a human that might be what

1 you do but as a juror it is what you cannot do.

2 I've written down a list of the reasons why I
3 think, ya' know, people would think any time
4 somebody is arrested that they must be guilty,
5 they must be the one, they must have done what the
6 Solicitor has said, but I'm not going to go
7 through that list but one of the reasons that I
8 have put down was that well, if the police and the
9 Solicitor's office are telling me that this is
10 what happened then I would defer to their
11 judgement. That it's easy to think that the
12 police got the right guy. It makes us feel safer.
13 We don't want to think that innocent people are
14 spending time charged with crimes they didn't
15 commit or that the real perpetrator would be
16 somewhere on the loose. And we want to have that
17 faith and trust in our police and we can, I think
18 we can. But when we're jurors you cannot. You
19 have to look at what they do with a degree of
20 skepticism. But what I want to point out to you
21 is that people who are in the law enforcement
22 profession lack the independence that are required
23 to make good judgment about what has occurred. I
24 think that the -- the -- well, what I am saying is
25 there is a case called the competitive endeavor of

1 ferreting out crime. Ya' know, that it is cops
2 and robbers, things of that nature, where there is
3 an element of competition. When that element of
4 competition means exists, there are times when you
5 wouldn't want the police, you wouldn't want the
6 Solicitor's office deciding who was guilty, who
7 was not guilty. We want somebody with a degree of
8 independence. That's why we have judges, that's
9 why we have magistrates, that's why we just don't
10 rely on the government to tell us who did this and
11 who didn't do this and so that's what I wanted to
12 point out to you that you're the ones with the
13 independence. You're the ones who do not have a
14 stake in this. And so, I'm asking you to use that
15 independence when you make your decisions on -- on
16 this case.

17 The Judge said something and I note, she was
18 speaking for -- for -- for a few minutes I'm not
19 sure if anybody else picked out but she made the
20 point that an error of judgment of the facts made
21 by the jury that there is really no way to reverse
22 that error. Okay. If I make a mistake there's a
23 process for checking on what I do. If the judge
24 makes a mistake there's a process for looking over
25 her shoulder. But if there's an error in applying

1 the facts to the law made by you there is no
2 process for overturning that. Okay. So I guess
3 what I'm saying is that the decision that you make
4 on this case has a degree of permanence that the
5 way I behave on this case or the way the judge
6 behaves on this case doesn't have. So with that
7 permanence comes the responsibility. I don't
8 think that I have to explain to anybody how dire
9 the consequences are of being convicted of some or
10 all of these charges that you just heard about. I
11 don't think that -- it's fairly obvious to
12 everyone that convictions of those charges would
13 have dire consequences and the decision that you
14 make has the added element of the permanence. And
15 so it is with that weight of responsibility that
16 you have to decide on this case. And so that is
17 what the Judge told you basically that -- well
18 this is what I'm telling you, this is not what the
19 Judge is told you. I can't think of anything
20 worse that could happen in a courtroom other than
21 a wrongful conviction by a jury. There is nothing
22 worse that could happen in a civil courtroom or --
23 or in a criminal courtroom. And so that is, as a
24 lawyer, when I have clients I give them worse
25 possible case scenario examples of what could

1 happen. And the worst possible case -- you're not
2 my clients -- but I'm going to tell you that the
3 worst possible case scenario for you guys, as
4 jurors, is to return a wrongful conviction.

5 And so the Judge is gonna give you a roadmap
6 to avoid it and that roadmap is proof beyond a
7 reasonable doubt, the burden of proof on the State
8 beyond a reasonable doubt. And how that's
9 explained to you really acts as the roadmap to
10 avoid the wrongful conviction, the worst possible
11 scenario that could occur. And we are lucky in
12 Beaufort County because, the jurors that we have,
13 come with a huge variety of life experiences.
14 They spend a lot of time either at -- in school,
15 at work these are just regular life experiences
16 that -- that they all bring something special and
17 that -- what I'm saying is that their smart. And
18 that you -- this jury is no different. It's
19 another one of those typical smart Beaufort
20 jurors. And so I'm gonna try to take advantage of
21 that.

22 And I want to let you know that this isn't a
23 case -- a wrongful conviction whether it's -- this
24 is what -- what -- the point I'm trying to get to.
25 I don't want you to think that the choice is he's

1 guilty or he's not guilty that is a choice. But
2 it's six different charges. You've got six
3 different charges and the State has to prove Mr.
4 Bonds is guilty of each element of each charge.
5 And that a wrongful conviction as to one charge
6 isn't made any less worse of a consequence. It
7 doesn't have any more of a dire consequence
8 independent of the other charges. So what I'm
9 saying is we've got to look at each charge
10 separately. Now, we've got a whole list of
11 charges that makes him look bad because he's
12 charged with so much but that's more that the
13 solicitor has to prove. And a wrongful conviction
14 on anyone of those charges would have dire
15 consequences, a permanent dire consequences that
16 could not be reversed. And we've got the mental
17 capacity on this jury to analyze each -- each
18 piece of evidence, each fact, each element of the
19 offense, everything that I just said that you
20 could look at it analytically as opposed to just
21 having an emotional reaction. Because the
22 emotional reaction is what I think the Solicitor
23 wants you feel. I want you to be analytical,
24 intellectual and focused on exactly what your job
25 is. And it's important and it's -- it's not a fun

1 job, it's hard work, it is hard work but I'm
2 asking you guys to do -- but because of what's
3 happening here is so important that's why I'm
4 doing it.

5 The last thing I kind of want to flag for you
6 is that -- second to last -- there's a few things
7 that the Solicitor said during her opening that
8 this isn't CSI, we don't have to prove the why.
9 Things that she said that were, I perceive, maybe
10 you did not perceive as a way of trying to
11 minimize what she has to prove, or what level of
12 proof you should expect. And I don't want you
13 guys to fall into that trap. I want you to be, I
14 guess, aware of things that the Solicitor might
15 say that would try to minimize what she thinks the
16 burden of proof beyond a reasonable doubt. But
17 what I think you need to remember is that not just
18 what is proof beyond a reasonable doubt but why is
19 proof beyond a reasonable doubt and that sets a
20 roadmap to avoid a wrongful conviction on each and
21 everyone of those charges.

22 And then the last thing that I want to say is
23 that there will be facts that will come out at
24 this trial that will make you question the
25 Solicitor's judgment for bringing these charges.

1 I'm not going to sit here and say this is what the
2 fact is this is what the fact isn't. To be honest
3 with you when the witnesses testify I do not -- I
4 know what they have said but I do not know what
5 they are going to say. But I do know that there
6 are facts and pieces of evidence that you will
7 hear that directly contradict the story that the
8 Solicitor just tried to tell you today. I
9 appreciate your patience and I know I'm asking a
10 lot -- a lot of attention but it is difficult work
11 but there's nothing I haven't asked you to do that
12 isn't fair and a look forward to talking to you
13 after the evidence has been presented.

14 THE COURT: Thank you. Solicitor, call your
15 first witness.

16 MS. TANNER: Thank you. The State calls Paul
17 Green.

18 THE COURT: Come on forward and be sworn.

19 Being first duly sworn, **PAUL GREEN**,
20 testified as follows:

21 THE CLERK: Please state your first and last
22 name and spell your last name, please.

23 THE WITNESS: Paul Green. G-r-e-e-n.

24 THE CLERK: Thank you, sir.

25 **DIRECT EXAMINATION**

1 BY MS. TANNER:

2 Q. Good morning, Corporal Green. Where are you
3 employed?

4 A. Beaufort County Sheriff's Office.

5 Q. And how long have you worked with the Sheriff's
6 Office?

7 A. Fifteen years.

8 Q. And in what capacity do you work there now?
9 What's your main job?

10 A. (No response)

11 Q. Are you an investigator, are you road patrol?

12 A. Road patrol.

13 Q. Is that what we think of when we hear about first
14 responders?

15 A. Yes, ma'am.

16 Q. And were you working on February 17, 2010?

17 A. Yes, ma'am, I was.

18 Q. And did you respond out to ■ Eddings White Road?

19 A. Yes, ma'am.

20 Q. What area of the county is that in?

21 A. That's near St. Helena.

22 THE COURT: Corporal Green would you mind
23 pulling yourself a little closer just to make sure
24 my court reporter and my jury can hear you, as
25 well.

1 Q. Do you recall about what time you were first
2 dispatched to Eddings White Road?

3 A. Right close to 0700.

4 Q. That's military time. For normal people time what
5 time is that?

6 A. Seven o'clock.

7 Q. Seven o'clock in the morning?

8 A. Seven A.M.

9 Q. Now once you arrive, what's the first thing you
10 see, what kind of place is this?

11 A. A double wide mobile home that was divided into
12 two separate apartments like a duplex.

13 MS. TANNER: May I approach the witness, Your
14 Honor?

15 THE COURT: You may.

16 BY MS. TANNER:

17 Q. I'll show you what's been marked as State's
18 Exhibit 1. Can you identify that?

19 A. Yes, ma'am. This is the residence that I responded
20 to at seven o'clock that morning.

21 Q. And you say some type of a duplex?

22 A. Yes, it's a duplex.

23 Q. How many homes are there?

24 A. In that particular, there's like two apartments --
25 divided into two apartments.

1 Q. And do you speak to anyone when you get there?

2 A. Yes, I spoke to some people that lived in the
3 apartment, in one of the apartments.

4 Q. Based on your conversations with them were you
5 able to determine anything about what had
6 happened?

7 MR. DEYSACH: Objection as to hearsay, Your
8 Honor.

9 MS. TANNER: I'll withdraw it.

10 BY MS. TANNER:

11 Q. What type of call were you responding to out at
12 Edings White Road?

13 A. Shots fired. An individual had got shot at the
14 apartment.

15 Q. When you get there did you actually come in
16 contact with the person who was allegedly shot?

17 A. Not right away.

18 Q. Okay. And how long were you there before you see
19 him?

20 A. I would say a minute. I looked around and then I
21 found him and made contact with him.

22 Q. And who would that be?

23 A. That would be Mr. Holmes.

24 Q. Do you know his first name?

25 A. It is Reginal.

1 Q. Are you able to observe an injury on
2 Mr. Holmes?

3 A. Yes. I asked him to show me where he was shot and
4 he showed me his right arm where he was shot.

5 Q. And do you call for EMS for him?

6 A. Yes, I did.

7 Q. Now, you're basic duty as first responder once you
8 find a scene like this, do you conduct a whole
9 investigation, what are you doing on the scene?

10 A. Well, I'm a first responder. I just try to gather
11 information on hand right there and then I call my
12 supervisor and let him know what I have and he
13 takes what we need to actually investigate.

14 Q. Now, in this case did you turn that over to
15 investigators?

16 A. Yes.

17 Q. Now, once you turn this scene over to
18 investigators what do you do; do you go back to
19 patrol?

20 A. Pretty much. Once it's completely turned over,
21 I'm no longer needed at that point.

22 Q. So how long would you say one of your shifts
23 lasted?

24 A. Shifts last 12 hours.

25 Q. Twelve hour shift?

1 A. Yes.

2 Q. So what time did you come on that day?

3 A. I got in shift meeting approximately 6:25 that
4 morning.

5 Q. Was this your first call of the day?

6 A. Yes, my first call.

7 Q. And once you leave this call are you back
8 patrolling the roads?

9 A. Yes. On St. Helena.

10 Q. Now, oddly enough, while you're still on this
11 shift, do you then get a call later in the day to
12 go to Ball Park Road?

13 A. Yes, ma'am, I did.a

14 Q. Is Ball Park Road also in St. Helen?

15 A. Yes, it is.

16 Q. And that's all in Beaufort County?

17 A. Yes.

18 Q. Do you recall about what time you got that phone
19 call or that call out for dispatch?

20 A. It was somewhere around ten that morning, I
21 believe, I'm not sure.

22 Q. Could it have been a little bit later?

23 A. Could have been. Yes. Could have been.

24 Q. Now, this phone call or this dispatch, what type
25 of call were you responding to?

1 A. I wasn't exactly dispatched to that, I was told to
2 go to a particular residence up there.

3 Q. And what were you headed out there to do?

4 A. To make sure no one leave the residence.

5 Q. And this is the residence at Ball Park?

6 A. Yes, ma'am.

7 Q. And when you arrive there do you come in contact
8 with any people or person?

9 A. Yes, I did.

10 Q. And who do you come in contact with?

11 A. I believe his name was Lewis, his last name was
12 Lewis.

13 Q. And what do you do with Mr. Lewis?

14 A. Well, I told him he couldn't leave the residence.
15 He was just standing outside talking on the cell
16 phone. I just told him to stay in the residence.

17 Q. So when you arrived Mr. Lewis was on the phone?

18 A. Yes. He was on the cell phone.

19 Q. And again as the first responder, do you then turn
20 that scene and Mr. Lewis over to investigators?

21 A. Yes. After -- after a while they arrived on the
22 scene.

23 Q. Would it be fair to say that you're holding it
24 down until they get there?

25 A. Yes.

1 MS. TANNER: Your Honor, The State would move
2 Exhibit 1 into evidence.

3 THE COURT: Any objections?

4 MR. DEYSACH: No objections, Your Honor.

5 THE COURT: It's in evidence without
6 objection.

7 MS. TANNER: Thank you. I have no further
8 questions. Answer anything from Mr. Deysach.

9 BY MR. DEYSACH:

10 Q. Good morning, Corporal Green?

11 A. Yes, sir.

12 Q. So at seven in the morning, or around that time,
13 you arrived at ■ Eddings White Road; is that
14 correct?

15 A. Yes, sir.

16 Q. And when you initially arrived there you don't
17 encounter anybody; correct?

18 A. No. Not right away.

19 Q. The first person that you encountered was Earl
20 Holmes?

21 A. It was the people that lived in the other
22 apartments that I spoke with.

23 Q. Two people?

24 A. Two people.

25 Q. Male and female. And not from -- not ■ Eddings

1 White but from, maybe, [REDACTED] Eddings White?

2 A. It was at the same at duplex.

3 Q. Okay, so they have the same address?

4 A. Yes.

5 Q. So did you knock on the door to -- to ---

6 A. Yes, I did.

7 Q. And you got the names of those people?

8 A. Yes, I did.

9 Q. And you put it in your report, correct?

10 A. Yes, sir.

11 Q. And you actually spoke with them, correct?

12 A. Correct.

13 Q. And you put what they said in your report?

14 A. What they told me.

15 Q. All right. How long was it before you saw Reginal
16 Holmes?

17 A. It was a few minutes.

18 Q. So you arrive at the scene and you meet two people
19 from the adjoining apartment and then as you say,
20 maybe three to five minutes before...

21 A. I can't say exactly how long but it wasn't very
22 long.

23 Q. Okay. Mr. Holmes was not in that side of the
24 apartment -- Reggie Holmes was not in the other
25 side of that apartment that's not ---

1 A. Correct.

2 Q. When he came up to the residence where did he come
3 from?

4 A. He came up from around the house.

5 Q. The back of the house?

6 A. The back of the house; yes.

7 Q. Was he -- was he doing anything to treat his
8 wound?

9 A. He had, like, a t-shirt or something wrapped
10 around his arm.

11 Q. So at first you couldn't see the wound because of
12 the t-shirt?

13 A. No. I couldn't see it.

14 Q. But you do ask to look at it; correct?

15 A. Yes. He told me he was shot and I asked him to
16 let me see it.

17 Q. Okay. And you noted the entry wound to his lower
18 right arm, correct, the lower right arm?

19 A. Yes.

20 Q. And the exit wound was in the right bicep area?

21 A. The bicep area. Right.

22 Q. It didn't come out up here right? Was it towards
23 the back of his arm?

24 A. Yes. It was towards the back.

25 Q. So how could you tell what was an entry and what

1 was and exit?

2 A. I just saw a bullet hole.

3 Q. Okay. So you really have no way of knowing which
4 way the bullet traveled?

5 A. I'm not sure.

6 Q. But from here to here is that fair? Now did you
7 see any -- now the wound was bleeding, correct?

8 A. Yes, it was.

9 Q. Was the shirt bloody?

10 A. Yes. There was blood on the shirt also.

11 Q. Did you see any blood on the ground when you
12 arrived at Eddings White?

13 A. No.

14 Q. Did you see blood anywhere?

15 A. No.

16 Q. Other than on Reggie Holmes?

17 A. No.

18 Q. Did you see a -- umm, a shell casing or anything
19 like that?

20 A. No. I didn't find any shell casings.

21 Q. Did you look for one?

22 A. Yes, I did.

23 Q. Did you look for a bullet?

24 A. Well, we looked -- we looked on the side of the
25 trailer to see if there was any impact or anything

1 like that on the side of the trailer right in the
2 general area.

3 Q. Looking for a bullet hole?

4 A. Yeah, bullet hole, yes.

5 Q. Did you find some bullet holes?

6 A. No.

7 Q. You didn't find any -- you didn't find any bullet
8 holes at Reggie's house?

9 A. No. I didn't find any.

10 Q. Did you -- and no bullet and no shell casings,
11 correct?

12 A. Right.

13 Q. And no blood?

14 A. Right.

15 Q. Now, and when you get there is one of your jobs to
16 make sure that nobody messes with the scene?

17 A. Yes. I secure the scene. Yes.

18 Q. That picture that we saw, number one. There you
19 have it It shows the yellow crime scene tape?

20 A. Yes.

21 Q. Is that something that you put up there?

22 A. Yes.

23 Q. And so the idea is that it says do not cross,
24 right?

25 A. Yes. Keep everyone out.

1 Q. Right. So you get everybody out from the area
2 where you think there might be evidence to be
3 collected?

4 A. Yes, sir.

5 Q. And make sure nobody disturbs it, correct?

6 A. Yes.

7 Q. And so Earl Holmes or the other two people that
8 were in the duplex next door they were not allowed
9 to go inside that crime scene?

10 A. Right. They were not allowed to leave their
11 apartments.

12 Q. So when you secure the crime scene, you don't just
13 leave after that, correct?

14 A. No. No.

15 Q. You wait for other officers to arrive?

16 A. Yes.

17 Q. And those officers might take over?

18 A. Correct.

19 Q. Did -- were you the one who called EMS or asked
20 for EMS?

21 A. Well, EMS was on standby because how the call came
22 out. That person had possibly been shot so after
23 the scene was secure we had EMS come in.

24 Q. So you're not saying that you waited until you saw
25 a wound and then notified that EMS might be

1 needed, EMS was already notified to be on standby?

2 A. Yes, they are on standby and once we verified
3 there was an injury they come out.

4 Q. Gotcha. So how long were you at the Eddings White
5 address before you leave?

6 A. Well over an hour or so, I guess.

7 Q. You wrote a report, correct?

8 A. Yes.

9 Q. Okay. Do you have a copy of that report?

10 A. Yes, I do.

11 Q. Did you write on the report that you departed at
12 8:43?

13 A. Yes.

14 Q. Okay. And who all was on the -- who -- who else
15 were there when you left?

16 A. I know Investigator Kelleher was.

17 Q. Investigator Kelleher was there? Do you know who
18 else?

19 A. A couple more investigators came out also.

20 Q. Okay. Do you not remember which ones?

21 A. No. I can't remember the ones.

22 Q. Do you remember how many investigators were there?

23 A. No, not exactly.

24 Q. Were you there when Reggie left?

25 A. Yes. I was there when the ambulance took him

1 away.

2 Q. Okay. And so once your finished at Eddings White
3 Road, it's back to work for Corporal Green?

4 A. Yes.

5 Q. And at some time later you're -- the Solicitor, I
6 guess, asked you about another event that happened
7 later in the day, correct?

8 A. Yes.

9 Q. You said something about ten o'clock and she said
10 isn't it -- wasn't it a little later, do you
11 remember that?

12 A. Yes.

13 Q. Is it possible that what you're talking about
14 happened at 14:16?

15 A. Hey, it could have been. I just -- just not aware
16 of the time.

17 Q. Okay. You did write a report about this also,
18 right?

19 A. I don't believe I wrote anything about that one.
20 I'm not sure.

21 Q. I'm going to hand you a document and I'm going to
22 ask you about it. Is that a report that you
23 wrote?

24 A. Yes. It is a supplement to the original report.

25 Q. Okay. Does it reference the visit to Ball Park

1 Road, ■ Ball Park Road?

2 A. Yes, it does.

3 Q. Okay. Does it -- does it give the time that you
4 were dispatched to Ball Park Road on the first
5 line?

6 A. Yes, it does.

7 Q. What time does it say?

8 A. Fourteen sixteen, which is 2:16 in the afternoon.

9 Q. Two sixteen in the afternoon. When you go to Ball
10 Park Road you said that your job is to make sure
11 nobody left the residence?

12 A. Yeah. Secure the resident. Yeah.

13 Q. Okay. So does that make sure that nobody goes
14 into the residence or nobody leaves the residence?

15 A. Nobody left the resident. That's what I was told.

16 Q. So when you arrived, the man, you said, Mr. Lewis
17 was outside, correct?

18 A. Yes, sir.

19 Q. And while you were there he walked inside,
20 correct?

21 A. Yes. He ended up going inside.

22 Q. Okay. Which is fine because you're just trying to
23 make sure nobody leaves the residence, right?

24 A. Right.

25 Q. So while he's in the residence -- after he goes

1 into the residence, you follow -- you go into the
2 residence also, correct?

3 A. I went to the door.

4 Q. And you ordered him to come out of the residence?

5 A. Yes.

6 Q. And in fact you actually reached into the
7 residence, didn't you?

8 A. Yes.

9 Q. And you grabbed him by the elbow, correct?

10 A. Yes.

11 Q. All right. And you reached into the residence and
12 pulled him out even though you didn't have any
13 type of a search warrant or arrest warrant to do
14 so, correct?

15 A. Right. I was, I was told to detain him.

16 Q. You were told that by another police officer?

17 A. Yes.

18 Q. Okay. And so you thought if another police
19 officer told you that you may not need a search
20 warrant or an arrest warrant or -- you didn't even
21 think about it?

22 A. I didn't search anything. I was just detaining
23 him.

24 Q. Okay. So it's standard procedure to just go into
25 somebody's house and pull them out and detain

1 them?

2 A. No. It's not standard procedure but he was told
3 to stay outside and he walked in and I told him,
4 "sir, stay outside".

5 Q. Was he told to stay outside or was he told not to
6 leave?

7 A. Well, he was outside and after I was told not to
8 let him -- not to let him go into the residence I
9 told him, "Sir, stay outside".

10 Q. All right. Isn't it true that the first thing you
11 were told is not to let anybody leave, and then
12 then you were later told not to let anybody in the
13 residence?

14 A. Right.

15 Q. So you got two different sets of instructions?

16 A. Yes.

17 Q. Okay. It wasn't your idea to get him out of the
18 residence it was something that a supervisor told
19 you you should do?

20 A. Yeah ---

21 Q. Another police officer?

22 A. Another investigator.

23 Q. Okay. So when you detained him where did you put
24 him?

25 A. I put him in handcuffs, I put him in the back

1 seat -- seat of the car.

2 Q. So he's -- he's handcuffed behind his back?

3 A. Yes, sir.

4 Q. And placed in your patrol car?

5 A. Yes, sir.

6 Q. And, you know, it's obvious that I -- you can't
7 open a patrol car from inside, he's locked in the
8 patrol car?

9 A. Yes, sir.

10 Q. And other investigators arrived, correct?

11 A. Yes.

12 Q. Were they the same investigators that told you to
13 keep anybody from leaving the scene and then later
14 get anybody out of the residence who was there?

15 A. No. It was another investigator. It was another
16 officer that came -- a couple of other officers
17 that came.

18 Q. Who was it that told you to secure the scene?

19 A. It was Investigator Fraser.

20 Q. Okay. Did he also arrive?

21 A. Yes.

22 Q. Okay. When -- when did you leave? If you know?

23 A. I don't know exactly when I left. When it was
24 turned over to Officer Rice..

25 Q. Officer Rice? Okay. So Officer Rice is there

1 before you leave?

2 A. Yes.

3 Q. Correct? Okay. Obviously when you leave you
4 don't still have Richard Lewis in your patrol car,
5 correct?

6 A. No.

7 Q. And that is basically the extent of your
8 involvement in this case?

9 A. Yes, sir.

10 MR. DEYSACH: I don't have anything further,
11 Your Honor.

12 MS. TANNER: Nothing further. Your Honor may
13 this witness be excused and go back to work?

14 THE COURT: You have any objections?

15 MR. DEYSACH: I don't have an objection. I
16 don't want him excused completely from the trial,
17 may want to recall him if there's that
18 possibility.

19 THE COURT: Corporal Green you may go back to
20 work, sir, but we may need to recall you.

21 MS. TANNER: The State calls Reginal Holmes.

22 THE COURT: Come on forward at this time, Mr.
23 Holmes.

24 First being duly sworn, **REGINAL**
25 **HOLMES**, testified as follows:

1 THE COURT: All right, Mr. Holmes, if you will
2 come on around, sir. Give us your full name for
3 the record and spell your last name for my Court
4 Reporter and pull that microphone up to your
5 mouth, sir.

6 THE WITNESS: Reginal Holmes. H-o-l-m-e-s.

7 DIRECT EXAMINATION

8 BY MS. TANNER:

9 Q. Good morning, Mr. Holmes.

10 A. Good morning.

11 Q. Where do you live?

12 A. ■ Eddings White.

13 Q. Where is that?

14 A. Off of Seaside Road; St. Helena Island.

15 Q. How long have you lived there?

16 A. The past three years. Three or four years, since
17 I moved back from Columbia.

18 Q. And what kind of property is that?

19 A. It's like private property a lot of family around.

20 Q. Who owns ■ I'm sorry, ■ Eddings White Road,
21 who actually owns that building?

22 A. Earl Holmes.

23 Q. Who is Earl Holmes to you?

24 A. My uncle.

25 Q. And your neighbors, who lives around you?

1 A. Aunts, uncles, cousins.

2 Q. So this area of Eddings White is family land?

3 A. Yes.

4 Q. All right. Mr. Holmes, let's talk about February
5 17, 2010?

6 A. All right.

7 Q. Tell me how that day starts for you?

8 A. I heard a knock at the door. I was sleeping. I
9 was hoping that the knock would go away. I didn't
10 feel like really getting up. I asked who it was.
11 I asked -- I asked twice who it was. And he said
12 Pooh. And I waited and I looked and I see him
13 standing at the door.

14 Q. What time is this?

15 A. It was just daybreak, so I'll say it was close to
16 seven, like 6:45, I mean, sometime around there.

17 Q. All right. When you asked who it was he said
18 Pooh?

19 A. Uh-huh.

20 Q. Who is Pooh?

21 A. Marion Bonds.

22 Q. And are you familiar with Marion Bonds?

23 A. Yes.

24 Q. Who is Marion Bonds to you?

25 A. My cousin.

1 Q. And how cousins, y'all share an uncle or an aunt;
2 how does that work?

3 A. Grandaunt.

4 Q. How long have you known Marion, have y'all grown
5 up together?

6 A. Most of his life.

7 Q. Now, did you grow up in Beaufort County?

8 A. Yes.

9 Q. So you've lived here your whole life?

10 A. Yes, just about.

11 Q. And how about Marion?

12 A. From what I know, yeah, his whole life.

13 Q. So you know who Marion's parents are?

14 A. Yes.

15 Q. You know their names?

16 A. Yes.

17 Q. What are they?

18 A. Jeanette Bonds and Johnny Bonds

19 Q. How often would you see Marion?

20 A. At least twice a week, I mean, he lives on St.
21 Helena so I would see him in passing?

22 Q. So there's no question you're familiar with what
23 he looks like?

24 A. Yes.

25 Q. Do you know if Marion has any tattoos?

1 A. Like a teardrop--

2 MR. DEYSACH: I would object to this. I don't
3 know the relevance or -- and I think it's
4 prejudicial.

5 MS. TANNER: It goes to identity.

6 THE COURT: Do you need to approach?

7 MR. DEYSACH: I would like to, yes.

8 (Sidebar with the Judge.)

9 MR. DEYSACH: Can you get her to ask her
10 question again.

11 BY MS. TANNER: (Resuming)

12 Q. Mr. Holmes, you are familiar with Marion?

13 A. Yes.

14 Q. Is there any identifying markings on his face that
15 you can identify?

16 MR. DEYSACH: I am objecting, Your Honor. I
17 want to place my ---

18 THE COURT: The objection is noted for the
19 record.

20 MR. DEYSACH: I need to get my grounds out
21 there. I don't think it's relevant.

22 THE COURT: Okay. Hold on a second Mr.
23 Deysach, you need to come up here for a second.

24 (Sidebar with the Judge.)

25 THE COURT: All right. Mr. Deysach, your

1 objection is noted for the record.

2 MR. DEYSACH: Rules 401 and 403, Your Honor.

3 THE COURT: Thank you.

4 BY MS. TANNER: (Resuming)

5 Q. All right, Mr. Holmes, back to you. You said,
6 "yes". What identifying mark does he have on his
7 face?

8 A. He has a tattoo on his face.

9 Q. Where --

10 A. A tear drop.

11 Q. Where is it located?

12 A. The left side of his face.

13 Q. So you see him at your door the morning of the
14 seventeenth; is that correct?

15 A. Yeah.

16 Q. And what happens then?

17 A. I open my door.

18 Q. And why did you do that?

19 A. I mean, I had no reason not to open my door, I
20 mean, it was him, so.

21 Q. What do you look out to see who it was, can you
22 you see out of a window?

23 A. Yes.

24 Q. And where is Marion located when you see him?

25 A. Like, standing in front of the door.

1 Q. How close is he to the door?

2 A. Like, maybe eight inches away from the door.
3 Standing right in front of it.

4 Q. And once he comes in, do you say anything?

5 A. I open my door and say, "what's up".

6 Q. And what did Marion say?

7 A. He said nothing at the time. As I opened my door
8 I said, "what's up", and I turn my back, and
9 that's when he, like, -- that's when I heard the
10 gun -- the gun went -- cocked back and he said to
11 me, "get your money" and then I pretty much stood
12 there, like, sort of like disbelief as if it was a
13 joke and I turned around and he had me at gunpoint
14 and he slung the gun. I sort of was dodging the
15 gun sort of got, like, a grazing of the head and I
16 sort of went down and sat on the couch and tried
17 to collect myself and reevaluate myself and this
18 second person came in. So I just sat and
19 evaluated myself for a minute as he started asking
20 for money and asked me do I think I'm better than
21 him and stuff like that.

22 Q. So what kind of gun did he have? Could you give
23 any kind of description of it?

24 A. It was black. Like a nine...

25 Q. Nine millimeter?

- 1 A. Yeah.
- 2 Q. Is that a pistol or is that a long gun?
- 3 A. Handgun.
- 4 Q. You said a second guy came in, do you know who
- 5 that is?
- 6 A. No, not sure.
- 7 Q. Did you tell the police who you thought it might
- 8 be?
- 9 A. I'm not -- I told them who I lot thought it might
- 10 be but I'm not exactly sure.
- 11 Q. Now, what does that guy do?
- 12 A. Sort of standing in the corner with the shotgun up
- 13 to his face, sort of shaking with the shotgun in
- 14 his hand.
- 15 Q. Does he say anything?
- 16 A. No.
- 17 Q. So back to Marion, are you looking at Marion when
- 18 he's saying these things to you?
- 19 A. Straight at him.
- 20 Q. And what's he doing with his gun while he's making
- 21 these comments?
- 22 A. Pointing the gun at me.
- 23 Q. What is he saying to you?
- 24 A. He's saying -- he's asking me do I think I'm
- 25 better than him, and let me get your money, let me

1 get your money, he keeps saying that I tell him --
2 I told him to calm down cause he looked like he
3 was out of control, so I did have a few dollars
4 right around my pocket so I figured after
5 reevaluating that would sort of distract for a
6 moment, so I handed him that and that's when he
7 was still pointing the gun and as he was like
8 handing the money over his friend and that's when
9 I rushed up and grabbed him and threw him up
10 against the wall. I tried to keep the second guy
11 in the back of my mind and what he was gonna do
12 cause, like I say he seemed like he was shaking
13 with the gun so I went out the front door and
14 tripped over the top step. I fell and fell down
15 the step. As I fell down the step and I looked up
16 and he was pointing the gun as he pointing the gun
17 I tried to get up and I got up with my arm and he
18 shot. The bullet went right through my arm and
19 came out the back. And I left the scene. I went
20 to seek aide from my cousin.

21 Q. All right. Let's go back inside the house. How
22 big is this room you're in?

23 A. Typical small living room area.

24 Q. And who's closer to the door, you or Marion?

25 A. He's closer to the door.

1 Q. And when you push by him which direction does he
2 go in?

3 A. Towards the -- towards the wall to the left, a
4 little towards the left.

5 Q. So how many steps is it to get you out the door?

6 A. At that point, maybe, four to five steps from
7 after the time after I grabbed him.

8 Q. So all in all how long do you think all of this is
9 taking, how much time passes?

10 A. From the time I opened the door or from the time
11 I grabbed him?

12 Q. From the time you open the door?

13 A. It went pretty quick, I don't know, it couldn't
14 have went longer than ten minutes, couldn't have
15 been longer than ten minutes, or a little less
16 than that.

17 MS. TANNER: May I approach the witness, Your
18 Honor?

19 THE COURT: You may.

20 BY MS. TANNER : (Resuming.)

21 Q. I'm going to show you what's in evidence already,
22 the States exhibit number 1. Can you identify the
23 item?

24 A. Yes.

25 Q. And what is this?

1 A. It's where I stay.

2 Q. Is this where this occurred?

3 A. Yes.

4 MS. TANNER: Your Honor, may I publish this to
5 the jury, using the Starboard?

6 THE COURT: You may.

7 MS. TANNER: May I have the witness come off
8 the stand?

9 THE COURT: Yes, you may.

10 MS. TANNER: Mr. Holmes, could you come and
11 stand down here beside me, please?

12 (Whereupon witness stepped down from witness stand)

13 BY MS. TANNER: (Resuming)

14 Q. All right. This is the photograph that we showed
15 you. Could you describe to the jury what this is?

16 A. (Inaudible)

17 THE COURT REPORTER: He's going to have to
18 speak up. I can't hear him.

19 MS. TANNER: Can you talk like this like
20 you're yelling at somebody.

21 BY MS. TANNER: (Resuming)

22 Q. Describe to the jury what's in this picture.

23 A. This is the front door, my front door.

24 Q. And can you show us -- you said you came out
25 and you tripped, where were you when you tripped?

1 A. I came up here. We were getting -- there's, like,
2 a piece of wood covering a broken piece of step
3 and I tripped off the top step and I fell down
4 there. That's where I fell.

5 Q. And in what position is your body in on the
6 ground?

7 A. I'm laying on my butt, right here.

8 Q. And where is Marion when you see him again?

9 A. He's standing right here.

10 Q. And what is he doing?

11 A. He's aiming his gun, pointing the gun.

12 Q. And does he shoot the gun?

13 A. Yes.

14 Q. How many times does he shoot?

15 A. Once.

16 Q. And once he's done that what did you do?

17 A. I got up, I ran towards my cousin's house. I ran
18 back there back towards my cousin.

19 Q. Right. Did you see where Marion went?

20 A. No. I didn't see where Marion went. He could
21 have went back inside. I went back that way.

22 MS. TANNER: You can go back to the stand.

23 Thank you.

24 (Whereupon witness went back to stand)

25 BY MS. TANNER (Resuming)

1 Q. Mr. Holmes, do you still have a scar where you
2 were shot?

3 A. Yes.

4 Q. And can you get to it? I know that you have a
5 jacket on and can you take that jacket off for us?
6 Can you point out for the jury -- and if you need
7 to stand up, please and speak loud.

8 A. This is a entry wound. It went up , shot down.
9 The second wound that went inside right here and
10 came out right here.

11 Q. What position was your arm in when you got shot?

12 A. Sort of blocking my chest.

13 Q. Thank you. You can sit down back down. And did
14 you come back to your house that night?

15 A. That evening ---

16 Q. Or that morning, I'm sorry, we're still in the
17 morning, did you talk to the police that morning?

18 A. Not right away. I was on the backside. I was
19 about to get in my car and drive myself to the
20 hospital.

21 Q. But you don't?

22 A. No.

23 Q. What did you do?

24 A. I spoke with the officer and he told me -- he just
25 advised me that it would be better to wait on EMS.

1 And at the time I was, like, pretty angry and
2 irate and did not -- I just wanted to drive myself
3 there and get to it.

4 Q. Did you end up waiting on EMS?

5 A. Yes.

6 Q. Did you let them treat you?

7 A. Yes.

8 Q. Did you go to the hospital?

9 A. Yes.

10 Q. Tell me about your first conversation with the
11 police; Were you cooperative?

12 A. Not at first.

13 Q. Why not?

14 A. I was just angry and real irate at the time.

15 Q. So why does that translate to you didn't want to
16 tell the police nothing?

17 A. Because my mind set was more, like, just getting
18 back. I was confused as to why it even happened.
19 I just was angry.

20 Q. So you said your initial reaction was that you
21 were going to take care of him?

22 A. Yes.

23 Q. Is that what you ended up doing?

24 A. No.

25 Q. What did you do?

1 A. Got with EMS and went to the hospital where my
2 mother and father finally got there and I
3 eventually spoke to the detectives and said who it
4 was that shot me.

5 Q. And did you give them a full explanation of what
6 happened that morning?

7 A. Yes.

8 Q. And were you able to tell them the name of the
9 person that shot you?

10 A. Yes.

11 Q. What other information did you give about him as
12 far as what he looked like that day?

13 A. He had on a camouflage jacket. He was light skin
14 and short.

15 Q. Did you also give them some information of where
16 you might think he would be?

17 A. Yes.

18 Q. All right. Reginal, we need to talk just a few
19 minutes about your background.

20 A. Yeah.

21 Q. You haven't always been an angel; is that correct?

22 A. No.

23 Q. And you've actually had some problems--

24 A. Yes.

25 Q. --and some struggles?

1 A. Yes.

2 Q. Tell the jury a bit about your background and your
3 troubles?

4 A. Two instances I made a poor decision by possessing
5 a controlled substance and the second time I think
6 it was, like, maybe three years ago I was pulled
7 over for driving under suspension and a controlled
8 substance.

9 Q. All right. Now, when you say a controlled
10 substance, what was that substance?

11 A. It was cocaine and marijuana.

12 Q. Now, is that something that you've used in the
13 past?

14 A. Yes.

15 Q. Is that something that you still struggle with
16 that little bit?

17 A. Not right now.

18 Q. Not right now?

19 A. No.

20 Q. All right. Well, tell us what you're doing right
21 now to work on that.

22 MR. DEYSACH: Object to the relevance.

23 MS. TANNER: It goes to the whole weight of
24 the event.

25 THE COURT: Okay. You can be very limited.

1 MS. TANNER: Yes, ma'am.

2 BY MS. TANNER: (Resuming)

3 Q. Since the shooting what are you doing?

4 A. Just graduated with my second degree.

5 Q. And what is that degree in?

6 A. In industrial technology.

7 Q. Okay. Are you still living here in Beaufort
8 County?

9 A. No. I've left and went to Columbia where there is
10 better job opportunities.

11 Q. Do you still have contact with Marion?

12 A. No.

13 Q. On February the 17th of this year, were you having
14 problems with Marion?

15 A. Not that I know of; no.

16 Q. Everybody wants to know why he would try and rob
17 you and shoot you, then?

18 A. Maybe a false perception of, I don't know -- I'm
19 thinking I may have it -- maybe because of the
20 fact my uncle who was just moving back --

21 MR. DEYSACH: I object. I don't think that
22 there's a foundation for this opinion that he's
23 giving. I don't think he should be able to give
24 an opinion with evidence like this, Your Honor.

25 THE COURT: I agree. I sustain the objection.

1 BY MS. TANNER: (Resuming)

2 Q. All right. Mr. Holmes, I need you to tell me who
3 shot you on February 17, 2010?

4 A. Marion Bonds.

5 Q. Who tried to rob you February 17, 2010?

6 A. Marion Bonds.

7 Q. And how do you know Marion Bonds?

8 A. He's my cousin.

9 Q. And do you see, your cousin Marion Bonds, who shot
10 you on February 17th in this courtroom?

11 A. Yes.

12 Q. Could you please point to him for the jury?

13 A. Right there.

14 (Witness points to defendant.)

15 Q. Can you tell me what he's wearing?

16 A. White shirt and a tie.

17 MS. TANNER: Please have the record reflect
18 that he has indicated the defendant. Thank you,
19 Mr. Holmes. Answer anything the defense council
20 asks.

21 **CROSS EXAMINATION**

22 BY MR. IAN DEYSACH:

23 Q. Good morning, Mr. Holmes. My name is Ian Deysach
24 and I'm Marion Bonds' attorney. I'm going to ask
25 you some questions about what happened and what

1 you just testified to when asked questions by the
2 Solicitor. You told the jury just now that you
3 were sleeping when you heard the knock at the
4 door?

5 A. Yes.

6 Q. You told Investigator Kelleher -- let me ask you
7 this -- back up a little bit. You had the
8 opportunity to speak to the police officers on a
9 couple of different occasions about this, correct?

10 A. Yes.

11 Q. The first one that you spoke to was Officer Green.
12 Do you remember speaking to him?

13 A. Was that the first guy that ---

14 Q. That was the gentleman who just testified right
15 before you?

16 A. Yeah.

17 Q. You spoke with Investigator Fraser and Chapman
18 when you were at the hospital; you remember that?

19 A. Yes.

20 Q. And you spoke -- and that was the same day?

21 A. Yes.

22 Q. The 17th. And you spoke to Investigator Kelleher
23 on the 18th at your home, correct?

24 A. Yes.

25 Q. You told Investigator Kelleher that you were

1 getting ready for classes when you heard the knock
2 at the door, correct?

3 A. Excuse me?

4 Q. That you weren't asleep when the knock came at the
5 door. You were getting ready for school. Do you
6 remember telling Investigator Kelleher that?

7 A. No.

8 Q. Back up again now. When you're speaking to
9 police, it is very clear to you that this is a
10 serious subject that you're speaking about, right?

11 A. Yes.

12 Q. And for one thing, you never want to lie to the
13 police, correct?

14 A. No.

15 Q. And you never want to leave anything out that's
16 really important when you're talking to the
17 police?

18 A. No.

19 Q. And you certainly don't want to do it when the
20 subject matter is something that's so important,
21 correct?

22 A. Correct.

23 Q. Not only is it an important subject matter, it
24 directly deals with you, correct?

25 A. Correct.

1 Q. So you want to make sure that what you're telling
2 the police is the complete truth?

3 A. Um hmm.

4 Q. Make sure you answer with a yes or no because
5 she's taking it down. You want to make sure you
6 don't leave anything out that is important,
7 correct?

8 A. Correct.

9 Q. And you don't want to -- you want to include every
10 detail that they might want to know, correct?

11 A. Correct.

12 Q. You say that you just graduated with a CAT Degree?

13 A. A second degree.

14 Q. So you already had a degree at this time when this
15 happened?

16 A. Yes.

17 Q. So I guess my point is that, ya' know, you're no
18 dummy, ya' know?

19 A. No.

20 Q. Correct. Now when this occurred, you had cocaine
21 in your system, correct?

22 A. Yes.

23 Q. And you had marijuana in your system, correct?

24 A. Yes.

25 Q. How -- when did you use the cocaine and marijuana

1 before this?

2 A. I'm not sure. Perhaps, a couple of days before.

3 I'm not sure but that was a long time ago.

4 Q. You think it was just a couple of days?

5 A. I'm not sure.

6 Q. Had you had a party at your house?

7 A. Well, I was playing a game and a few friends were
8 drinking.

9 Q. That's when the drug use took place?

10 A. I'm not sure when that took place. I'm just
11 saying I was drinking the night before. We were
12 partying and playing video games.

13 Q. Were you trying to tell the Solicitor that you had
14 a drug problem at the time?

15 A. I've had problems with drug use.

16 Q. Were you having problems with use on February
17 17th?

18 A. That morning?

19 Q. No, I mean ---

20 A. A couple of days before I did experience -- well,
21 it wasn't ---

22 Q. You said experience, did you mean experiment?

23 A. It wasn't experimenting cause it wasn't the first
24 time. I've had trouble with it before.

25 Q. Right. You had trouble with it because you had to

1 go to court for it in May of 2009, correct?

2 A. I believe, I think that's when it was.

3 Q. And it was for PWID, wasn't it?

4 A. I'm not sure if that's what it was. If that's
5 what you have then it is.

6 Q. So what you're saying is you went to court May of
7 '09 on drug charges and you're not exactly sure
8 what the drug charges are?

9 A. I'm not sure exactly what you're reading. I'm not
10 sure it was PWID. I know I did get in trouble
11 with possession of cocaine.

12 Q. So it's possible that it was PWID?

13 A. It's possible.

14 Q. It stands for possession with intent to
15 distribute.

16 A. Yes.

17 Q. And you pled guilty, correct?

18 A. Yes.

19 Q. And you're actually -- you got three years of
20 probation, right?

21 A. Yes.

22 Q. And so you were on probation when this occurred?

23 A. Yes.

24 Q. And you were on probation when you were
25 experiencing with the drugs, correct?

1 A. Yes.

2 Q. So I already asked you -- you're telling the Jury
3 that you never did tell Investigator Kelleher that
4 you were getting ready for classes that morning,
5 correct?

6 A. I said I had classes that morning. I had classes
7 that same day but I was just waking up.

8 Q. And what you told the Jury was that when you heard
9 the first knock you were in bed?

10 A. I was laying in the living room.

11 Q. Okay. And -- uh, asleep?

12 A. Yes.

13 Q. And that you didn't respond to the first knock,
14 correct?

15 A. No.

16 Q. You hoped that the person would go away?

17 A. Yes.

18 Q. Now when -- before you open the door, you hear a
19 voice on the other side, correct?

20 A. I asked them who it is.

21 Q. And after you ask who it is and you hear the
22 response you then look out the window?

23 A. Yes, I did simultaneously at the same time.

24 Q. You asked and looked out the window at the same
25 time, correct?

1 A. Yes.

2 Q. Was the window that you looked out of the same
3 window that has a bullet hole in it?

4 A. No.

5 Q. Different window?

6 A. It's the window right beside the door.

7 Q. And the bullet hole is in a different window?

8 A. Yes.

9 Q. And that bullet hole that's in that window your
10 saying did not come from this event on the 17th?

11 A. I'm really am not clear where that bullet hole
12 came from.

13 Q. Do you know if it was there before this happened?

14 A. Yes.

15 Q. It was there?

16 A. Yes.

17 Q. So there's no way it could've occurred on the
18 17th?

19 A. No.

20 Q. There's another bullet mark in your house, isn't
21 there?

22 A. I'm not sure.

23 Q. There might be?

24 A. There shouldn't be.

25 Q. When ---

1 A. There is a hole where that bullet came through
2 that window. There's a marking in that wall.

3 Q. Inside the home?

4 A. Yes.

5 Q. When you look out the window are you telling the
6 Jury that you see one person or two people?

7 A. I see one.

8 Q. Did you tell Investigator Green -- not
9 Investigator Green -- Patrolman Green that saw
10 Marion Bonds and Jason Thomas standing there? You
11 never told him about Jason Thomas?

12 A. Not before I open the door.

13 Q. But you did give him the name Jason Thomas,
14 correct?

15 A. Yes.

16 Q. But you're saying that you didn't see Jason Thomas
17 standing there?

18 A. That was the last person that -- that he was
19 around -- that was around -- I figured it was him.

20 Q. So you know Jason Thomas?

21 A. Yes.

22 Q. And are you related to Jason Thomas?

23 A. Yes.

24 Q. What's the relationship?

25 A. Cousins.

1 Q. Are Marion Bonds and Jason Thomas brothers?

2 A. Excuse me?

3 Q. Are Marion and Jason brothers?

4 A. No.

5 Q. So you see the other person, correct?

6 A. Not clearly.

7 Q. Not clearly? Not at first, not clearly?

8 A. Not clearly it was -- it kind of like on a glance
9 because there's a gun pointing in your face and
10 the other one with the shotgun, I'm trying to make
11 -- focus on the one that was ---

12 Q. Who's face?

13 A. The other person.

14 Q. What was it covered with?

15 A. It was covered up with the shotgun.

16 Q. What was that person wearing?

17 A. He was wearing black.

18 Q. A black overcoat?

19 A. A big, black coat.

20 Q. A black coat or a black jacket?

21 A. Like a black coat on.

22 Q. So you're saying that there's a person with a
23 shotgun pointed at you and you don't really pay
24 attention to that person?

25 A. Because he's not the one pointing a firearm.

1 Q. But I thought you said he was pointing a shotgun?

2 A. Yeah. He wasn't the only one pointing a firearm.

3 Q. He wasn't the only one, I didn't hear the word
4 only. So when the door opened -- well, when you
5 opened the door, the only person who walks in at
6 that time, you're saying is Marion Bonds?

7 A. When I initially opened the door, I saw it was
8 Marion Bonds. He came in, I immediately turned my
9 back and walked away when I saw it was him.

10 Q. So you didn't see Jason Thomas at that time or
11 Jason anybody at that time?

12 A. I'm not sure if it was Jason or anyone else. I'm
13 not positive on the second person. I'm just
14 positive on who the first was when I opened the
15 door.

16 Q. But your positive there was a second person?

17 A. Yes. I am positive there was a second person at
18 the door.

19 Q. And you don't see that person until after Marion
20 comes into the room?

21 A. Until afterwards. When he came -- when he came
22 in, when I heard the gun cock, that's when that
23 second person must of came in right within that
24 time.

25 Q. When you opened the door for Mr. Bonds ---

1 A. It was just him there.

2 Q. --nobody shuts the door behind?

3 A. I don't recall.

4 Q. So you don't know if this other person comes
5 through an open door or closed door?

6 A. Yeah, he came in through an open door.

7 Q. So the door was left open when Marion Bonds comes
8 in?

9 A. I think so. All of the events were occurring at
10 the same time.

11 Q. Now when that person comes in, you do or do not
12 initially see their shot gun?

13 A. Of course you see the shot gun.

14 Q. Because there's no way to conceal a shotgun?

15 A. No.

16 Q. And there's no way given what this person was
17 wearing that they could have concealed a shot gun?

18 A. No.

19 Q. Because they're too big, right? Shotguns are too
20 big, right?

21 A. Yes.

22 Q. So you say that you handed over some money?

23 A. Yes.

24 Q. Where did that money come from?

25 A. A small amount of money that I had in my pocket

1 from change left over from the store.

2 Q. How much money?

3 A. I don't recall, maybe like \$30 or so.

4 Q. Isn't it true that you never told Corporal Green
5 that you turned over any money, correct?

6 A. He didn't ask me that.

7 Q. What about Investigators Fraser and Chapman?

8 A. No. They just asked me who did it.

9 Q. But they never asked you what it was? They never
10 asked you what happened?

11 A. Yeah, they asked me what happened. They asked who
12 it was. That's the one point they wanted to get
13 down to. They said that the first twenty-four
14 hours is the most important.

15 Q. So what you're saying is that they're talking to
16 you about what you've alleged is an armed robbery
17 or an attempted armed robbery and they never asked
18 you whether anything was given to the person who
19 supposed to of done it?

20 A. I said a small amount of cash. Their main focus
21 was they wanted to find out who actually shot the
22 gun.

23 Q. You did tell them that you turned over a small
24 amount of cash?

25 A. A small amount of cash.

1 Q. And you told -- are you saying you told the same
2 thing to Investigator Kelleher?

3 A. Was that the guy at the hospital?

4 Q. That was the guy at your house the next day.

5 A. Well, all I recall is him asking me is about
6 identifying who was there.

7 Q. Okay. Isn't it true that you told Investigator
8 Kelleher -- instead of telling him whether or not
9 you gave any money to the two guys, that the next
10 thing you told him about was pushing Marion Bonds
11 against the door and getting off the porch?

12 A. Small amount of cash is what gave me the time to
13 distract him to push him against the door.

14 Q. I know that's what you're saying now. The
15 question is whether you ever told anybody else
16 about that small amount of cash? Yes or no?

17 A. I don't know. It was seven months ago but if
18 they asked, I'm pretty sure I did.

19 Q. But you don't specifically remember doing it?

20 A. I don't -- I don't specifically remember telling
21 them about the small amount of cash but if I was
22 telling them the story I don't see how I would
23 leave that out because that was a crucial part.

24 Q. Exactly. So what you're telling the Jury now is
25 that you got two guys armed inside your house?

1 A. Yes.

2 Q. Both of them pointing guns?

3 A. Yes.

4 Q. And that you pushed Marion Bonds against your wall
5 inside your house?

6 A. Through him up against the wall, yes.

7 Q. Not against the door of your house or anything
8 like that?

9 A. No. I through him up against the wall.

10 Q. And that this occurred inside the home not out on
11 the porch?

12 A. Inside -- I'm grabbing him from inside. I threw
13 him up against the wall.

14 Q. And you told -- do you remember telling
15 Investigator Kelleher that it was against the
16 door? If you don't remember, I mean, I'm not
17 trying to trick you.

18 A. I mean it was pretty much eight months ago. What
19 happened was I grabbed him and threw him up
20 against the wall.

21 Q. It was eight months ago when you spoke to him, but
22 when you spoke to him the event had just occurred
23 the day before, right?

24 A. Yeah.

25 Q. And when you spoke to Investigators Fraser and

1 Chapman in the hospital, it had just occurred that
2 day, correct?

3 A. But you're asking me present time, I don't recall
4 what I said that day.

5 Q. Don't you think you would've had a better memory
6 about what happened back then than you do now;
7 about the events of that day?

8 A. I would have a better memory now?

9 Q. Then.

10 A. I think so.

11 Q. Because it had just happened, right?

12 A. Yes.

13 Q. Memories fade with time; would you agree with
14 that?

15 A. Yes, that's why I can't recall exactly what all I
16 said. I told them to the best of my knowledge.

17 Q. Now, when you get out of the house, you say that
18 you trip on the top step?

19 A. Yeah.

20 Q. And then land at the bottom of the steps, correct?

21 A. On the ground.

22 Q. On the ground. The bottom of the steps looks like
23 there is just a loose board laying there. Do you
24 know what I'm talking about?

25 A. Can you show me?

1 MR. IAN DEYSACH: Can I approach the witness,
2 Your Honor?

3 THE COURT: All right.

4 Q. Can you see the bottom of your staircase?

5 A. Yes.

6 Q. Do you see that board that's laying on the ground?

7 A. Yes.

8 Q. Is that the board that you tripped on?

9 A. No, I tripped at the top of steps.

10 Q. And you fell all the way down?

11 A. Yes.

12 Q. Was there ever like a bruise or a cut that
13 resulted from that fall?

14 A. I hit my knee, twisted it a little.

15 Q. When you -- Okay -- when you landed on the ground,
16 you flipped around?

17 A. I landed on the ground. I landed sort of like on
18 my butt. Right on my hip or my butt.

19 Q. So you're running front-wards down the steps,
20 correct?

21 A. Yeah.

22 Q. And you trip?

23 A. Yeah.

24 Q. And by the time you hit the ground, you have
25 twisted around so that your butt lands first?

1 A. Yeah.

2 Q. And you're saying that the gunshot occurs from the
3 top of the -- on the porch?

4 A. Yes.

5 Q. You're at the bottom, you're on the ground, and
6 the person shooting you is on the porch?

7 A. Yes.

8 Q. And you said that the gun that was used was not a
9 revolver.

10 A. No.

11 Q. You told that to the police, correct? You told
12 that to these people, correct?

13 A. Yes, it was a handgun.

14 Q. So that means that in a revolver the shell casing
15 stays in the chamber, correct?

16 A. Yes.

17 Q. But for the handgun you're describing the jacket
18 bullet -- the bullet jacket would be ejected,
19 correct?

20 A. Yes.

21 Q. Now you told the Jury that the gun looked like a
22 nine millimeter, correct?

23 A. Yes.

24 Q. You told the police at the hospital that you
25 thought it was like a .380 correct?

1 A. I think but they look pretty similar.

2 Q. Now you also said that the gun "ain't have much
3 pop to it"?

4 A. The minute that things were going on all I heard
5 was the pop and that was it.

6 Q. When you were describing the gun, you told police
7 that the gun that shot you didn't have much pop to
8 it?

9 A. I said that.

10 Q. And a nine millimeter has a lot of pop to it,
11 doesn't it?

12 A. That would be your opinion.

13 Q. That is not your opinion? You don't know?

14 A. I'm not sure. A lot was going on. Some may, some
15 don't.

16 Q. Now will you show the Jury what position your arm
17 was in when it got hit by the bullet?

18 A. Like this (demonstrating).

19 Q. And will you, while holding onto that position,
20 show me where the entry wound occurred?

21 A. (demonstrating).

22 Q. So your arm -- you're facing -- your feet are
23 closer to your home and your head is away?

24 A. Yes.

25 Q. You have your arm up like this (demonstrating)?

1 A. As I'm swinging to get up.

2 Q. You're trying to get up?

3 A. Yes.

4 Q. And so you're saying that the shot comes from
5 above and hits you right here.

6 A. I'm saying, yes. It hits me in the middle and
7 down right here. It comes through here and it
8 comes up, straight out. (demonstrating).

9 Q. And so that would have left a bullet somewhere in
10 that area where it occurred?

11 A. I think so.

12 Q. Isn't it true that when you got shot, the gun that
13 shot you, was right up against your skin?

14 A. What?

15 Q. Isn't it true that when you got shot, it didn't
16 happen as you just described? It happened as your
17 -- as the gun was up against your skin?

18 A. No.

19 Q. Isn't it true that along with the bullet holes
20 that were left on your arm that there was a burn
21 mark on the front of your arm?

22 A. I don't know what it was that was like I guess
23 when the bullet coming in. It burned me going in.

24 MR. IAN DEYSACH: Let me mark this as -- I
25 believe this one is exhibit ten. I'm just going

1 to approach the witness, Your Honor.

2 THE COURT: Go ahead.

3 Q. I'm going to show you this picture. Is that a
4 picture of your injury?

5 A. Yes.

6 Q. Do you see a burn mark below the entrance wound?

7 A. Yes.

8 Q. Do you see burns around the entrance that look
9 like powder burns?

10 A. Yes.

11 Q. So isn't it true that this gunshot occurred, not
12 from somebody standing on the top of the stairs
13 and you on the ground, but with the gun pressed up
14 against your arm?

15 A. No.

16 Q. So while this is happening, where is the guy with
17 the shotgun?

18 A. He never came outside. All I saw was when Marion
19 came outside. I don't know where he was. He
20 might have been inside. I don't know.

21 Q. And you ran to your cousin's house?

22 A. Yes.

23 Q. Where did -- who's your cousin, I guess, is the
24 question? What's your cousin's name?

25 A. Michael Holmes.

1 Q. Michael Holmes?

2 A. Yes.

3 Q. How far away does he live?

4 A. 50 yards, maybe less. Less than 50 yards.

5 Q. Now, isn't it true that you told the police back
6 on the 17th that Marion and Jason left on foot?

7 A. I would think. There wasn't a car there.

8 Q. So did you have a car?

9 A. Yes.

10 Q. But you didn't see a car that would be attributed
11 to either Jason Thomas or Marion Bonds or anybody?

12 A. No.

13 Q. And you never heard a car start up and people
14 drive away or anything like that?

15 A. I already ran -- after getting shot, I ran to my
16 cousins house.

17 Q. So you're saying that if that would have occurred,
18 you would not have been in a position to hear it?

19 A. There wasn't a car around.

20 Q. Now when this first happened, you were ambivalent
21 about -- you weren't sure if you wanted the police
22 to get involved in this, correct?

23 A. It wasn't a fact of me not being sure. I was
24 angry at the time and didn't consider the fact ---

25 Q. You said something to the effect that I'll handle

1 it myself, correct?

2 A. Perhaps.

3 Q. That, instead of turning this over to the police,
4 that you would hand out justice on your own?

5 A. I just said I would handle it by myself.

6 Q. And that's what that means, right?

7 A. If that's the way you want to interpret it.

8 Q. Well, you know this is the case that centers
9 around you. I'm trying to find out what you meant
10 when you told them that you would handle it
11 yourself?

12 A. I would handle it myself.

13 Q. And so you're not going to give the Jury anymore?

14 A. I mean I was angry. What I'm meant at that time
15 was I mean for me to be angry at that momen,t
16 obviously. Do you mean for me to get back at him
17 the way they hit me?

18 Q. Right.

19 A. Yeah.

20 Q. And when the police asked you if you wanted to --
21 we're at the hospital now -- when the police asked
22 you whether or not you wanted them to go forward
23 with this you told them I don't care?

24 A. I think at that point I mentioned what I said I
25 was still unsure. I was still angry at the time.

1 Q. So you did tell them that?

2 A. I don't specifically remember that. It's a
3 possibility I may have said it. I don't recall.

4 Q. And then when you didn't give them a firm answer
5 they asked you if you want to sleep on it; is that
6 right, give you some more time to think about it?

7 A. I -- they did ask me.

8 Q. They did?

9 A. They did ask me if I needed more time to think
10 about it.

11 Q. Did you say did or didn't? I couldn't
12 quite ---

13 A. They did.

14 Q. They did. Because you weren't sure if you wanted
15 to get the police involved?

16 A. Once again, I was still angry.

17 Q. And it wasn't until after you talk to your parents
18 that you decided that getting the police involved
19 was the right thing, right?

20 A. Yes.

21 Q. So if it had been just left up you, you're not
22 sure if you would have gotten the police involved?

23 A. That's a big if. After I cooled down I would have
24 thought more rationally.

25 Q. So when you're talking to the police at the

1 hospital, you tell the police that the other guy
2 with the shotgun is Jason something, correct?

3 A. Yes.

4 Q. And they asked you, "do you mean Jason Thomas?"

5 A. Yes.

6 Q. And you told them I don't know his name or not?

7 A. I don't know his last name.

8 Q. But he's your cousin?

9 A. So.

10 Q. So ---

11 A. I know the last name isn't Holmes.

12 Q. So you've got a cousin whose last name you don't
13 know what it is?

14 A. I wasn't sure of his last name.

15 Q. Even when they said Jason Thomas, you said I'm not
16 sure?

17 A. I'm not sure. I wasn't sure.

18 Q. And so what you're saying to the Jury today is --
19 I think, to this day, you're not sure who that
20 second person was; is that what you're saying?

21 A. I already made that known. I wasn't sure who the
22 second person was. I know who shot me.

23 Q. But you don't know who the second person is?

24 A. I'm not sure.

25 Q. And you never knew, did you?

1 A. I'm not sure.

2 Q. Didn't -- You remember when Investigator Kelleher
3 came to your house, right?

4 A. Yes.

5 Q. Didn't he show you pictures of Jason Thomas?

6 A. I was going on a hunch. I don't know who the
7 second person was.

8 Q. Didn't the investigator tell you that you weren't
9 obligated to pick anybody out?

10 A. He may have said that.

11 Q. Didn't he tell you the fact that photographs are
12 shown to you should not influence your judgment?

13 A. He may have said that also.

14 Q. You should not conclude or guess that the
15 photographs contained the picture of the person
16 who committed the crime?

17 A. He may have said that. I'm not sure.

18 Q. And then after he read you that, didn't he ask you
19 to sign a document with those words on it?

20 A. With what words on it?

21 MR. IAN DEYSACH: I'm going to approach the
22 witness, Your Honor. I guess, I'm going to
23 identify this as number eleven.

24 Q. Is that your signature?

25 A. Yes.

1 Q. Is that the document that Investigator Kelleher
2 asked you to sign?

3 A. Yes.

4 Q. And by signing it weren't you agreeing to follow
5 what the rules were?

6 A. Yes.

7 Q. And now you're telling the Jury that the only
8 reason that you picked this person out of the
9 lineup was because it was a hunch?

10 A. It fit his description at the time.

11 Q. But they're showing you a picture of his face,
12 aren't they?

13 A. Yes.

14 Q. And you circled that picture, correct?

15 A. Yes.

16 Q. And you didn't tell the police that you were doing
17 it just because it was a hunch, were you?

18 A. No.

19 Q. In fact they told you not to circle somebody's
20 face on that basis, correct?

21 A. Excuse me?

22 Q. They told you not to circle somebody's face on the
23 basis of a guess, correct?

24 A. They asked -- they asked me who.

25 Q. So you circled Jason's face?

1 A. But I'm not sure if it was Jason.

2 Q. So isn't it true that you lead the investigator to
3 believe, on that time, that you were sure it was
4 Jason?

5 A. I don't know how to answer that. That's who I
6 thought it was -- that's who I thought was so
7 that's why I circled it.

8 Q. That's who you thought it was then?

9 A. Yeah.

10 Q. And that's who you had a hunch about now?

11 MS. ANGIE TANNER: Your Honor, I'm going to
12 object. This has been asked and answered now,
13 several times.

14 THE COURT: Okay. Keep going but let's get
15 there.

16 MR. IAN DEYSACH: I think the Solicitor's
17 probably correct that the point has been made.

18 BY MR. DEYSACH (Resuming)

19 Q. Just to be clear, you're saying that the only
20 thing that was taken was the change in your pocket
21 that you had from going to the store, correct?

22 A. That I handed over to him.

23 Q. Nothing else was taken?

24 A. Not that I know of. After I grabbed him, got
25 outside, I don't know what happened.

1 Q. And was there anything else missing?

2 A. Not that I know of.

3 Q. Didn't you tell -- when was the last time you had
4 seen Marion Bonds before this occurred?

5 A. Maybe a day or two before. I'm not sure.

6 Q. Isn't it true that you had seen -- you told the
7 police that you had seen Marion yesterday?

8 A. That would qualify as a day or two before.

9 Q. On the 16th, you had seen him?

10 A. Uh-huh.

11 Q. And this happened on the 17th?

12 A. Uh-huh.

13 Q. That's what you told the police and that's what
14 you're telling the Jury now?

15 A. Yes.

16 Q. Your people -- umm, I'm gonna ask the question
17 again. You told the police that Marion might be
18 on Ball Park Road near the clinic, correct?

19 A. Yes.

20 Q. Because you knew he stayed there?

21 A. I didn't know he stayed there.

22 Q. Why did you tell the police to look there?

23 A. Because I know he's there from time to time.

24 Q. And you know he's there from time to time from
25 observing him there?

1 A. I just hanging out seeing him outside when I was
2 passing by.

3 Q. Have you ever visited him there?

4 A. No.

5 MR. IAN DEYSACH: Begging The Court's
6 indulgence. Just a couple more things.

7 BY MR. DEYSACH (Resuming)

8 Q. Do you remember telling the police that Jason
9 Thomas was at the bottom of your steps, not in
10 your house?

11 A. When?

12 Q. When... Let me see...

13 MR. IAN DEYSACH: Begging The Court's
14 indulgence.

15 BY MR. DEYSACH (Resuming)

16 Q. When you spoke with Investigator Kelleher the day
17 after?

18 A. That what?

19 Q. That Holmes said he then saw Jason Thomas standing
20 at the bottom of the front porch with a shotgun in
21 his hand?

22 A. No.

23 Q. You never told Investigator Kelleher that?

24 A. I don't recall ever saying that.

25 Q. You don't remember saying it, correct?

1 A. I don't recall ever saying it.

2 Q. And you're telling the Jury that's not the way it
3 was?

4 A. No.

5 MR. IAN DEYSACH: That's all I have, Your
6 Honor.

7 THE COURT: Solicitor?

8 MS. ANGIE TANNER: Nothing further, Your
9 Honor. May this witness be excused?

10 THE COURT: Any objection?

11 MR. IAN DEYSACH: No, Your Honor.

12 THE COURT: All right. You may be excused,
13 sir.

14 MS. ANGIE TANNER: May we approach, Your
15 Honor?

16 (Sidebar)

17 THE COURT: Yeah. Ladies and gentlemen of the
18 Jury, we will be taking a very short break. Put
19 up another witness and then break for lunch. I'm
20 going to caution you, again, do not discuss this
21 case. It would be inappropriate to do so at this
22 time. Refresh yourselves, very quickly. Come on
23 back out and we'll finish up and get you out to
24 lunch. Thank you, ladies and gentlemen.

25 (Whereupon Jury exited courtroom 12:21 P.M.)

1 THE COURT: Y'all, we will be at ease for just
2 a couple of minutes.

3 (Whereupon a break was taken at 12:21 P.M.)

4 (Whereupon Court resumed at 12:45 P.M.)

5 THE COURT: Welcome back, Ladies and
6 Gentlemen. Solicitor, if you will call your next
7 witness.

8 MS. ANGIE TANNER: Thank you, Your Honor. The
9 State calls Dr. Thomas Duff.

10 First being duly sworn, **DR. THOMAS**
11 **DUFF**, testified as follows:

12 THE CLERK: Can you please state your first
13 and last name for the record.

14 THE WITNESS: Thomas Duff

15 THE CLERK: And spell your last name.

16 THE WITNESS: D-u-f-f.

17 BY MS. ANGIE TANNER:

18 Q. Good afternoon, Dr. Duff. If you could, pull the
19 microphone right around to you so everybody in the
20 courtroom can hear. Where are you employed?

21 A. Beaufort Memorial Hospital.

22 Q. And what is your position at Beaufort Memorial
23 Hospital?

24 A. An ER physician.

25 Q. And what is your educational background?

1 A. Medical school (Inaudible)

2 COURT REPORTER: He needs to speak up. I
3 can't hear him.

4 BY MS. TANNER (Resuming)

5 Q. I'm sorry. What is your educational background?

6 A. Medical school with West Virginia, intern year at
7 Logan-West Virginia, and then residency at Medical
8 College of Georgia Augusta.

9 Q. And how long have you been working at the Beaufort
10 Memorial Hospital?

11 A. About three and a half years.

12 Q. What kind of shifts do you have in the emergency
13 room?

14 A. Twelve hour day and night.

15 Q. And do you have any specialties in your field?

16 A. Board certified in family medicine and other
17 training in addition to that.

18 Q. And do you have training in emergency medicine or
19 I guess -- is there another name for what you call
20 what you do in the emergency room?

21 A. I've had other training such as Ultrasound,
22 advanced trauma, life support training.

23 MS. ANGIE TANNER: Your Honor, at this time,
24 the State would move to have Dr. Duff qualified as
25 an expert in his medical background, particularly

1 in family medicine, emergency medicine.

2 THE COURT: Mr. Deysach?

3 MR. IAN DEYSACH: Just briefly.

4 BY MR. IAN DEYSACH:

5 Q. The training for emergency medicine, could you let
6 the Jury know a little bit about what you've done
7 that makes you qualify specifically as an
8 emergency room doctor?

9 A. I interned at a small community hospital in Logan,
10 West Virginia that saw a lot of trauma. Most of
11 my time in intern year was spent in the emergency
12 room dealing with trauma and also cardiac patients
13 and things like that. So I'm experienced in doing
14 procedures such as chest tubes and central line
15 placements, things like that.

16 Q. And briefly, just explain to the Jury what you
17 mean by trauma?

18 A. Trauma is anything that could be falling down the
19 stairs, gunshot wounds, car wrecks. In West
20 Virginia, timber and coal accidents.

21 MR. IAN DEYSACH: I don't have any more
22 questions. I do not have an objection to the
23 qualified as an expert in the emergency room
24 medicine. I'm not sure what the family medicine
25 would have to do with this case. I guess I don't

1 have an objection to that either.

2 THE COURT: Ladies and Gentlemen, typically, a
3 witness can only testify to something they've
4 heard, seen specifically and are not permitted to
5 their opinion. There is an exception to that for
6 people who have been determined or qualified as
7 expert witnesses. In this case, Dr. Duff is being
8 qualified in the area of trauma medicine or
9 emergency room medicine and family medicine.
10 Again Ladies and Gentlemen, that for which he can
11 giving an opinion. Again that opinion is for you
12 to use as you see fit. Solicitor.

13 MS. ANGIE TANNER: Thank you, Your Honor.

14 BY MS. TANNER: (Resuming)

15 Q. Now Dr. Duff, you said that part of your training
16 is treating gunshot wounds?

17 A. Yes. Yes, it is. Basically, you treat where the
18 gun enters.

19 Q. And so you are familiar with, recognize, lot's of
20 experience with gunshot wounds?

21 A. Yes.

22 Q. And on February 17, 2010, did you treat Reginal
23 Holmes for a gunshot wound?

24 A. Yes.

25 Q. And with your experience, can you examine a

1 gunshot wound and determine anything about it such
2 as what type of weapon it would have come from?

3 A. You can give an estimate of the weapon and often
4 times front path entrance wounds and exit wounds.
5 Not always but most often.

6 Q. And is there a difference for you in your
7 examination in an entry wound and a exit wound?

8 A. An entry wound is usually smaller than the exit
9 wound.

10 Q. Why is that?

11 A. The projectile as it enters the skin, the skin
12 will sometimes flex inward as the bullet or
13 projectile goes into the skin and often times that
14 will leave a smaller entry wound than the exit
15 wound because tissue is pushed ahead of the bullet
16 when it exits.

17 Q. And in your treatment of Mr. Reginal Holmes, were
18 you able to evaluate his wounds for entry or exit
19 wounds?

20 A. Yes.

21 Q. And did you also -- were you able to determine
22 some type of trajectory of the projectile?

23 A. Usually you can, yes. Based on his, it was pretty
24 straight trajectory, yes.

25 MS. ANGIE TANNER: Your Honor, if I may

1 approach the witness?

2 THE COURT: You may.

3 BY MS. TANNER: (Resuming)

4 Q. First, I'm going to show you what has been marked
5 as the State's exhibit two. If you can identify
6 what is depicted in that photograph?

7 A. This appears to be an entrance wound.

8 Q. And I will show you what's marked State's Exhibit
9 Three. Ask if you can identify what is depicted
10 in this photograph?

11 A. In the lower right hand corner, is what appears to
12 be smaller and the more round exit wound in the
13 center of the photograph.

14 Q. And are these photographs a fair and accurate
15 depiction of Reginal Holmes' wounds on February
16 17, 2010?

17 A. Yes.

18 MS. ANGIE TANNER: Your Honor, the State moves
19 two and three into evidence.

20 THE COURT: Any objection, Mr. Deysach?

21 MR. IAN DEYSACH: No, Your Honor.

22 THE COURT: In evidence without objection.

23 MS. ANGIE TANNER: Your Honor, may I publish
24 to the Jury?

25 THE COURT: You may.

1 MS. ANGIE TANNER: And, Your Honor, may I have
2 the witness come down from the stand?

3 THE COURT: Dr. Duff, you may step down, sir.

4 BY MS. TANNER: (Resuming)

5 Q. Dr. Duff, if you will come and stand right here
6 with me. I'm going to ask you to hold this.

7 A. Thank you.

8 Q. Speak into the microphone. First, the State's
9 exhibit number two, can you point out to the Jury-
10 - first I need to have a pointer for you?

11 A. This is appears to be an entrance wound.

12 COURT REPORTER: You still need to speak up.

13 A. The wound you see here, appears to be an entrance
14 wound.

15 Q. And what can you tell us about the discoloration
16 around the wound?

17 A. At this point, it looks like bruising at the
18 trauma of the entrance wound.

19 Q. Now Doctor, in your experience with gunshot
20 wounds, can you tell if a weapon is actually
21 pressed to the skin when the gun is fired versus
22 when it is shot from a distance? Are there any
23 indicators on the skin, that you look for, in
24 examination?

25 A. You look for burns or sometimes you see specks

1 that look like pepper basically.

2 Q. Now did you see that on Mr. Reginal Holmes?

3 A. No.

4 Q. He did not have any wounds that are burns on him?

5 A. No, he didn't.

6 Q. And no specks from the gun powder?

7 A. No.

8 Q. So this appears, in your opinion -- does this
9 appear, in your opinion, to be shot from a
10 distance?

11 A. Yes.

12 Q. So this dark color here, what would that be, in
13 your opinion?

14 A. This could potentially be where a bullet path
15 entered the skin. An indirect path basically that
16 went into the bicep region.

17 Q. And Doctor, this is what is the State's exhibit
18 number three, would you tell the jury what is
19 depicted here?

20 A. Entrance wound much smaller and more round. An
21 exit wound is larger usually and more irregular.

22 Q. I know that this is up close but can you show us,
23 maybe on my arm, how this is oriented? And what
24 are you showing the Jury there?

25 A. Basically a support path.

1 Q. And can you show us how his arm held? Where would
2 the entry wound be?

3 A. Right about here.

4 Q. And exit?

5 A. It'd be an angle probably about 60 degrees to the
6 arm.

7 Q. Thank you, Doctor. You may return to the stand.

8 MS. TANNER: Thank you, Doctor Duff. I have
9 no further questions. Answer anything defense
10 counsel may have.

11 BY MR. IAN DEYSACH:

12 Q. Good afternoon, Dr. Duff. My name is Ian Deysach
13 and I represent Marion Bonds in this case. I'm
14 going to step forward and grab these pictures. I
15 think you told the Jury that you do have a pretty
16 extensive history with treating gunshot wounds?

17 A. I've treated several gunshot wounds. I have no
18 idea of the number.

19 Q. Does it make a difference in your treatment, how
20 close the gunshot came from?

21 A. No. It depends, basically depends on organs or
22 body structure, bullet speed, size of the caliber.

23 Q. From seeing gunshot wounds, you have seen the
24 burns that accompany a close range gunshot wound;
25 is that correct?

1 A. Yes, I have.

2 Q. And you describe what you would expect to see as -
3 - what does those burns look like?

4 A. The burns usually will cover a wider area.
5 There's bruising at the initial impact point but
6 the burns cover a wider area and they'll be, often
7 times, look like pepper. Some people call it
8 stippling around the wound edge. That's usually
9 from unburned powder.

10 Q. Let me ask you this. You were doing it on the
11 slide, I'm just going to use the picture this
12 time. This is States Exhibit Two. And I'm going
13 to refer to that burn -- that burn -- or I don't
14 know -- that blemish, however you would want to
15 call it, that's below the gunshot wound, itself?

16 A. Yes.

17 Q. And did you describe that -- did you describe that
18 as a bruise?

19 A. Potentially bruise. It had no stippling around
20 it. It didn't have any burns, blisters. It did
21 not look like it had been burned.

22 Q. So what caused that bruise was the bullet?

23 A. I cannot say with certainty. It's very possible
24 it could have because there was a track of darker
25 skin.

1 Q. In fact, you ---

2 A. If the arm was flexed somewhat the bullet could
3 come up the skin before it entered into the bicep
4 region.

5 Q. Okay. What you're -- you -- you pointed out
6 something that you thought was the track of the
7 bullet, correct?

8 A. Potentially the track.

9 Q. In fact, from the -- the spot that I was referring
10 to, there is a darkened line on his skin; is that
11 correct?

12 A. Yes.

13 Q. And you don't see that line before the blemish,
14 correct?

15 A. No, sir.

16 Q. So there's nothing on his arm to indicate the
17 track of a bullet for you get to that blemish?

18 A. Correct.

19 Q. And so I think -- I want to try and characterize
20 what you're describing as the bullet initially
21 hits here, causes a big bruise, then a line
22 towards the entry wound?

23 A. A bullet is also very hot when it comes out of the
24 barrel. It's the explosion that projects -- that
25 moves the projectile.

1 leave blood marks in that pattern, is what you're
2 saying?

3 A. There's dry blood in an area, somewhat circular.
4 The wound has not been -- obviously hasn't been
5 cleaned well yet. That was when it was unwrapped.

6 Q. So you're saying that -- let me ask you this.
7 There is a -- can you describe us -- to us what
8 that piece is right there?

9 A. That's from the exit wound.

10 Q. And what is that?

11 A. That's a piece of gauze.

12 Q. So there's a piece of gauze on the exit wound?

13 A. There was gauze wrapped around his arm when he
14 first presented to the emergency room.

15 Q. Let me ask you what -- this is State's number Two
16 -- let me ask you what that is?

17 A. That's the gauze from the front, from the entry
18 wound there.

19 Q. And so do you think that these are your hands?

20 A. I know those are my hands. I recognize my watch.

21 Q. So isn't it fairly clear that the dressing has
22 been removed so that the pictures can be taken?

23 A. Yes.

24 Q. So are you saying that the wound isn't cleaned
25 before you dress it?

1 A. That's the dressing he presented to the ER with
2 then it gets cleaned, assessed further, and you
3 call in a specialist if you need them.

4 Q All right.

5 A That's just to control the bleeding.

6 Q. So what you're saying is this ---

7 A. Those are the original dressings on his arm when
8 he came into the ER.

9 Q. This piece, right here, with blood on it?

10 A. Yes.

11 Q. And that instead of cleaning the wound first, what
12 you did was allow pictures to be taken?

13 A. No. When I unwrapped it the deputies were there
14 to take pictures as I opened the wound, and we
15 started cleaning right away.

16 Q. So the deputies got there at the same time the
17 victim got there?

18 A. I'm not certain of the time-line. Often times the
19 deputies arrive before the victim.

20 Q. You don't remember how it happened in this case?

21 A. I don't have a time-line. No, sir.

22 Q. And -- I don't need to know. All I want to know
23 is first, second, and third. That you do not know
24 whether or not -- whether Reggie Holmes arrived at
25 the hospital before the police did?

1 A. I'm not certain if he did or not.

2 Q. And you don't know how long Reggie had to wait
3 before he was treated, do you?

4 A. Less than two minutes when they come to the door,
5 we drop everything and go.

6 Q. So it's not like ---

7 A. They don't wait for the people that take pictures
8 and get statements.

9 Q. It's not like sometimes people think oh I go to
10 the emergency room and I had to wait real long.
11 Somebody comes in with an ambulance and a gunshot
12 to the arm, that's not the way it is?

13 A. Gunshot wounds, heart attacks, any life-
14 threatening injury takes first priority.

15 Q. So what you're telling the Jury is that -- is that
16 the mark down here is a bruise by burning?

17 A. It does not appear to be a burn. No, sir.

18 Q. And it's not that it's dried blood or anything
19 like that? It's a bruise?

20 A. It looks to be a bruise.

21 Q. And the tiny marks that you see above the wound
22 are dried blood, not burning?

23 A. Yes, sir.

24 Q. Did you give Reggie any -- let me ask you one last
25 question about the picture. You would agree that

1 on State's Exhibit Three, that's that picture,
2 that the area that I was asking about on Defense
3 Exhibit Ten is oriented so it's difficult to see
4 on this picture what it is I was talking to you
5 about, you saying its dried blood, I'm asking if
6 it's a burn?

7 A. Yes. In this area you can see to the perimeter
8 some of those specks of dried blood.

9 Q. On the exit wound?

10 A. Yeah, on the exit wound side. It's similar. Not
11 seen by the picture that you present.

12 Q. And so how long did it take you to treat Reggie?

13 A. I'm not certain. It didn't take long. First
14 thing was to establish that there was nothing
15 life-threatening or limb threatening, and x-rays,
16 IVs, and antibiotics, blood work, and I called the
17 surgeon.

18 Q. There wasn't anything life-threatening or limb
19 threatening, was there?

20 A. Initially, you're not certain but when he did have
21 sensory and his fingers, he can move his wrist and
22 hands, it appeared at that point to me that it
23 didn't appear to be life-threatening or limb
24 threatening. He had a pulse in the wrist.

25 Q. Did you discharge him from the hospital?

1 A. I called an orthopedic surgeon. I believe that's
2 Doctor Stoddard who took over the case.

3 Q. Do you have any idea how much time Reggie spent in
4 the hospital?

5 A. No, I don't.

6 Q. Do you know if he spent overnight?

7 A. Yeah, I don't think he did.

8 Q. Did you prescribe therapies?

9 A. That was left up to the specialist that I
10 consulted with.

11 Q. Did you do the drug test?

12 A. Yes.

13 Q. And did you tell him that he was positive for
14 cocaine and marijuana?

15 A. Yes, sir. And it was on discharge papers.

16 Q. Did you give him instructions on how to deal with
17 that or anything like that?

18 A. I'm not certain. I think whenever we do put that
19 on the discharge papers it would have instructions
20 regarding that.

21 Q. Did you prescribe him narcotic medication to help
22 deal with pain?

23 A. I believe a consultant took over the case and did
24 disposition. He probably would prescribe
25 narcotics and antibiotics.

1 Q. But you're not the one who did that?

2 A. I did not do the disposition. No, sir.

3 Q. Let me ask you this. You -- along with testing
4 somebody for cocaine and marijuana, do you also
5 ask them whether or not they use cocaine or
6 marijuana, don't you?

7 A. I typically will ask do you use any drugs or
8 alcohol or smoke.

9 Q. He did not tell you that he used those drugs, did
10 he?

11 A. I do not recall. I don't recall.

12 MR. IAN DEYSACH: That's it, Your Honor.

13 MS. ANGIE TANNER: Just briefly, Your Honor.

14 BY MS. ANGIE TANNER:

15 Q. Dr. Duff, you said that by examining the injuries
16 you could give an estimate about caliber of the
17 projectile?

18 A. Often times, yes.

19 Q. Could you do that in this case?

20 A. It was a fairly large caliber. Could be a nine
21 millimeter up to as large as a 45.

22 Q. But would it be your opinion that it was
23 definitely not a shotgun?

24 A. No.

25 Q. And you can say that comfortably because why?

1 A. A shotgun has multiple projectiles and there was
2 one wound.

3 Q. One wound. And isn't it right that shotgun's have
4 pellets that scatter?

5 A. Yes.

6 Q. And the wound that you observed was more
7 consistent with one projectile; is that correct?

8 A. Yes.

9 Q. And going back to Mr. Holmes toxicology; what was
10 in his system. Actually what you found in there
11 were metabolites for cocaine; isn't that correct?

12 A. Yes.

13 Q. What is the difference? What does that mean when
14 you see a metabolite for cocaine?

15 A. Metabolites -- after drugs of any kind are
16 ingested there are metabolites in the body in the
17 liver or kidneys usually. And the metabolites
18 come out through the urine.

19 Q. And does that give you some gauge on the time-line
20 of the use of the drug?

21 A. Not necessarily. But it can. Cocaine does not
22 stay in your system as long as marijuana for
23 example. And marijuana is a fat soluble, cocaine
24 is not.

25 Q. How long can marijuana stay in your system?

1 A. About 30 days or more depending on peoples body
2 habits and how much they smoke.

3 Q. And what about cocaine if you are finding a
4 metabolite?

5 A. Usually less than seven days.

6 Q. Thank you, sir. I have no further questions.

7 THE COURT: Anything further?

8 MR. IAN DEYSACH: No, Your Honor.

9 THE COURT: Any objection to Dr. Duff being
10 excused?

11 MS. ANGIE TANNER: None from the State.

12 MR. IAN DEYSACH: No, Your Honor.

13 THE COURT: You're excused Dr. Duff. Ladies
14 and gentlemen, I think it's a good time for a
15 lunch break. It is, by the clock back there,
16 about 1:12. I'm going to excuse you back to the
17 jury room. You are going to be free to go about
18 your business over the lunch hour. I'll just ask
19 that you all be back in your jury room at 2:30
20 where we are going to continue the trial of this
21 case.

22 Ladies and gentlemen, I'll also caution you,
23 you are not to discuss this case with anyone you
24 may come in contact with at lunch or anyone with
25 whom you talk with on the phone. Again, that

1 would be inappropriate. You are also not
2 permitted to do you own research. Go and have a
3 nice lunch, ladies and gentlemen and we will see
4 you back in your jury room at 2:30. Thank you.

5 (Whereupon Jury exited courtroom at 1:14 p.m.)

6 THE COURT: Anything we need to put on the
7 record?

8 MS. TANNER: Nothing from the State.

9 THE COURT: Mr. Deysach?

10 MR. DEYSACH: No, Your Honor.

11 THE COURT: Okay.

12 MS. TANNER: Can I ask you for scheduling ---

13 THE COURT: Absolutely.

14 MS. TANNER: What time do you think we are
15 going to stop tonight? I've got plenty to
16 do for the rest of the day but I've got some I
17 don't think we will even get to so I'm thinking
18 about telling them to come back tomorrow ---

19 THE COURT: Okay ---

20 MS. TANNER: But I don't want to suddenly
21 speed up and be stuck.

22 THE COURT: Well, actually I have an issue in
23 the morning.

24 (Whereupon we went off the record and to lunch at 1:17
25 P.M.)

1 (Whereupon Court resumes after lunch at 2:35 P.M.)

2 THE BAILIFF: All rise.

3 THE COURT: Please be seated. All right is
4 the State ready?

5 MS. TANNER: State's ready, Your Honor.

6 THE COURT: Is the Defense ready?

7 MR. DEYSACH: Yes, Your Honor.

8 THE COURT: All right. Let's bring the jury
9 in.

10 (Whereupon the Jury enters at 2:37 P.M.)

11 THE COURT: Welcome back, ladies and gentlemen
12 of the jury. I hope you had a good lunch.
13 Solicitor, at this time if you will call your next
14 witness.

15 MS. ANGIE TANNER: Thank you, Your Honor. The
16 State calls Investigator John Kelleher to the
17 stand.

18 First being duly sworn, **JOHN**
19 **KELLEHER** testified as follows:

20 THE CLERK: Will you please state your name
21 and spell your last name.

22 THE WITNESS: My first name is John. Kelleher
23 is K-e-l-l-e-h-e-r.

24 **DIRECT EXAMINATION**

25 BY MS. ANGIE TANNER:

1 Q. Good afternoon, Investigator Kelleher?

2 A. Good afternoon.

3 Q. Where are you employed?

4 A. Beaufort County Sheriff's Office.

5 Q. And how long have you been with the Sheriff's
6 office?

7 A. Almost seven years now.

8 Q. And prior to you coming to the Sheriff's office,
9 what did you do?

10 A. I was in the Navy for 20 years.

11 Q. This is actually a second career.

12 A. This is my wives' second career.

13 Q. And at the Sheriff's office, what is your duty or
14 capacity?

15 A. I'm a investigator on the northern side of the
16 County and anything that the road patrol reports
17 to we evaluate and we decide which investigations
18 to follow-up.

19 Q. And what areas are included in the northern side
20 of Beaufort County?

21 A. Everything north of the Broad River up to the
22 Yemassee, Point South area, and the ocean.

23 Q. Does that include St. Helena Island?

24 A. Yes, it does.

25 Q. I'm gonna ask you were you working on February 17,

1 2010?

2 A. Yes. I was the on-call duty investigator.

3 Q. And what does that mean, on-call duty ---

4 A. It just means that for a 24 hour period, you are
5 on-call. Anything that needs to be taken care of.

6 Q. And during that time period are you called out?

7 A. Yes, ma'am. At about seven o'clock in the
8 morning, I got a call that morning.

9 Q. And where do you respond to?

10 A. I respond to [REDACTED] Eddings White Road.

11 Q. And where is that?

12 A. That's in St. Helena in Beaufort County.

13 Q. That is within Beaufort County?

14 A. Yes, it is.

15 Q. And once you arrived, who do you first come in
16 contact with?

17 A. When I first arrive there, I meet up with Corporal
18 Green.

19 Q. And what do you do with him?

20 A. With him, I asked him what's going on. I had an
21 idea already what was going on. He tells me what
22 happened, what he knows and stuff once I arrive
23 there.

24 Q. And once you are able to get a briefing of the
25 situation, what do you then do?

1 A. At that time, then I started processing,
2 investigating the scene that's there. I was
3 notified that the victim was already taken to the
4 hospital and I start looking around for evidence.

5 Q. Now based on information you received about this
6 crime, what kind of things were you looking for?

7 A. On that morning, I was told there was a shooting.
8 The victim was taken to the hospital. So when I
9 arrive there, I'm looking at the scene, the front
10 door area of the porch. I was told that's where
11 the scrimmage took place. I'm checking the porch
12 out. I'm checking grounds around there looking for
13 any physical evidence, casings, anything on the
14 ground, anything that would give me clues or give
15 me evidence to go along.

16 Q. Now your crime scene investigation, what does --
17 what comes out of that? Did you find anything?

18 A. I went over there -- the only thing I can
19 remember, we were -- recalling that I notice was
20 there was on the ground at the bottom of the
21 stairs of the porch, the ground was very hard
22 because it was colder than today -- it was very
23 cold outside. So the dirt is all scuffled up and
24 marked up which is unusual because the rest of the
25 ground was very hard. I could see where it was

1 all scuffed. It was all scuffed up.

2 Q. And do you document what you find?

3 A. Yes.

4 MS. ANGIE TANNER: May I approach the witness,
5 Your Honor?

6 THE COURT: You may.

7 BY MS. TANNER:

8 Q. Investigator Kelleher, I'm going to show you
9 what's been marked State's four and five.
10 Starting with four, can you describe what's being
11 depicted in that or can you identify what's being
12 depicted?

13 A. In number four, it's the bottom of the stairs of
14 the porch of the victim's house and on the ground,
15 the dirt area is the scuff marks that I saw.

16 Q. And is that a fair and accurate depiction of how
17 it appeared that day?

18 A. Yes.

19 MS. ANGIE TANNER: Your Honor, the State moves
20 Four and Five into evidence.

21 THE COURT: Any objection, Mr. Deysach?

22 MR. IAN DEYSACH: No, Your Honor.

23 THE COURT: In evidence without objection.

24 MS. ANGIE TANNER: May I publish to the Jury?

25 THE COURT: You may.

1 BY MS. TANNER:

2 Q. Investigator, if I could, have you to come down
3 briefly?

4 (Whereupon witness steps down)

5 Q. First we have State's Exhibit Four. Can you
6 describe for the Jury what is depicted in this?

7 A. When I arrived, I saw -- this is the front porch
8 because there are steps as you go into the
9 victim's house and right here is the scuffed mark
10 area. So all this ground was very hard. This
11 ground was all turned over and stuff.

12 Q. It looks like I saved the same picture twice. I'm
13 going to have to have you grab the small version.
14 Could you grab State's Five, please?

15 A. This is the one on the wider screen that we just
16 saw. Can you move it in a little closer? A
17 closer photo of it.

18 Q. Thank you, sir. Now, Investigator, based on your
19 examination of the scene and the items you found,
20 is that consistent with the description you
21 received where this occurred?

22 A. Yes.

23 Q. Now, what other further examination do you perform
24 at the crime scene? What else are you looking
25 for?

1 A. I'm looking for any blood droppings, any casings,
2 projectile from a gun, possible weapon, anything
3 that can be used as evidence.

4 Q. Did you find any of those things?

5 A. No, I did not.

6 Q. You didn't recover the gun?

7 A. No, I never located the gun.

8 Q. How about the projectile?

9 A. I did not. My metal detector canvassed what I
10 thought was the area that everything took place.
11 I never located anything.

12 Q. So you did use a metal detector?

13 A. Yes, I did.

14 Q. Is it unusual not to find the projectile?

15 A. Not at all.

16 Q. And how many investigations would you say you've
17 handled over the years you've been here?

18 A. Investigations? We average 130-140 a year, times
19 that by five, almost six years.

20 Q. And how often would you say you find a bullet
21 outside that's been fired?

22 A. If you're lucky, not that often.

23 Q. So it's not unusual that you didn't find a
24 projectile?

25 A. No. A lot of times the projectile will split in

1 two when it leaves the barrel. It's just the back
2 end of the bullet. The metal part will split
3 through sometimes. It's just a needle in the
4 haystack.

5 Q. Let's move forward in the day. Are you present
6 and participate in the arrest of Marion Bonds?

7 A. Yes, ma'am.

8 Q. And where does that occur?

9 A. I can refer to my notes. It's on Ball Park Road,
10 Mr. Lewis' residence, ■ Ball Park Road in
11 Beaufort County.

12 Q. In Beaufort County as well. And are you alone
13 when he's arrested?

14 A. No, I'm not.

15 Q. What other officers are with you?

16 A. Investigator Fraser, Investigator Chapman, there
17 were some civil deputies out there, and Officer
18 Green may have been there too. I'm not sure.

19 Q. And are you inside -- are you the actual officer
20 who first puts hands on Marion Bonds?

21 A. No, I don't. I'm outside in the perimeter area.

22 Q. And from outside the perimeter area, what do you
23 observe?

24 A. When we arrived at ■ Ball Park Road, we walked up
25 the driveway. It's a single wide, mobile home

1 trailer. It'd be on my left walking up the
2 driveway. Investigator Fraser told us that the
3 back door is the front door. So we're going
4 around that way and we met Mr. Lewis somewhere
5 between the front door and coming around the
6 corner of the building. As we were near, maybe
7 five yards from the trailer, you could hear a lot
8 of ruckus inside the trailer.

9 Q. When you say ruckus, do you mean voices or
10 movement?

11 A. Movement. People who were adults. Large sized
12 running around or furniture being moved, I'm not
13 sure. It was just a lot of ruckus in that corner.

14 Q. And at some point do the officers make entry into
15 the home?

16 A. Yes, they did.

17 Q. Do you go in first?

18 A. No, I do not. I stay outside right by the area
19 where the noise was heard.

20 Q. And what do you see from where you are?

21 A. A few moments later, there's a bedroom window
22 where I'm standing, the suspect, later identified
23 as Jason Thomas, opens the window. I advise him
24 of who I am. He closes the window and disappears.

25 Q. And later on he is grabbed from inside the

1 residence?

2 A. Almost -- yes, right away.

3 Q. Did you have conversations with the victim,
4 Reginal Holmes, about the suspects in this case?

5 A. We did. The day after which would be the 18th.

6 Q. And with your discussions about the suspect, did
7 you take anything with you?

8 A. I took a prepared photo lineup from the Sheriff's
9 office.

10 Q. What is a photo lineup?

11 A. A photo lineup is what we use in investigations.
12 Sometimes known as a six pack. It's six
13 individuals usually from the necks up similar
14 race, skin color, hairstyle, clothing, background
15 to make everyone look similar to each other.

16 Q. What do you do with that?

17 A. I present it to Reginal Holmes at his house and he
18 identified the defendant.

19 MR. IAN DEYSACH: I do have a prior objection,
20 I want to put on the record right now, Your Honor.

21 THE COURT: Noted for the record.

22 MR. IAN DEYSACH: Same grounds.

23 THE COURT: Thank you.

24 BY MS. TANNER:

25 Q. Going back. You've been here for all the

1 testimonies?

2 A. Uh-huh.

3 Q. During defense there was some confusion about the
4 identity of Jason Thomas. Was Mr. Holmes able to
5 identify a Jason Thomas?

6 A. Yes, he was.

7 Q. And your investigation revealed that is a person
8 that hangs out with Marion Bonds?

9 MR. IAN DEYSACH: I object to the hearsay. I
10 think when she says "your investigation revealed",
11 she is referring to hearsay.

12 THE COURT: Overruled. Go ahead.

13 BY MS. TANNER:

14 A. Yes.

15 Q. So that person was identified as someone who hangs
16 out with Marion Bonds?

17 A. That was my understanding.

18 Q. And is that the Jason Thomas you described opening
19 and shutting the window?

20 A. Yes.

21 Q. Now back to this photo lineup.

22 MS. ANGIE TANNER: May I approach the witness,
23 Your Honor?

24 THE COURT: You may.

25 BY MS. TANNER:

1 Q. I want to show you what's been marked as State's
2 Exhibit Six. Can you identify that item?

3 A. This is the photo lineup that I showed
4 Mr. Holmes.

5 Q. And how did you go about showing that to
6 Mr. Holmes?

7 A. Usually what I do is, there's a statement on the
8 back and I read that statement or I ask them to
9 read it. And then that person, the victim, sign
10 it. There's a place for him to sign it. Then I
11 flip it over. Usually they view it and they take
12 a look at and he immediately identified the person
13 that's circled in number two.

14 Q. And this is the actual lineup that you used?

15 A. Yes, it is. It's the actual one.

16 MS. ANGIE TANNER: Your Honor, the State moves
17 six into evidence.

18 MR. IAN DEYSACH: Subject to the prior
19 objection.

20 THE COURT: It's in evidence. Subject to your
21 prior objection.

22 BY MS. TANNER:

23 Q. Now Investigator Kelleher, at the time that you
24 showed this lineup, didn't you already have
25 information that Marion Bonds was the cousin of

1 your victim?

2 A. Yes, I did.

3 Q. So why would you then show the photo lineup?

4 A. Usually just for extra support, CYA.

5 Q. You want to make sure that's the right Marion
6 Bonds?

7 A. Yes, ma'am.

8 MS. ANGIE TANNER: Your Honor, if I may
9 publish this to the Jury?

10 MR. IAN DEYSACH: Your Honor, I object to the
11 publishing to the Jury of the photo lineup.

12 MS. ANGIE TANNER: It's in evidence. They
13 need to see it.

14 MR. IAN DEYSACH: No.

15 THE COURT: It's in evidence right now. Let's
16 not do it. Do you have it on the board?

17 MS. ANGIE TANNER: No, ma'am. I was going to
18 pass it.

19 THE COURT: I'm going to ask you to just hold
20 it. We can do it later when the he stops and you
21 can go ahead and do it, if you want, at the time.

22 MS. ANGIE TANNER: Can I just walk by with it?

23 MR. DEYSACH: I'm objecting to the publishing
24 of it on grounds that it's prejudicial and I would
25 appreciate it if you didn't keep showing it to the

1 Jury while the Judge has asked you not to.

2 MS. ANGIE TANNER: It's in evidence. They're
3 going to see it.

4 THE COURT: Okay, y'all. I have moved it into
5 evidence but I'm asking the Solicitor to move it
6 along. So I don't want you to put in and walk
7 across the Jury right now. They will get it back
8 in the Jury room to take a look at it. So go
9 ahead and ask him his next question.

10 BY MS. TANNER:

11 Q. Investigator Kelleher, the person that Reginal
12 Holmes circled and identified as the shooter, who
13 was that?

14 A. Marion Bonds Junior.

15 Q. And is that person in the courtroom?

16 A. Yes, he is.

17 Q. Could you please point to him?

18 A. He's sitting right over there in a white shirt and
19 tie. (Pointing to Defendant)

20 MS. ANGIE TANNER: Please have the record
21 reflect that he has indicated the defendant.

22 MS. TANNER:

23 Q. Now when Mr. Bonds is arrested, do you try to
24 collect other evidence from him?

25 A. Yes.

1 Q. And what would that be?

2 A. He was wearing a -- the victim told us that he was
3 wearing a camouflage jacket. There's a jacket
4 located where Mr. Bonds was laying when he was
5 located.

6 MR. IAN DEYSACH: I have a prior objection on
7 the jacket also, Your Honor. I want to make sure
8 I've noted it for the record.

9 THE COURT: Thank you.

10 BY MS. TANNER:

11 Q. What about any forensic evidence?

12 A. I did a gunshot residue kit on the suspects.

13 Q. What is a gunshot residue kit?

14 A. A gunshot residue kit is a -- where you take
15 samples from the palm of each hand, the back of
16 each hand and see if you can pick up any
17 gunpowder. When you shoot a gun, it leaves
18 gunpowder.

19 Q. And what can you tell us about this powder that
20 comes out and what you are looking for?

21 A. The kit is -- when I collect stuff off the hand
22 and I put it in the kit, it tells me if anyone has
23 fired a gun.

24 Q. What is the consistency of gunpowder?

25 A. I'm not sure. It's analyzed at a lab.

1 Q. For a consistency, what does it look like?

2 A. It would be like -- my reference is it's like a
3 fine powder on a charcoal or something.

4 Q. And is this something that will stay on the skin
5 and indefinitely?

6 A. No. It's only a few hours.

7 Q. So you actually have guidelines on how long you
8 should even attempt to get these tests?

9 A. We usually like to stay within the range of two to
10 three hours.

11 Q. Two to three hours. Well, what happens after
12 three hours?

13 A. It's going to wear off of the skin. Also there's
14 other ways of losing any evidence that may be
15 there, like in a shower or running water on their
16 hands.

17 Q. And wouldn't even sweating take it off?

18 A. Certainly could, yes.

19 Q. In your investigation, did you receive information
20 that he showered before you saw him?

21 A. Yes.

22 MR. IAN DEYSACH: I object to the hearsay.

23 THE COURT: Overruled. You can ask the
24 question.

25 BY MS. TANNER:

1 Q. So prior to taking your gun residue test, Mr.
2 Bonds has showered?

3 A. That was my understanding, yes.

4 Q. Would you expect to find powder after the shower?

5 A. I wouldn't be as hopeful.

6 Q. You wouldn't be as hopeful?

7 A. I wouldn't be as hopeful.

8 Q. And in fact do you get the test results back?

9 A. The test results come back from sled in Columbia.
10 There is no gun powder residue.

11 Q. So you didn't get any off of it after the shower?

12 A. Correct.

13 Q. But you tried?

14 A. Yes.

15 MS. ANGIE TANNER: No further questions for
16 this witness.

17 MR. IAN DEYSACH: May it Please the Court,
18 Your Honor?

19 THE COURT: Yes, sir.

20 BY MR. IAN DEYSACH:

21 Q. Good afternoon.

22 A. Hey.

23 MS. ANGIE TANNER: Your Honor, can we
24 approach? I'm sorry.

25 THE COURT: You may.

1 (Whereupon lawyers approached the Bench)

2 BY MR. DEYSACH:

3 Q. You are the lead investigator on this case?

4 A. Yes.

5 Q. So when this happens on 17th of February, you
6 happen to be on call and if something happens
7 you're the investigator that shows up?

8 A. Yes.

9 Q. And at what time in the morning did you get
10 notified that your services would be needed at [REDACTED]
11 Eddings White Road?

12 A. Approximately 7:30, 7:15. I believe I was in my
13 driveway going out.

14 Q. Headed to work?

15 A. Yes.

16 Q. And instead of going to the office you go straight
17 to ---

18 A. I go straight to---

19 Q. --straight to [REDACTED] Eddings White Road?

20 A. Yes.

21 Q. Do you know what time you arrive?

22 A. No, I do not.

23 Q. Do you think you got called at 7:15 or 7:30?

24 A. Possibly. I'm not sure. I'd have to look back at
25 my records.

1 Q. How long would it take you to get from where you
2 started to -- pulling out of your driveway to
3 Eddings White Road, how long did that take you?

4 A. Once again, I'm not sure but I know I did not know
5 where [REDACTED] Eddings White Road was. I had to call
6 dispatch for clarification.

7 Q. So if you heard about it at 7:15 or 7:30, do you
8 have at least an estimate for the Jury to tell
9 them when you would have arrived?

10 A. Fifteen, twenty minutes, maybe.

11 Q. So that's like 7:30, 7:45?

12 A. Depending on the start time.

13 Q. How do you find out that you were needed at
14 [REDACTED] Eddings White Road?

15 A. That morning on the Sheriff's radio, I heard some
16 stuff going on.. Also, I was notified by my
17 supervisor by telephone.

18 Q. Cell phone?

19 A. I believe so.

20 Q. And was it -- it wasn't Corporal Green who called
21 you, was it?

22 A. No.

23 Q. When you arrived at [REDACTED] Eddings White Road, who's
24 there?

25 A. Corporal Green is there.

1 Q. Is he the only police officer there?

2 A. No. There was another officer there but I cannot
3 recall who.

4 Q. Was it another investigator?

5 A. No. I was the only investigator.

6 Q. Was, umm -- was Reggie Holmes there?

7 A. No, he wasn't.

8 Q. Was EMS there? Was there an ambulance there.

9 A. No, they had already left.

10 Q. Do you know how long they had been gone by the
11 time you arrived?

12 A. No, I don't.

13 Q. Was the yellow crime scene tape up already?

14 A. Yes.

15 Q. And as the investigator, you're the person who
16 takes over the operations at that address,
17 correct?

18 A. Correct.

19 Q. And you're, at that point, in charge of keeping
20 integrity to the crime scene?

21 A. Yes.

22 Q. I guess that would mean keeping up with who is
23 going in and out of it and making sure nothing
24 gets messed up?

25 A. Yes.

1 Q. At that time did you have any indication that the
2 crime scene might have included inside of the
3 residence?

4 A. At that time, no, I did not.

5 Q. Now we -- you showed the scuff marks to the Jury
6 while you were being asked questions by the
7 Solicitor?

8 A. Yes.

9 Q. And you wrote in your report that those scuff
10 marks which could have been caused from shoes; do
11 you remember writing that?

12 A. Correct.

13 Q. So your initial impression was that the cause of
14 this disturbance in the dirt was from feet?

15 A. When I wrote it? Yes, sir.

16 Q. I mean you -- when you're writing a report, you're
17 not just throwing down words on a piece of paper.
18 It's an important document that you're generating,
19 right?

20 A. I would think so.

21 Q. You're the lead investigator on this case,
22 correct?

23 A. Correct.

24 Q. At this time you really don't know, I what, the
25 health status is of the victim in this case,

1 right?

2 A. Correct.

3 Q. So you know that this is quite possibly a report
4 that's going to be relied on by other police in
5 this investigation?

6 A. Yes.

7 Q. The Solicitor's office?

8 A. Yes.

9 Q. The Defense attorney might rely on it?

10 A. Yes.

11 Q. So it's really important to make sure that what
12 you write in your report is accurate, complete,
13 and not missing any details, correct?

14 A. At the time when I'm writing.

15 Q. Well do you -- at this point are you saying that
16 you don't think that those scuff marks were caused
17 by shoes?

18 A. I'm not -- scuff marks?

19 Q. Page one.

20 A. Which says, "appeared to be a few scuff marks
21 which could've been caused by shoes". I guess I
22 could write a paragraph of what it could be caused
23 by.

24 Q. But you didn't, correct?

25 A. No.

1 Q. You wrote shoes?

2 A. Yes.

3 Q. Now I think you described, to the Jury, exactly
4 what I think anybody would want -- would be
5 looking for at this scene. You described looking
6 for a shell casing, correct?

7 A. Yes.

8 Q. That's the metal piece that goes around the
9 bullet, correct?

10 A. Correct.

11 Q. And that when a gun is fired the bullet leaves the
12 shell casing, correct?

13 A. Correct.

14 Q. And that's called the projectile?

15 A. Correct.

16 Q. And depending on what type of gun is used, the
17 shell casing is ejected from the gun?

18 A. Correct.

19 Q. If a gun is a revolver, the shell casing is not
20 ejected, correct?

21 A. Correct.

22 Q. If it is an automatic or semi-automatic or non-
23 revolver type gun, the shell casing is ejected?

24 A. Correct.

25 Q. And so at that time did you know whether or not

1 the gun alleged to have been used was a revolver
2 or not?

3 A. I had no idea.

4 Q. Did you find out later?

5 A. I don't recall. The gun was never located. So I
6 don't know.

7 Q. I hear you. Okay, you did talk to Reggie,
8 correct?

9 A. Yes.

10 Q. And you asked him about the gun?

11 A. I talked to him the next day.

12 Q. I guess the point is you don't know right now
13 whether or not there would be a shell casing or
14 not when you're looking for it?

15 A. Correct. I didn't know.

16 Q. So it's not just you're walking around with your
17 bare eyes looking for shell casing, right?

18 A. At first I was, yes.

19 Q. At first you were.

20 A. Yes.

21 Q. And then after you didn't find one that's when you
22 go to the metal detector?

23 A. Yes, sir.

24 Q. In fact you keep the metal detector in your car
25 just for cases such as these?

1 A. Yes.

2 Q. You also talked about the projectile?

3 A. Correct.

4 Q. You mentioned something about that when you're
5 being asked questions by the Solicitor. And you
6 said sometimes that projectile creates not just
7 one but two pieces?

8 A. No, I said it could splinter.

9 Q. Okay.

10 A. It could just splinter...

11 Q. Just disappear into the --- into the...

12 A. I wouldn't go to that extreme.

13 Q. Right. But it could be multiple pieces?

14 A. It could be.

15 Q. And so there might be -- if the shooting had
16 occurred out there, there might be more than one
17 pieces of projectile that are findable, correct?

18 A. Or not.

19 Q. Because in this case you didn't find any
20 projectiles, right?

21 A. Correct.

22 Q. And the Solicitor mentioned, "Well, you know, when
23 you are outside it's tougher to find projectiles"
24 and you agreed with her. Do you remember that?

25 A. Yes. Any locations sometimes it's hard to find a

1 projectile.

2 Q. And sometimes you can find them, correct?

3 A. Sometimes you do and sometimes you don't.

4 Q. In this case, did you know to look for the
5 projectile near the scuff marks, correct?

6 A. Correct.

7 Q. Did you know when you were looking for the
8 projectile that the victim said the gun had been
9 pointed downwards towards the ground?

10 A. No, I didn't know that.

11 Q. At that time, you did not know whether the victim
12 was alleging that the shooter was standing?

13 A. Right.

14 Q. And you did not know whether or not the scuff mark
15 represented a place where the victim would have
16 fallen?

17 A. No, I do not.

18 Q. But the crime scene that you taped off included
19 that area, correct?

20 A. Corporal Green taped it off. My understanding
21 when he explained to me, what he was told, that
22 most of it happened on the front door area. That
23 general -- that dirt area.

24 Q. You did not locate any possible signs of blood
25 droppings, did you?

1 A. No.

2 Q. Did you contact other police to help you with the
3 investigation?

4 A. Yes.

5 Q. Who did you contact?

6 A. Once I received the notification to go out to the
7 incident scene, I received a call from my
8 supervisor who sent Investigator Fraser and
9 Chapman to the ER to meet with the victim who's
10 coming in with the ambulance.

11 Q. Who's your supervisor?

12 A. Master Sargent Purdy.

13 Q. Brody?

14 A. Purdy.

15 Q. Purdy?

16 A. P-u-r-d-y.

17 Q. And so, you don't even get on the phone and talk
18 to Sargent Fraser and Chapman?

19 A. Not right away, no.

20 Q. And so they just go -- even though you're the lead
21 investigator, they go to the emergency room
22 without being prompted by you?

23 A. They were prompted by their supervisor.

24 Q. And your supervisor?

25 A. Yes, sir. Which is nothing unusual.

1 Q. Do you know -- did he tell you when he told them
2 to go?

3 A. He called me and said, "You're going out to the
4 shooting scene. I have Fraser and Chapman headed
5 to the hospital to talk to the victim."

6 Q. So he had already talked to them before he called
7 you?

8 A. I don't know.

9 Q. But -- did he -- Okay. He must have if he said
10 that I've already got Fraser and Chapman to go to
11 the hospital, correct?

12 A. Before or after, immediately -- sometime before or
13 after he talked to me.

14 Q. He might've had multiple phone calls with the
15 supervisor, right?

16 A. No. I just talked to him once.

17 Q. You spoke to the next-door neighbor in the other
18 half of the duplex?

19 A. Yes, sir.

20 Q. At some point, did Fraser and Chapman return to ■
21 Eddings White?

22 A. No. They didn't return. After they were done at
23 the hospital, they came out.

24 Q. I understand. All right. You guys end up at ■
25 Ball Park Road, correct?

1 A. Yes.

2 Q. And that's at what time, about 10 o'clock?

3 A. Approximately 10 o'clock.

4 Q. And you were -- you went there because that was
5 one of Marion Bonds' last known addresses?

6 A. Investigator Fraser and Chapman worked the St.
7 Helena area. I did not. I worked the Burton
8 area, regularly. They know the land -- the know
9 the land better than I do and the clientele and
10 they had an idea that he would be staying at
11 locations in that area.

12 Q. The -- you took Marion Bonds and Jason Thomas into
13 custody at ■ Ball Park Road, correct?

14 A. They were taken into custody there.

15 Q. And you performed the gun shot residue check on
16 them, correct?

17 A. Yes, I did.

18 Q. They both said they had nothing to do with the
19 shooting, correct?

20 A. Correct.

21 Q. You get the gun shot residue result sometime later
22 from SLED?

23 A. Yes.

24 Q. The next day you meet with Reginal Holmes?

25 A. Yes.

1 Q. He never told you that anything was taken from
2 him, did he?

3 A. No, he did not.

4 Q. Do you think that's something you would have
5 wanted to get clear as the lead investigator? Is
6 that an important fact whether or not something
7 was taken?

8 A. Yes.

9 Q. I mean, as lead investigator you're looking for
10 all the important facts right?

11 A. Well I know there was supposed to be a gun put in
12 his face so I'm sure he was a little upset.

13 Q. This is a day later, isn't it?

14 A. If you ever had a gun in your face, it could be a
15 couple of days later.

16 Q. So what you're saying is -- what he tells you at
17 the time isn't reliable?

18 A. No. I can understand sometimes when you're
19 focusing on one thing other things can be blurry.

20 Q. He told you that he saw Jason Thomas standing near
21 the bottom of the front porch, didn't he?

22 A. Yes, sir.

23 Q. He did not tell you that he came in, did he?

24 A. No, he didn't.

25 Q. He never told you that?

1 A. He said he was outside at the bottom of the porch.

2 Q. He told you that Bonds and Thomas ran off,
3 correct?

4 A. After he was shot -- he was shot -- let me just
5 look at my notes here. Yes, sir.

6 Q. He did tell you that?

7 A. Yes.

8 Q. He said that soon after, his uncle came out to see
9 what had happened, correct?

10 A. I don't remember him saying anything about his
11 Uncle.

12 Q. You know you've reduced your interview to writing,
13 correct, on page five of your report -- at the
14 very end of the first paragraph? You wrote,
15 'Holmes said sometime soon after that his uncle
16 came out to see what had happened', Okay.

17 A. Okay.

18 Q. And you brought the photo lineup, correct?

19 A. Correct.

20 Q. And you read the back of the photo lineups like
21 you talked about before?

22 A. Right.

23 Q. "You'll be asked to look at a group of
24 photographs. The fact that the photographs are
25 shown to you should not influence your judgment."

1 That's part of it.

2 A. Correct. That's part of it.

3 Q. "You should not conclude or guess that the
4 photographs contain a picture of the person that
5 committed a crime." Correct?

6 A. Correct.

7 Q. "You're not obligated to identify anyone."
8 Correct?

9 A. Right.

10 Q. And so you're not asking him to identify a Jason
11 that he knows hangs out with Marion Bonds, are
12 you?

13 A. No. I believe I asked him who the other person
14 was -- he identified Marion first -- I asked who
15 the other person was that was with him.

16 Q. I mean you're trying to find out who's the guy
17 with the shotgun?

18 A. Yes.

19 Q. And he circles Jason Thomas?

20 A. He picked him out right away.

21 Q. He doesn't say that I have a hunch it's Jason
22 Thomas, no?

23 A. No. He said that's him.

24 Q. He said that's him.

25 MR. IAN DEYSACH: Courts indulgence. That's

1 all I have, Your Honor.

2 THE COURT: Anything further, Solicitor?

3 MS. ANGIE TANNER: Nothing further for this
4 witness.

5 THE COURT: You may step down.

6 MS. ANGIE TANNER: Our next witness is
7 Investigator Fraser. I'm going to check to see if
8 he's cleared from courtroom two.

9 THE COURT: If not, we can take a break.

10 MS. ANGIE TANNER: Can we take a couple minute
11 break?

12 THE COURT: Sure. Let's go ahead and take a
13 couple minute break. Ladies and gentlemen, I
14 caution you to not begin discussing the case. It
15 would be inappropriate to do so. You haven't
16 heard all of the evidence. We'll be back with you
17 shortly.

18 (Whereupon the Jury was excused for a break at 3:20
19 P.M)

20 (Whereupon at 3:35 P.M., Court resumed)

21 THE COURT: Are we ready, Solicitor?

22 MS. ANGIE TANNER: I talked to Mr. Deysach.
23 It looks like Investigator Fraser -- they're still
24 on the direct exam. So they still got to go
25 through cross and any re-direct and re-cross. So

1 I'm going to go out of order. It might be a
2 little bit confusing for the Jury but I'll do the
3 best I can. Then I've got -- I've got to short
4 chain witnesses that I can put up after him. So
5 I'm hoping that can get us through until
6 Investigator Fraser. I'm going to go ahead and
7 call Investigator Rice.

8 THE COURT: All right. That's fine. Bring in
9 the Jury.

10 (Whereupon the Jury re-enters at 3:37 P.M.)

11 THE COURT: Solicitor, if you want to go ahead
12 and call your next witness.

13 MS. ANGIE TANNER: Thank you, Your Honor. My
14 next intended witness is tied up in another trial
15 right now. I'm going to go out of order a little
16 bit but try to keep it making sense. The State
17 will call Andrew Rice.

18 THE COURT: Come on forward, sir and be sworn.

19 Being first duly sworn, **Andrew Rice**,
20 testified as follows:

21 THE CLERK: Please state your full name and
22 spell your last name for the record.

23 THE WITNESS: Andrew Rice. R-i-c-e.

24 **DIRECT EXAMINATION**

25 BY MS. ANGIE TANNER:

1 Q. Good afternoon, Investigator Rice. Where are you
2 employed?

3 A. Beaufort County Sheriff's Office.

4 Q. And what capacity do you work for the Sheriff's
5 office?

6 A. I'm an investigator with the drug task force.

7 Q. How long have you been working there?

8 A. Just over two years.

9 Q. Now were you working on February 17, 2010?

10 A. Yes.

11 Q. And on that day did you receive a call out from
12 other members from the Sheriff's office?

13 A. Yes.

14 Q. What location do you respond to?

15 A. I actually was asked to respond to, I believe it
16 was, the ■ Ball Park Road due to the length of
17 time to get there I met with Investigator Chapman
18 and Investigator Fraser at their office on Duke
19 Street.

20 Q. About what time of day was that first call?

21 A. That was in the morning before lunch.

22 Q. And so with that first call you don't actually
23 make it out to the Ball Park Road residence, do
24 you?

25 A. No.

1 Q. When you meet with the investigators in the
2 office, what transpires there?

3 A. I received from them suspected cracked cocaine.

4 MR. IAN DEYSACH: Your Honor, I do think that
5 this is the appropriate time to renew for the
6 record my previous motion. Also, I know they
7 haven't completed the chain at this time and I
8 guess before they introduce that into evidence,
9 they're going to need to complete the chain or if
10 they fail to by the end of the trial, I will have
11 an objection.

12 MS. ANGIE TANNER: That's correct. As stated,
13 we are going out of order a little bit. So were
14 going to work backwards on the chain.

15 THE COURT: Thank you. Your previous
16 objections are noted for the record and overruled.

17 BY MS. TANNER:

18 Q. Now Investigator Rice, you received something from
19 Investigator Fraser; is that what you said?

20 A. Yes.

21 Q. Once you receive the items from Investigator
22 Fraser, what did you do with them?

23 A. I tried to obtain the field weight of how much the
24 illegal drugs weighed before submitting them into
25 evidence. Also, Investigator Fraser conducted a

1 Field Test or a NIK Test on the site.

2 Q. What is that? What is a NIK Test?

3 A. All it does is it's a NIK -- It's a cocaine swipe,
4 model 6500 that indicates whether or not there
5 would be a cocaine-based substance presence. The
6 substance we are looking at.

7 Q. How much of this substance do you use to test for
8 this NIK?

9 A. As much as required, a very small amount. Enough
10 to maybe put into a paper clip and rub on to the
11 test strip.

12 Q. So a NIK?

13 A. A NIK.

14 Q. I'm going to show you what's been marked as
15 State's 11, 13, and 14. And ask if you can
16 identify these items?

17 A. They are the items that I received from
18 Investigator Fraser on the 17th. It was later
19 found to be crack cocaine.

20 Q. What did you do with these items after you
21 received them from Investigator Fraser?

22 A. After conducting this field test, I tried to
23 obtain the field weight of the substances. I
24 submitted them inside a Best Bag to the evidence
25 division which has a drop box.

1 Q. Are there other items you received from
2 Investigator Fraser that day?

3 A. Yes.

4 Q. I'm going to show you what's been marked as
5 State's Exhibit number Ten.

6 A. It's a red and black Nike Air Force One tennis
7 shoe I received from Investigator Fraser that
8 actually contained the suspected crack cocaine.

9 Q. The cocaine that's in States item number Eleven?

10 A. Yes.

11 Q. And what did you do with this item?

12 A. Just submitted it into evidence. I received it
13 from Investigator Fraser and then submitted it
14 inside this evidence bag to the evidence division.

15 Q. And in the time it goes from Investigator Fraser
16 to you to evidence, do you do anything to tamper
17 with or alter any of these items?

18 A. No.

19 Q. And how do you know by looking at these items, ten
20 months later, that these are the actual items you
21 got from Investigator Fraser?

22 A. Those are the items that I sealed inside of the
23 Best Bags and signed it over with my signature to
24 Eileen Rios and mark with the case number that
25 corresponds with the case.

1 Q. Now once you've handled the evidence that morning,
2 do you then draft any paper work for these items
3 or based upon these items?

4 A. Eventually we can draft an incident report or
5 something in our report to Investigator Fraser or
6 Chapman, Kelleher, whose ever original report it
7 was. Also, we were going to obtain arrest
8 warrants to serve on Marion Bonds at the jail.

9 Q. And based on those items what charges were brought
10 against Marion Bonds?

11 A. Based on these items, the trafficking crack
12 cocaine was the charge. Based on the weight it
13 was more than ten grams of crack cocaine.

14 Q. Now at the time you become involved, has Mr.
15 Bonds been charged yet with these drugs?

16 A. No.

17 Q. Now on February 17th, is that the last thing you
18 do with regards to Mr. Bonds?

19 A. No.

20 Q. You get another callback regarding him later that
21 day?

22 A. I do. We received a phone call about a phone call
23 being placed from the jail by Mr. Bonds to an
24 individual known by Old School which is Richard
25 Lewis indicating that there---

1 MR. IAN DEYSACH: I object to hearsay. Now
2 he's talking about what another officer overheard
3 on the jail phone.

4 MS. ANGIE TANNER: He's giving presence
5 impression to what he responds to.

6 THE COURT: Come here for a second y'all.
7 (Whereupon Lawyers approach the Bench)

8 BY MS. TANNER:

9 Q. Around what time do you get the second call out on
10 this case?

11 A. This was about a little after lunch time.

12 Q. And do you respond out to the Ball Park Road
13 residence at that time?

14 A. I had other people that worked at that office
15 respond. I went to the Magistrate Office to
16 obtain a search warrant for the residence.

17 Q. So when you go back the second time you have a
18 search warrant for the Ball Park Road residence?

19 A. Yes.

20 Q. And what are you looking for when you go back?

21 A. I'm looking for a quantity of the crack cocaine
22 that is said to be hidden in the trash.

23 Q. And when you get there with your search warrant,
24 who do you come in contact with?

25 A. At that time, I came in contact with Mr. Lewis,

1 Richard Lewis, who is the tenant or resident at
2 that house. He had already been detained.

3 Q. And did you execute the search of the Ball Park
4 residence at that time?

5 A. I do.

6 Q. And what do you locate inside the residence?

7 A. Underneath the bathroom sink, right as you walk
8 into the door, underneath the bathroom sink
9 there's a quantity of crack cocaine that has been
10 broken up into pieces as if it was tossed or just
11 thrown into the cabinet.

12 MS. ANGIE TANNER: If I may approach the
13 witness, Your Honor?

14 THE COURT: You may.

15 BY MS. TANNER:

16 Q. Show you State's 17 asking if you can identify
17 what is displayed in that?

18 A. That's the suspected crack cocaine underneath the
19 kitchen sink area. Underneath, the crack cocaine
20 is the white rock like substance that's inside.

21 Q. And State's Exhibit 15?

22 A. This is the sink. The crack cocaine is in the
23 sink.

24 Q. Is that a closer up view?

25 A. Yes, it is. You can see where it's three

1 different parts of several pieces where it was
2 broken and scattered.

3 Q. And State's Exhibit 16?

4 A. These are smaller pieces that came off the larger
5 pieces that were on the actual bathroom floor.

6 Q. Thank you.

7 MS. ANGIE TANNER: Your Honor, State moves 15,
8 16, and 17 into evidence.

9 MR. IAN DEYSACH: Those pictures will still be
10 subject to the objection -- prior pretrial
11 objection.

12 THE COURT: Again, overruled but noted for the
13 record.

14 MS. ANGIE TANNER: I would like to publish to
15 the Jury with the witness so he can explain the
16 photographs.

17 BY MS. TANNER:

18 Q. Investigator Rice, if I could have you come off
19 the stand, briefly. Starting with State's 17,
20 will you point out to the Jury what is depicted in
21 this photograph?

22 A. This large area is the actual sink or the vanity,
23 we call it, in bathroom from the main hallway.
24 This is a large piece -- this is the large piece
25 of suspected crack cocaine. Where the crack

1 cocaine was found.

2 Q. This will be State's 15. Can you point out to the
3 Jury what is being depicted?

4 A. This is three pieces. A large piece here, a piece
5 here, and a smaller piece here of crack cocaine.
6 It was probably one piece originally referred to
7 as a cookie of crack cocaine that broke when it
8 was dropped.

9 Q. And State's 16?

10 A. You can see the various small pieces here, pieces
11 that have come off of larger pieces inside the
12 bathroom vanity or sink area.

13 Q. And did you collect all of these items?

14 A. Yes I did, along with another Investigator.

15 Q. Thank you, sir. You can take the stand. Once you
16 collected those items, what did you do with them?

17 A. I submitted them to the evidence division through
18 the temporary, it's called a drug drop box, for
19 examination via the Best Bag?

20 MS. ANGIE TANNER: Your Honor, may I approach
21 the witness?

22 THE COURT: You may.

23 BY MS. TANNER:

24 Q. Show you State's 18. State's 18, what is that?

25 A. That is the same pieces of crack that were located

1 underneath the sink or vanity.

2 Q. And in collecting and preserving, prior to you
3 turning it into evidence, did you do anything to
4 alter or change any of the contents of that bag?

5 A. No.

6 Q. And did you weigh that as well?

7 A. I did. I conducted a field weight to get the
8 gross weight, estimated weight prior to submitting
9 it. Prior to submitting it, I also conducted a
10 NIK test.

11 Q. What was your NIK test on this?

12 A. This resulted in a positive result for the cocaine
13 base being present.

14 Q. Now as a further part of your investigation, did
15 you create any other items for your file?

16 A. I created another incident report with inventory
17 of what was taken from the residence.

18 Q. And did you document the scene in any way; the
19 home?

20 A. I did. I conducted a very rough sketch of the
21 residence to give you an idea of where the rooms
22 were located.

23 Q. Show you State's Exhibit 19.

24 A. That's the rough sketch.

25 Q. This is the sketch you drew?

1 A. Yes.

2 Q. Is that a fair and accurate picture of the home of
3 Richard Lewis out on Ball Park Road?

4 A. It is. It's not to scale or exactly the same as
5 if you were in it but it's a very rough sketch. .

6 Q. Thank you. Can you tell us basically what's
7 depicted in that?

8 A. Basically the lines coming out of the doors to
9 enter the residence is the front door as you walk
10 in. It's got bedroom number three to your right
11 then bathroom number two straight ahead and
12 bedroom number two, kitchen, and living room. And
13 then onto the bedrooms to the far left side,
14 actually the bathroom and one bedroom.

15 Q. Going back to the first items, the shoe and the 40
16 grams of crack that you collected, where on your
17 sketch was that retrieved from?

18 A. Looking at the sketch now, it's bedroom number
19 one. Actually, the search warrant for bathroom
20 number one is where that suspected crack was
21 located.

22 Q. Now that's round two or round one?

23 A. Round two.

24 Q. Round two. So we're talking about the crack under
25 the sink, that's found near where?

1 A. It's found underneath the vanity in bathroom
2 number one.

3 Q. Bathroom number one. Now the first time you
4 collected crack that came from the shoe, do you
5 know what bedroom on your sketch that was located
6 in?

7 A. I was told bedroom number one. I wasn't actually
8 there to see it.

9 Q. Based on the items collected under the sink, do
10 you draft warrants for Mr. Bonds?

11 A. I do.

12 Q. And what is he charged with for those items?

13 A. It is -- he's charged with Conspiracy to Traffic
14 Crack Cocaine.

15 Q. Anything else?

16 A. The charge of Possession with Intent to Distribute
17 within a half a mile from a school or public park.

18 Q. In preparation for your testimony about that
19 issue, do you have an exhibit that was prepared?

20 A. I did. It is a map indicating the location of
21 that residence in the proximity to that school.

22 MS. ANGIE TANNER: May I approach, Your Honor?

23 THE COURT: You may.

24 Q. Show you State's Exhibit 20.

25 A. That's the map.

1 Q. And what is depicted in that map?

2 A. The middle part of the map is US Hwy 21 or Sea
3 Island Parkway, the intersection of Ball Park
4 Road, the residence is depicted with a red star,
5 the school is depicted with a green flag and a
6 half mile radius is circled around the two.

7 Q. And does -- from the point of the Ball Park Road
8 residence to half a mile out, are there any
9 schools or parks in that area?

10 A. There is.

11 MR. IAN DEYSACH: Your Honor, I object. If
12 he's not the person who created the map I don't
13 think he's competent to testify that it is in fact
14 one half mile or what the different stars
15 represent on the map. I think the person who
16 created the map is the one who needs to testify to
17 that.

18 MS. ANGIE TANNER: It's a demonstrative used
19 to aid his testimony.

20 THE COURT: He can testify within his
21 knowledge of what is within a certain distance.
22 And you can cross-examine him on it.

23 BY MS. TANNER:

24 Q. Investigator Rice, within a half mile from the
25 Ball Park residence, are there any schools or

1 parks?

2 A. Yes, St. Helena High and Elementary School.

3 Q. And is that depicted on the demonstrative aid?

4 A. It is.

5 MS. ANGIE TANNER: State moves 19 and 20 into
6 evidence.

7 MR. IAN DEYSACH: Subject to that same
8 objection that I just gave voice to, Your Honor.

9 THE COURT: The only thing I need to know
10 is... I'm going to let it into evidence.

11 BY MS. TANNER:

12 Q. Investigator Rice, just to be clear. This aid was
13 to be produced at your request?

14 A. Yes.

15 Q. You provided the information that should be in it?

16 A. Yes.

17 MS. ANGIE TANNER: If I may publish it to the
18 Jury?

19 THE COURT: You may.

20 BY MS. TANNER:

21 Q. Investigator, I have nothing further. Please
22 answer anything from Defense Counsel.

23 MR. IAN DEYSACH: If it pleases the Court,
24 Your Honor?

25 THE COURT: Yes, sir.

1 BY MR. IAN DEYSACH:

2 Q. Good afternoon, Investigator Rice. You testified
3 on direct about the meeting that you had with the
4 investigators at the investigations office?

5 A. Yes.

6 Q. And that was around 10:30, 10:45 in the morning,
7 something like that or do you know?

8 A. I don't know the exact time, it was before lunch.
9 I want to say it was around 10:30.

10 Q. And when you took custody of what was given to you
11 from the -- from Investigator Fraser. He's the
12 one that physically gave it to you?

13 A. Yes.

14 Q. You swabbed the plastic baggy for DNA evidence,
15 didn't you?

16 A. Yes.

17 Q. And you take that swab and did you submit it to
18 SLED for testing?

19 A. I submitted it into evidence to be later
20 submitted to SLED. But it did not make it to the
21 SLED.

22 Q. It did not make it to SLED. Nobody sent it to
23 SLED?

24 A. It wasn't sent to SLED.

25 Q. Would that have been your job to give that

1 request?

2 A. Yes.

3 Q. But you didn't do that?

4 A. No.

5 Q. Did you -- did you swab the shoe for DNA evidence?

6 A. I don't believe I ever swabbed the shoe.

7 Q. Was the shoe ever submitted to SLED for any
8 testing?

9 A. No, sir.

10 Q. Was the shoe empty when Fraser gave it to you?

11 A. I believe that it was.

12 Q. And you're not sure?

13 A. I can't remember exactly how it was but I believe
14 it was. I believe the drugs had already been
15 taken out.

16 Q. And so once you do that, that's your understanding
17 -- that's the extent of the contact you are going
18 to have with Fraser and Chapman that afternoon or
19 that morning?

20 A. As far as I know.

21 Q. But then you get another call for help from them,
22 correct?

23 A. Yes, sir.

24 Q. And you actually swore, I guess, made an affidavit
25 to the Magistrate in order to obtain a search

1 warrant of [REDACTED] Ball Park Road?

2 A. Yes.

3 Q. And you actually went to execute that search
4 warrant?

5 A. Yes, I did.

6 Q. And you did it with a team of officers, Officer
7 Sankowski, Ricker, you, Travis Mitchell, and
8 Corporal Rodriguez?

9 A. Yes.

10 Q. And in fact, those photographs that you just were
11 talking about were taken by, not you, but Officer
12 Mitchell?

13 A. Yes.

14 Q. And part of what you do every time you execute a
15 search warrant is take video of the place that's
16 being searched; isn't that right?

17 A. Yes.

18 Q. I mean that's something that wouldn't be a special
19 thing that you would want to do just for [REDACTED] Ball
20 Park Road. Pretty much any time you were serving
21 a search warrant, you would want that video
22 camera, correct?

23 A. Yes.

24 Q. And it turns out that the video that was taken on
25 that camera was lost?

1 A. Yes.

2 Q. Because Officer Mitchell obviously didn't preserve
3 it like he was supposed to?

4 A. Yes.

5 Q. So it's not -- he didn't turn that video over to
6 you, correct?

7 A. No, sir.

8 Q. Even though you were the one who was documenting
9 and seizing the evidence at the service of that
10 search warrant?

11 A. Yes.

12 Q. So essentially we have some lost evidence,
13 correct?

14 A. Yes.

15 Q. The video is evidence, correct?

16 A. Yes.

17 Q. And you were the one who's in charge of
18 maintaining that evidence?

19 A. Yes.

20 Q. Are you aware that Officer Mitchell has been fired
21 from his job as a Bluffton Police Officer?

22 A. Yes.

23 Q. And so I guess one day -- I guess you have this
24 team of police officers that are made up of people
25 from different agencies. It's not just the

1 Sheriff's department, correct?

2 A. Yes. It's a multi-agency task force.

3 Q. And so Officer Mitchell was never a Sheriff's
4 department. He would work with you on this task
5 force?

6 A. Yes.

7 Q. And one day he was just off the task force?

8 A. Yes. He was replaced by another member from
9 Bluffton.

10 Q. So did you know that one of the reasons he was
11 fired was because of dishonesty?

12 A. Yes.

13 Q. And he's the one who actually, you alleged, points
14 out the substance in the cabinet in the bathroom?

15 A. Ultimately, it was pointed out by Investigator
16 Fraser but he was -- Travis Mitchell was the
17 co-case agent, you could call it and he was there
18 to help collect it.

19 Q. And he did collect it?

20 A. He did.

21 Q. Now on that rough sketch that you made, you
22 represent the doors with little lines that are
23 crooked?

24 A. Yes.

25 Q. And are you sure that you did the doors swinging

1 in the correct direction? Are you sure you got
2 them hinged properly when you were making that
3 drawing?

4 A. No, I'm not sure. They just -- s sthey all go
5 out for the outside doors.

6 Q. You just wanted to make sure where the door was,
7 was represented?

8 A. Yes.

9 Q. And whether the door existed?

10 A. Yes.

11 Q. You didn't never make representation of any closet
12 in bedroom one?

13 A. No. Just a rough area where the rooms were
14 located.

15 Q. And... Begging the Court's indulgence.

16 MR. IAN DEYSACH: Nothing further, Your Honor.

17 MS. ANGIE TANNER: Just briefly, Your Honor.

18 **RE-DIRECT EXAMINATION**

19 BY MS. TANNER:

20 Q. Investigator Rice, the swab that Mr. Deysach asked
21 you about, are you now familiar with SLED's policy
22 regarding no longer testing touch DNA swabs?

23 A. Yes, ma'am.

24 Q. So they wouldn't analyze that for you if you had
25 asked?

1 A. No.

2 Q. At ■ Ball Park Road, do you arrive before or
3 after Investigator Fraser?

4 A. After Investigator Fraser.

5 Q. So by the time you get there, is it already known
6 where the cocaine is located?

7 A. Yes.

8 MR. IAN DEYSACH: I object to the hearsay.

9 THE COURT: Overruled.

10 BY MS. TANNER:

11 Q. When it is collected, is that something that this
12 Mitchell guy does by himself or are you
13 participating in it?

14 A. I'm participating in it.

15 Q. Describe exactly for the Jury what you're doing,
16 where you are and what you observe?

17 A. Investigator Mitchell was taking photographs of
18 the evidence. As you can see how there were
19 several pieces all over. We actually had to use a
20 card or a piece of paper to scrape it up. And I
21 would hold the evidence bag open as Investigator
22 Mitchell would pour into the evidence bag and I
23 retained it.

24 Q. So you are with and participating the entire time
25 this cocaine is collected?

1 A. Yes.

2 Q. This video that he asked you about. Prior to
3 conducting a search warrant, why is that video
4 taken?

5 A. The main reason for videotaping is to capture
6 evidence on film. Primarily for liability reason
7 to the Sheriff's office to show -- we've had
8 defendant claim that we destroyed things during
9 the search of their residence -- show that we did
10 not destroy before and after we do the search
11 that's why we do the video before and after.

12 Q. So outside of this video tape you also take still
13 photographs?

14 A. Yes.

15 Q. And those were collected and were turned over?

16 A. Yes.

17 Q. We have those and we've actually seen some of
18 those today?

19 A. Yes.

20 MS. ANGIE TANNER: No further questions.

21 MR. IAN DEYSACH: Just one, Your Honor.

22 BY MR. DEYSACH:

23 Q. So you're saying that before you even showed up
24 with a search warrant, there's already a police
25 officer that has gone into the house?

1 A. Yes.

2 MR. IAN DEYSACH: That's all I have, Your
3 Honor.

4 THE COURT: Anything further?

5 MS. ANGIE TANNER: Nothing further. May this
6 witness be excused?

7 THE COURT: Any objection?

8 MR. DEYSACH: No, Your Honor.

9 THE COURT: You may be excused.

10 MS. ANGIE TANNER: The State calls Eileen
11 Rios.

12 Being first duly sworn, **Eileen**
13 **Rios**, testified as follows:

14 THE CLERK: Would you state your name for the
15 record and spell your last name?

16 THE WITNESS: Eileen Rios. R-i-o-s.

17 **DIRECT EXAMINATION**

18 BY MS. ANGIE TANNER:

19 Q. Good afternoon, Ms. Rios.

20 A. Good afternoon.

21 Q. Where are you employed?

22 A. I'm employed as an evidence technician for the
23 Beaufort County Sheriff's Office.

24 Q. How long have you been doing that?

25 A. Sixteen years.

1 Q. And can you describe for us just a little bit what
2 does your job entail? What are you responsible
3 for?

4 A. Receiving and maintaining evidence for the
5 Beaufort County Sheriff's Office.

6 Q. And once you receive evidence, do you do anything
7 with it, you tamper with it, or what is your job
8 with that evidence?

9 A. To log it into the computer, assign it a shelf in
10 the evidence vault, and to maintain it until such
11 time it needs to go to court or for further
12 processing.

13 Q. And in your department, how many people would have
14 access to that evidence once it comes in and is
15 logged in?

16 A. Myself, Sargent Ramona Cooper, and Captain John
17 Keough.

18 Q. And that's it?

19 A. That's it.

20 Q. I'm wanting to ask you about a couple of pieces of
21 evidence. Starting with --- this is going to be
22 States 11, 13, and 14, originally came out of one
23 bag. I'm going to ask you if you can identify
24 those items, and if you ever processed them?

25 A. I can identify this. What this is is a Beaufort

1 County Best Bag. The officer puts in his evidence
2 bag into a Best Bag and it would be logged in as
3 one item.

4 Q. And how is that Best Bag closed or sealed?

5 A. It's sealed by the officer, dropped into the drug
6 drop box by the officer and we log it in under the
7 container number which in this particular one was
8 C004843.

9 Q. And you can tell us what items were contained
10 within C004843?

11 A. No, it comes to me sealed.

12 Q. So when you got it, those items were sealed into
13 that bag?

14 A. Correct.

15 Q. Do you do anything with it? Do you open that bag,
16 you fiddle with the contents?

17 A. No.

18 Q. And where does that go?

19 A. In this particular case the officer himself
20 dropped it into that drug drop box.

21 Q. Once it's in that drug drop box, can you mess with
22 it?

23 A. No.

24 Q. Can anybody mess with it?

25 A. The only person that has a key is Lieutenant

1 Renita Berry from drug analysis. She will come
2 in, unlock it, remove items that are in there and
3 take them to her lab.

4 Q. Show you State's Exhibit Ten. Can you identify
5 State's Ten?

6 A. Yes, I can.

7 Q. And how can you identify that?

8 A. It was submitted by Fraser on February 17th. I
9 signed for it at 13:27 in the afternoon. I
10 recognize my signature and date and time.

11 Q. And what did you do with it once you get it?

12 A. It came to us sealed. At that time, I logged it
13 into the computer system, assigned it a shelf and
14 there it stays.

15 MS. ANGIE TANNER: No further questions.
16 Please answer anything the Defense Counsel has.

17 MR. IAN DEYSACH: I don't have any questions,
18 Your Honor.

19 THE COURT: Any objections to Ms. Rios being
20 excused?

21 MR. IAN DEYSACH: No, Your Honor.

22 THE COURT: You're excused, ma'am. Thank you.

23 MS. ANGIE TANNER: The State calls Ramona
24 Cooper.

25 Being first duly sworn, **Ramona**

1 **Cooper**, testified as follows:

2 THE CLERK: Please state your name and spell
3 your last name for the record.

4 THE WITNESS: Ramona Sue Kuhn-Cooper. K-u-h-
5 n-C-o-o-p-e-r.

6 **DIRECT EXAMINATION**

7 BY MS. ANGIE TANNER:

8 Q. Good afternoon, Ms. Cooper.

9 A. Good afternoon.

10 Q. Where are you employed?

11 A. Beaufort County Sheriff's Office.

12 Q. And how long have you been working there?

13 A. Eleven years.

14 Q. And in your eleven years, what's your duty today?

15 A. Evidence Technician.

16 Q. Are you working with Ms. Rios who just left?

17 A. Yes.

18 Q. And what are your duties and responsibilities in
19 the evidence department?

20 A. We check in and log all evidence that is collected
21 by officers who are on scenes and we keep track of
22 it, and we house it and we store it, and preserve
23 it until court.

24 MS. ANGIE TANNER: Your Honor, may I approach
25 the witness?

1 THE COURT: Yes, you may.

2 BY MS. TANNER:

3 Q. I want to show you State's Exhibit 18. I ask if
4 you can identify that?

5 A. Yes, ma'am. This is a Best Bag which we use to
6 submit drugs for analysis by our drug chemist.

7 Q. What's the procedure for submitting the drugs and
8 sending them off for analysis?

9 A. The officers will submit the drugs into this
10 plastic controlled bag, which is the blue bag on
11 the inside, and he seals it and then signs it.
12 And he completes some other documented paperwork
13 and those items are submitted to the drug box,
14 which we had at the time to store it, and it's in
15 a locked compartment where we didn't even have
16 access to. And it stayed there until the chemist
17 retrieved it.

18 Q. And did that occur in this case? Were those items
19 sealed in the Best Bag when you received them?

20 A. Yes, they were sealed in the Best Bag.

21 Q. And then, where did they go from there?

22 A. At that time in this particular instance, the
23 evidence was submitted to the temporary storage
24 lockers by the officer. The next day, everyday,
25 an officer would go to the temporary storage unit,

1 pick up all the evidence from the lockers and then
2 bring it back to evidence in order to log into our
3 computer systems, which is what I did. Once it
4 was logged in and everything was done then I
5 dropped it into the drug drop box.

6 Q. And all that is documented?

7 A. Yes.

8 Q. Everyone that touched it is documented?

9 A. Yes.

10 Q. And you received that item from Andrew Rice of the
11 drug task force?

12 A. Yes.

13 Q. Show you State's Exhibit number Eight. Can you
14 identify that item?

15 A. Yes, ma'am.

16 Q. Is this the item that you took into evidence?

17 A. Yes, it is.

18 Q. And who did you receive that item from?

19 A. Deputy Fraser.

20 Q. And what did you do with it once you received it
21 from Fraser?

22 A. I logged it into our computer systems and then I
23 housed it and on the shelf somewhere until it was
24 needed.

25 Q. Either of these items, did you change them anyway,

1 did you affect them anyway, did you even open
2 these packages?

3 A. No, ma'am. This tape is used by the submitting
4 officer to secure it so that it is sealed upon
5 submission.

6 MS. ANGIE TANNER: I have no further
7 questions. Please answer anything Defense Counsel
8 has.

9 MR. IAN DEYSACH: Nothing from me, Your Honor.

10 THE COURT: Any objection to her being
11 dismissed?

12 MR. IAN DEYSACH: No, Your Honor.

13 THE COURT: You may be excused, ma'am.

14 MS. ANGIE TANNER: I'd like to try
15 Investigator Fraser again.

16 THE COURT: Okay.

17 MS. TANNER: May we approach?

18 THE COURT: Sure, c'mon. All right.

19 Ladies and gentlemen of the jury,
20 the person they were going to put up is actually
21 testifying in another case and can't be in two
22 places at once. What I'm going to do, as opposed
23 to having the Solicitor call some witnesses that
24 have to travel from Bluffton, I think it's better
25 we just go ahead and break for the day and bring

1 you back so you can be fresh tomorrow.

2 I do have to tell you ladies and
3 gentlemen, that we won't be able to start tomorrow
4 until 11:30 and that's just because I have a prior
5 commitment that I cannot get out of.

6 So, with that said, ladies and gentlemen
7 I'm going to ask that you be back in your jury
8 room at 11:30. I will tell you that I anticipate
9 that this case will probably go until Thursday.
10 I'm just going to tell you that right now. I just
11 don't think it's very likely that if we start at
12 11:30 tomorrow that we would finish tomorrow,
13 however we are going to give it our very best
14 effort.

15 So I'm going to go ahead and send you
16 home for the evening and again I'm going to tell
17 you, do not discuss this case. It would not be
18 appropriate. You haven't heard all the evidence
19 and I haven't given you my charge on the law. The
20 only thing I ask, ladies and gentlemen, go home,
21 get a good night's sleep and we will see you all
22 back at 11:30 in the jury room tomorrow. All
23 right.

24 Again, ladies and gentlemen, I don't
25 think there will be anything in the newspaper, but

1 again I caution you, if there happens to be
2 something about this case in the newspaper
3 tomorrow, you are to close it and disregard it.
4 If there is something I will ask you if you have
5 read it. So again, I implore you if there is
6 something to not read it. All right. Good night,
7 y'all. We'll see you in the morning. Thank you.

8 (Whereupon the jury was dismissed at 4:26 P.M.)

9 THE COURT: All right. Solicitor, how many
10 witnesses do you have tomorrow?

11 MS. TANNER: I have twelve witnesses total.
12 I think we put up five now.

13 THE COURT REPORTER: Seven.

14 THE COURT: So everyone on your list you are
15 putting up tomorrow?

16 MS. TANNER: I think there is two I'm not.

17 THE COURT: Okay, so who are you not putting
18 up?

19 MS. TANNER: The two Roberts.

20 THE COURT: The two Roberts. Okay. That's
21 fine. I just wanted to have an idea. And do you
22 have any idea?

23 MR. DEYSACH: To the best of my estimation,
24 not lengthy.

25 THE COURT: Okay. Ya'll can go ahead and

1 we'll be back tomorrow morning ---

2 MR. DEYSACH: There is one thing I wanted to
3 mention, just briefly.

4 THE COURT: Sure.

5 MR. DEYSACH: And I certainly bear some of the
6 responsibility, but when I aloud the photo lineup
7 to be introduced into evidence, and then I
8 objected when she tried to publish it, I -- the
9 better thing would have been to object when she
10 was introducing it as evidence ---

11 THE COURT: Right ---

12 MR. DEYSACH: And that was something that was
13 a istake and I don't want -- the point is I don't
14 want the jury to see Mr. Bonds in a jail outfit,
15 which is how he appears, in that photo lineup so
16 I'm asking that maybe we not end up publishing
17 that to the jury. There is going to be -- the
18 testimony is that he picked him out of a phot
19 lineup. I don't think that they are going to be
20 confused -- I'm not trying to tell them that he
21 wasn't picked out of a photo lineup and so I
22 recognize that I need to take my share of the
23 responsibility for this ---

24 THE COURT: The problem is you challenged the
25 photo lineup.

1 MR. DEYSACH: I challenged it ---

2 THE COURT: Had you challenged it ---

3 MR. DEYSACH: It wasn't as strong as the
4 actual testimony that he was picked out of a photo
5 lineup and then when he came to actually putting
6 the photo lineup into evidence that's when my
7 senior moment occurred.

8 MS. TANNER: The photo is basically a face
9 shot. You can see a T-shirt but there's no way the
10 Jury is going to know that is a jail outfit.

11 MR. DEYSACH: They are all wearing orange.

12 MS. TANNER: It's a head shot.

13 MR. DEYSACH: They are wearing orange and I
14 think that people all know that they wear orange
15 jumpsuit in jail. They do know that.

16 THE COURT: Actually I don't think they know
17 that. Every jail has different colors jumpsuit.

18 MR. DEYSACH: But they are all wearing orange.

19 THE COURT: I understand that they are all
20 wearing orange it just maybe goes to show that
21 your officer, as far as the photo lineup is
22 concerned they are all wearing the same clothes.

23 MS. TANNER: And from his testimony they had
24 four similar ---

25 THE COURT: Right.

1 MS. TANNER: There's no handcuffs. There's no
2 stripes. I think most people are looking for
3 stripes on inmates. I think it's prejudicial and
4 frankly, they are going to hear that he has been
5 arrested before because he was a felon in
6 possession of a firearm.

7 THE COURT: That and they've already heard
8 testimony that he was making phone calls from the
9 jail talking about more drugs, so anyway, I think
10 it's in evidence. The reason why I didn't want it
11 published at the time, Mr. Deysach, is when you
12 start asking questions and of course, this is a
13 choice by prosecutors, it's actually one of the
14 things Ms. Tanner does the best which when I tell
15 young lawyers, when you try cases, how you take
16 your document and show them is actually, I think,
17 very good. She's one of the few people that know
18 how to do that where they can all see it and they
19 know exactly what she is talking about at the time
20 because I do think it gets lost after you are on
21 to twenty-five next questions, they don't even
22 know what they are looking for or looking at at
23 the time. I think showing it to them and walking
24 it to them is by far the best thing for a jury. I
25 also noticed when you do publish it and let it go

1 around, you wait a little bit and I'm just trying
2 to move us along. I understand why, but again I'm
3 just trying to move us along. So that's why I
4 said this time not to. I just think based on the
5 testimony they all know he was in jail at some
6 point in this case so I don't think it's
7 prejudiced.

8 MR. DEYSACH: I would point out I think there
9 is some case law on the subject and that's all I
10 have.

11 THE COURT: All right, anything further for
12 the record?

13 MS. TANNER: Not tonight.

14 THE COURT: I anticipate being here about
15 11:15. Good night.

16 (Whereupon Court was dismissed for the evening at 4:32
17 P.M.)
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STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

COURT OF GENERAL SESSIONS
2010-GS-07-598, 599, 600,
602, 603, 634

STATE OF SOUTH CAROLINA,

Plaintiff

VS

MARION BONDS,

Defendant

TRANSCRIPT OF RECORD
VOLUME 111

DECEMBER 15, 2010
BEAUFORT COUNTY,
SOUTH CAROLINA

B E F O R E:

HONORABLE CARMEN T. MULLEN, Judge.

Deborah E. Everett
Official Court Reporter

1 (Whereupon Court resumed at 12:12 P.M. Dec. 15, 2010)

2 THE COURT: Is the State ready?

3 MS. ANGIE TANNER: State's ready, Your Honor.

4 THE COURT: Defense ready?

5 MR. IAN DEYSACH: Yes, Your Honor.

6 THE COURT: All right. Let's bring them in.

7 Now my intention is to ---

8 (Jury enters)

9 MS. ANGIE TANNER: He's here.

10 THE COURT: He's here. And you said his
11 testimony is exactly about an hour long, you told
12 me yesterday?

13 MS. ANGIE TANNER: I think with cross
14 examination that's what I would assume.

15 THE COURT: Okay.

16 MS. ANGIE TANNER: And before he starts, I'm
17 going to put that stipulation we discussed on for
18 the record and then start into his testimony.

19 THE COURT: Are we in agreement on the
20 language of the stipulation?

21 MR. IAN DEYSACH: What you had written in your
22 notes is what we both agreed to.

23 THE COURT: Defendant has been convicted of a
24 crime of violence and therefore prohibited from
25 possessing a gun at the time of this alleged

1 incident.

2 MR. IAN DEYSACH: Okay.

3 THE COURT: All right.

4 MS. ANGIE TANNER: Yes, ma'am.

5 THE COURT: I intend, as long as it doesn't
6 keep going on, to get Fraser up and done with
7 before we break for lunch just to let you know
8 that. So if it goes too much past about 1:30
9 there might be a concern but right now it's 12:20
10 so just keep that in mind.

11 MS. ANGIE TANNER: Yes, ma'am. The witness
12 after him is somewhat short so if for some reason
13 we move quickly with him. She's here, she's
14 short.

15 THE COURT: I will note that.

16 (Whereupon the Jury entered at 12:22 P.M.)

17 THE COURT: Good morning -- good afternoon,
18 ladies and gentlemen. Welcome back. At this
19 time I'm going to go ahead and continue the trial
20 of this case. Solicitor, if you will call your
21 first witness.

22 MS. TANNER: Thank you, Your Honor. The State
23 calls Jeremiah Fraser.

24 Being first duly sworn, **JEREMIAH**
25 **FRASER**, testified as follows:

1 THE CLERK: And can you state your full name
2 and spell your last, please.

3 THE WITNESS: Jeremiah Fraser, F-r-a-s-e-r.

4 MS. ANGIE TANNER: And, Your Honor, prior to
5 taking the witness' testimony there is one
6 stipulation regarding evidence in this case that
7 you are aware of that we would like to put on the
8 record in the presence of the Jury before we move
9 forward. That is there is a stipulation at the
10 time these offenses occurred, the defendant had
11 been convicted of a crime of violence and
12 therefore was prohibited from possessing a
13 firearm.

14 THE COURT: Ladies and gentlemen, a
15 stipulation is just an agreement between the
16 parties as to a certain issue or a fact. It
17 precludes having to present evidence to that fact.
18 That's why they've agreed to it. So that is for
19 you to use in your deliberations. Go ahead.

20 MS. TANNER: Thank you, Your Honor.

21 **DIRECT EXAMINATION**

22 BY MS. ANGIE TANNER:

23 Q. Investigator Fraser, where are you employed?

24 A. Beaufort County Sheriff's Office.

25 Q. And how long have you been working there?

1 A. I've worked at the Sheriff's Office for over eight
2 years.

3 Q. And prior to coming to the Sheriff's Office, what
4 did you do?

5 A. I was in the Marine Corp.

6 Q. So this is a second career for you as well?

7 A. Yes, ma'am.

8 Q. Investigator Fraser, what type of duties or
9 responsibilities do you have with the Sheriff's
10 Office?

11 A. My primary responsibility to the Sheriff's Office
12 is criminal investigation division.

13 Q. I'm going to ask you about February 17, 2010. Did
14 you perform duties as an investigator that day?

15 A. Yes, ma'am. I did.

16 Q. Let's start out -- how did you start? How did you
17 get called to begin with?

18 A. I received a phone call that an assault had
19 occurred involving a firearm and I was requested
20 to respond to the hospital to meet with the
21 victim.

22 Q. Can you turn the microphone a little bit towards
23 you? So when you get to the hospital, who do you
24 speak with?

25 A. I first met with the attending physician, Dr.

1 Duff. He gave me an idea of the extent of the
2 injuries of the victim in the hospital. Then I
3 met with the victim himself.

4 Q. What was his name?

5 A. His name was Reginal Holmes.

6 Q. And were you alone when you met with Mr. Holmes?

7 A. Investigator Chapman had arrived with me as well.

8 Q. Are you able to conduct an interview or ask Mr.
9 Holmes questions about the incident?

10 A. Yes, ma'am. I am.

11 Q. Based on that interview are you able to develop a
12 suspect in the shooting?

13 A. Yes, ma'am. I am.

14 Q. And what do you do with that information?

15 A. I immediately relay that information to
16 Investigator Kelleher. I also patrol units.

17 Q. And do you -- who is the suspect at this point?

18 MR. IAN DEYSACH: I object to the hearsay.

19 THE COURT: Okay. Rephrase the question,
20 Solicitor.

21 BY MS. TANNER:

22 Q. Based on your interview of the victim who did you
23 go looking for?

24 MR. IAN DEYSACH: Same objection, Your Honor.

25 MS. ANGIE TANNER: I'm asking him about his

1 actions.

2 THE COURT: He can go ahead and answer the
3 question.

4 BY MS. TANNER:

5 Q. Who did you go looking for?

6 A. Marion Bonds and Justin Thomas.

7 Q. And where did you go looking for him?

8 A. We went and met with Investigator Kelleher on
9 Eddings White Road which is on St. Helena off of
10 Seaside Road. We began searching for Marion and
11 Justin on Edding White Road at Marion's
12 grandmother -- grandmother's residence, his
13 father's resident. We made contact with both of
14 those parties and were able to search the house
15 but we didn't find him there .

16 Q. What time did the shooting occur or what
17 information were you given about the timing of the
18 shooting ?

19 A. It was shortly before we were on our way to work
20 I believe it was before 7 A.M.

21 Q. At some point on February 17th, do you locate
22 Marion Bonds?

23 A. Yes, ma'am.

24 Q. Give me some description or give the Jury some
25 description of how that comes about. Where do you

1 find him?

2 A. After searching Eddings White Road, we preceded to
3 Justin's mother's house which is off Ball Park
4 Road. We spoke to his mother. Search the house
5 after she gives consent and we didn't find him
6 there. During my interview with the victim, he
7 indicated to me that he may be staying across the
8 street from the clinic which is the Brown Medical
9 Clinic off of St. Helena. There is a residence
10 across the street from the Brown Medical Clinic.
11 We went and searched that residence and that's
12 where we found him.

13 Q. Now when you arrive at that residence, what's the
14 location of that? Is that the [REDACTED] Ball Park Road
15 residence?

16 A. Yes. That's sounds about right.

17 Q. Is that in Beaufort County?

18 A. It is.

19 Q. What area of Beaufort County?

20 A. That's on St. Helena. It's close to St. Helena
21 Elementary School on Ball Park Road.

22 Q. Once you arrive, what's the first thing you see or
23 hear?

24 A. As we pulled in, we pulled into the backside of
25 the trailer. The driveway leads around behind the

1 trailer. It appears they use the back door as the
2 main entrance. As we pulled up, we walked up to
3 the house. We could hear heavy movement, if you
4 will, in the back bedroom close to where we
5 parked. By heavy movement, it was loud. There
6 was obviously something going in that bedroom. I
7 walk to the back door and I make contact with the
8 person, Mr. Lewis, and started talking to Mr.
9 Lewis.

10 Q. And what type of residence is this on Ball Park
11 Road?

12 A. It's a single wide mobile home. It's an older
13 mobile home, very thin walls.

14 Q. Is it something that's raised up, where you can
15 see under it or is it propped up on something?

16 A. It's raised up off the ground.

17 Q. And once you -- describe your encounter with
18 Richard Lewis.

19 A. My initial encounter, I met him at the back door.
20 I told him why we're there and asked if Marion
21 Bonds or Jason Thomas were in the residence.
22 Initially, he kind of hem-hawed for a minute. He
23 answered no. I asked him to step outside because
24 of the movement we heard in the back. He stepped
25 outside and was giving a head motion towards the

1 back bedroom. I asked him again if Marion Bonds
2 or Jason Thomas was in the house and he said that
3 they were.

4 Q. At that point, do you make entry into the home?

5 A. At that point I gain consent to search the home
6 for Marion Bonds and Jason Thomas. Mr. Lewis gave
7 me consent to go in and get them. And that's when
8 Investigator Chapman and I went in the house.

9 Q. And who else was on scene with you at that time?

10 A. When we first arrived and heard all the commotion
11 in the back bedroom, we sensed somebody was in
12 there, possibly more than one somebody. So I
13 called other patrol units to help surround the
14 house in case they tried to flee, if in fact they
15 were in there. So I had several patrol units
16 surrounding the house in an attempt to apprehend
17 them.

18 Q. And once Mr. Lewis gives you consent, do you enter
19 the home?

20 A. Yes, ma'am. We did.

21 Q. And who is with you?

22 A. Investigator Chapman was with me as we entered the
23 house.

24 Q. And what do you see first?

25 A. When we first enter the residence, we started

1 moving back towards the back bedroom where we
2 heard all the commotion. Right before you get to
3 that entrance, there's a bathroom on the left,
4 right before that bedroom. A gentleman came out
5 of the bedroom -- I'm sorry -- out of the
6 bathroom. I put hands on him to detain him,
7 passed him back to Investigator Chapman. While
8 this is going on, I heard the window in the
9 bedroom slam open. I assumed it was open. I
10 heard the window slam. Then I heard deputies
11 outside yelling "Sheriff's Office, show me your
12 hands". After I heard that, I heard the window, I
13 assume, slam shut and that's when I hit the door.

14 Q. And this person that come out of the bathroom, did
15 you later identify him?

16 A. I did.

17 Q. What was his name?

18 A. Larry Holmes.

19 Q. And as part of your investigation, was he one of
20 the individuals you were looking for that day?

21 A. No, he was not.

22 Q. And in your investigation, was he determined to be
23 someone you were looking for?

24 A. No. He was not somebody we were looking for.

25 Q. He just happened to be there when you came in?

1 A. Yes, that's right.

2 Q. You said you hit the door in the bedroom, what do
3 you see in there?

4 A. As soon as the door opens, I saw Jason Thomas
5 running toward me, from the window. I was able to
6 detain him and pass him back to Investigator
7 Chapman for handcuffing and detention. I didn't
8 see Marion -- where Marion Bonds was at. So I
9 hollered for Marion to show me his hands. I saw
10 his hands come out at the floor in the closet. I
11 went in there to detain Marion.

12 Q. Now can you describe this area where you find
13 Marion?

14 A. The closet, ma'am?

15 Q. Yes, sir.

16 A. It probably is close to the size of this box that
17 I'm sitting in. It's very small.

18 Q. And how was he located in the closet?

19 A. He was on the floor. When I -- when I gave him a
20 command to show me his hands, his hands came out
21 of the closet door at the floor.

22 Q. Now once you have custody of Marion, do you subdue
23 anything else with that closet?

24 A. Yeah. We searched the room -- we photographed and
25 then searched the room.

1 Q. And what did you locate, if anything?

2 A. I located a -- in the closet, ma'am?

3 Q. Yes, sir?

4 A. A---

5 MR. IAN DEYSACH: Your Honor, I think this
6 would be the appropriate time to renew the
7 pretrial objection on the same grounds as I did in
8 the pretrial.

9 THE COURT: Noted for the record, sir. Please
10 continue.

11 BY MS. TANNER:

12 A. A camouflage jacket which was identified by the
13 victim through my interview Marion -- during my
14 interview with victim he said that Marion was
15 wearing a camouflage jacket. And I found what
16 appeared to be crack cocaine in a red and black
17 Nike shoe underneath the jacket. Once I lifted up
18 the jacket it was right there in the front of the
19 shoe, plain view.

20 Q. And further search of the room, did you find any
21 other items of relevance?

22 A. Yes, ma'am. We looked up underneath the bed, we
23 found a amber Walgreen's pill bottle, which also
24 contained a large quantity of crack cocaine. We
25 found a white equate naproxin pill bottle. Also

1 under the mattress in between the two mattresses,
2 it also contained a large amount of what appeared
3 to be crack cocaine.

4 Q. Once you find all of these items, are you the one
5 that takes them into custody?

6 A. Yes, ma'am.

7 Q. How do you take these into custody? What do you
8 do to preserve them?

9 A. We put them into evidence bags -- photograph them,
10 put them in evidence bags, submit to evidence for
11 storage.

12 MS. ANGIE TANNER: Your Honor, may I approach
13 the witness?

14 THE COURT: You may.

15 BY MS. TANNER:

16 Q. I'm going to show you what's been marked as
17 State's Exhibit number seven first. Can you
18 identify the item that's in that photograph?

19 A. Yes, ma'am. That's the camouflage jacket that I
20 found in the closet.

21 Q. And is this the closet you found Marion Bonds in?

22 A. Yes, it is.

23 Q. And is this a fair and accurate depiction of how
24 you found it that day?

25 A. Yes, it is.

1 MS. ANGIE TANNER: At this time, State moves
2 seven into evidence.

3 MR. IAN DEYSACH: Subject to the objection
4 that I already made.

5 THE COURT: Noted for the record, sir.

6 Q. I'm going to show you State's Exhibit Nine. Can
7 you identify the items in that?

8 A. Yes, ma'am. This is a photograph of a large
9 quantity of crack cocaine that was vivid -- plain,
10 visibly in the shoe after I removed the jacket.

11 Q. And is this a fair and accurate depiction of how
12 you found it?

13 A. Yes, ma'am.

14 MS. ANGIE TANNER: Your Honor, State moves
15 nine into evidence.

16 MR. IAN DEYSACH: Same objection, Your Honor.

17 THE COURT: Noted for the record, sir.

18 Q. State's Exhibit Twelve?

19 A. This is a photograph of the amber pill bottle and
20 the white naproxen pill bottle also containing
21 crack cocaine that was found between the mattress.

22 Q. Same bedroom?

23 A. Yes, ma'am.

24 Q. And that's a fair and accurate depiction of how
25 you located it?

1 A. Yes, ma'am. It is.

2 MS. ANGIE TANNER: State moves twelve into
3 evidence.

4 MR. IAN DEYSACH: Same objection, Your Honor.

5 THE COURT: Noted for the record.

6 MS. ANGIE TANNER: Your Honor, may I publish
7 this to the Jury and have the Officer come down.

8 THE COURT: You may. Investigator Fraser, I'm
9 just going to ask you to speak louder for my Court
10 Reporter.

11 THE WITNESS: Yes, ma'am.

12 MS. ANGIE TANNER: My apologies. Just a
13 minute. My apologies.

14 Q. States Exhibit number Seven. Investigator Fraser,
15 could you please describe for the Jury what is
16 depicted in State's Exhibit number Seven?

17 A. This is a photograph of the closet. As we made
18 entry into the room, the closet is directly in
19 front of the door. The closet opens on the side.
20 And this is the photograph of the camouflage
21 jacket lying on the floor and one of the black and
22 red Nike shoes.

23 Q. Where on this was Marion Bonds located?

24 A. Marion Bonds was laying on the floor on top of all
25 these items when I took him into custody.

1 Q. This is State's Exhibit number Nine, can you tell
2 the Jury what that would be?

3 A. Yes. After I removed the jacket from the floor,
4 this was the rim of the shoe, right here, and this
5 was the large quantity of crack cocaine that was
6 in the shoe.

7 Q. Now State's Exhibit Twelve, what is this?

8 A. This is a photograph of the box spring mattress.
9 This officer here with me was lifting up a portion
10 of the mattress. There's an amber bottle of what
11 appeared to be crack cocaine and this is the white
12 naproxen bottle also full of crack cocaine.

13 Q. And this is the same bedroom of the closet with
14 Marion Bonds?

15 A. Yes, that's correct.

16 Q. Thank you, sir. You can return to the stand.
17 Investigator Fraser, what did you do with the
18 jacket that was in that photograph?

19 A. I collected the jacket for evidence.

20 Q. I'm going to show you what's been marked as
21 State's Exhibit Eight. Can you look inside there
22 and tell me if you can identify what's in that
23 item?

24 A. Yes, ma'am. This is the camouflage jacket I
25 collected from the closet.

1 Q. And once you've collected it, who did you give
2 that too?

3 A. I submitted this into evidence to Sargent Cooper.

4 MS. ANGIE TANNER: Your Honor, at this time
5 State moves Eight into evidence.

6 MR. IAN DEYSACH: I have the same objection,
7 Your Honor, with the grounds that I stated in
8 pretrial.

9 THE COURT: Noted for the record.

10 BY MS. TANNER:

11 Q. And the red shoe that was in the photograph, the
12 black and red shoe, what did you do with that
13 item?

14 A. I turned that along with the crack cocaine over to
15 Investigator Rice.

16 Q. And if you could look inside State's Exhibit Ten
17 and if you could identify that item?

18 A. Yes, ma'am. This is the shoe that was collected
19 from the closet.

20 MS. ANGIE TANNER: Your Honor, State moves Ten
21 into evidence.

22 MR. IAN DEYSACH: Same objection, Your Honor,
23 as stated in pretrial.

24 THE COURT: Preserved for the record.

25 BY MS. TANNER:

1 Q. Detective, State's Exhibit Ten, is that the same
2 shoe that is depicted in State's Nine?

3 A. Yes, it is.

4 Q. Show you State's Exhibit Eleven, can you identify
5 that item?

6 A. Yes, ma'am. I can.

7 Q. How can you identify that?

8 A. Because I bagged this and I turned it over to
9 Investigator Rice.

10 Q. And what is that?

11 A. This is the quantity of crack cocaine that was
12 recovered from the Air Force One shoe.

13 Q. State's Ten?

14 A. Yes, ma'am.

15 MS. ANGIE TANNER: Your Honor, State moves
16 Eleven into evidence.

17 MR. IAN DEYSACH: Um ---

18 THE COURT: Subject to your prior objection?

19 MR. IAN DEYSACH: It is, Your Honor.

20 THE COURT: Noted for the record.

21 BY MS. TANNER:

22 Q. Showing you State's Thirteen and Fourteen. Can
23 you identify those items?

24 A. Yes, ma'am. This is the amber pill bottle
25 containing the crack cocaine that was recovered

1 from underneath the mattress and this is the white
2 pill bottle also recovered from under the mattress
3 containing cocaine -- crack cocaine.

4 Q. And what did you do with those items once you
5 collected them?

6 A. I turned these over to Investigator Rice as well.

7 MS. ANGIE TANNER: Your Honor, State moves
8 Thirteen and Fourteen into evidence.

9 MR. IAN DEYSACH: Renew under the same
10 pretrial objection, Your Honor.

11 THE COURT: Noted for the record.

12 BY MS. TANNER:

13 Q. Investigator, these two items are the same as
14 depicted in State's Twelve?

15 A. Yes, they are.

16 Q. So, Investigator Fraser, you were the one who
17 turned the drugs over to Andrew Rice from the drug
18 task force; is that correct?

19 A. That's correct, I did.

20 Q. And what did you do with Marion Bonds in the
21 meantime?

22 A. Marion Bonds was transferred to a patrol car to be
23 taken to, I believe, the Investigator's office.

24 Q. And at that time is he charged with anything?

25 A. Yes, he is.

1 Q. And what is he charged with?

2 A. I believe it was attempted armed robbery, assault
3 and battery with intent to kill, and unlawful
4 possession of a firearm.

5 Q. And about what time is this contact with Marion
6 Bonds occurring from the closet?

7 A. It would have been around ten o'clock that
8 morning.

9 Q. And at that time he has not been charged yet by
10 Investigator Rice for the crack cocaine; is that
11 correct?

12 A. No, ma'am. He hadn't.

13 Q. That's not the last time you deal with this case
14 that day; is that correct?

15 A. No, it's not.

16 Q. Once you move off of this scene, how do you become
17 involved again?

18 A. Once we finished processing the residence on Ball
19 Park Road, we return to the investigations office.
20 Once at the investigations office, Mr. Bonds has
21 already been booked into the jail, we began
22 listening to phone calls that he was making and
23 found that we had to return to the residence after
24 listening to his phone calls.

25 Q. And are you one of the officers that returns to

1 Ball Park Road residence?

2 A. Yes.

3 Q. And do you recall around what time that would've
4 been?

5 A. About noon or one, something like that.

6 Q. Are you the first one who gets back there?

7 A. No. While Marion Bonds is talking to Richard
8 Lewis, I sent Paul Green, a patrol officer, back
9 to the house to secure the house.

10 Q. And once you do arrive, do you have contact with
11 anyone?

12 A. I do. I immediately have response with Mr. Lewis.

13 Q. And as the first time, does Mr. Lewis cooperate
14 with you?

15 A. Yes, ma'am.

16 Q. And do you return to the residence?

17 A. Yes, I did.

18 Q. And at that time has he given you consent?

19 A. Yes, he has.

20 Q. And what do you do inside the residence this time?

21 A. He takes me into the residence into a bathroom
22 where he shows me a quantity of crack cocaine that
23 he had just hidden.

24 Q. And where was that?

25 A. It was under a sink in the bathroom.

1 Q. And what do you do with that crack?

2 A. I leave it.

3 Q. You don't touch it?

4 A. No.

5 Q. You're not a part of collecting evidence?

6 A. No.

7 Q. Who do you turn that over to?

8 A. Investigator Rice was already doing the search
9 warrant.

10 Q. Thank you, Investigator. Please answer anything
11 Defense counsel has?

12 A. Yes, ma'am.

13 CROSS EXAMINATION

14 BY MR. DEYSACH:

15 Q. Good afternoon, Investigator Fraser

16 A. Afternoon, sir.

17 Q. I think -- I think you may have said Justin Thomas
18 as one of the names. Did you mean Jason Thomas?

19 A. Jason. Yes, sir. I'm sorry.

20 Q. It's actually Jason, correct, or do you know?

21 A. I'm not real sure.

22 Q. Do you have it in your report?

23 A. I have written down Justin Thomas and then again
24 Jason. So I believe it's Jason.

25 Q. You get the phone call from a supervisor that

1 you're requested, needed at the Beaufort Memorial
2 Hospital, correct?

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

4 Q. So the -- and you're there with Investigator
5 Chapman the whole time? Did you guys ride
6 together?

7 A. No. I believe we arrive in separate cars within
8 minutes of each other at the ER.

9 Q. So the first person that you talked to, I think
10 you said that was the emergency room doctor, Dr.
11 Duff, correct?

12 A. Yes, sir.

13 Q. And when you talk to him, he was telling you the
14 extent of the injuries to the victim, correct?

15 A. He described the injury as to the arm. It
16 appeared to be a gunshot wound to the arm.

17 Q. Did you tell the Jury that, just a few minutes
18 ago, that he told you what the extent of the
19 injuries were?

20 A. I may have. That he had been shot in the arm.

21 Q. So when you go into -- when you meet with Mr.
22 Holmes, where is he?

23 A. He is in an emergency room bed.

24 Q. So is he in a separate room?

25 A. I met with Dr. Duff as soon as I entered into the

1 emergency room. He's not in a room with him. The
2 victim was in room 16 at the ER.

3 Q. So when you go to room 16, are you saying
4 Dr. Duff's not in there then?

5 A. I don't recall if he went in there with me or not.

6 Q. The -- was Mr. Holmes' arm bandaged when you first
7 saw him?

8 A. I believe it was.

9 Q. And he had already been treated by the Doctor?

10 A. I don't know to what extent. I don't know if he
11 just bandaged him and then treated him for the
12 injuries.

13 Q. But you saw the hospital bandage on his arm?

14 A. I did, sir.

15 Q. And in fact you're the one who took pictures?

16 A. Yes, sir.

17 Q. And those pictures that you took actually capture
18 some of that hospital bandage on the arm; don't
19 they?

20 A. I don't -- you'd have to show me.

21 Q. All right. I'll show you. This is State's number
22 Two?

23 A. Yes, sir. That's the bandage beside his arm.

24 Q. Correct?

25 A. Yes, sir.

1 Q. Because in order to take the picture you have to
2 lift the bandage in order for the wound to be
3 revealed?

4 A. I didn't. The medical staff did.

5 Q. You were able to tell from looking at the arm,
6 you already knew that the entrance wound was the
7 one on the front and the exit wound was the wound
8 on the back; you're able to tell that?

9 A. No, sir.

10 Q. Did you find that out from Dr. Duff?

11 A. I believe so, yes.

12 Q. And do you take the pictures before or after you
13 have your conversation with Mr. Holmes?

14 A. I don't recall if I took photos first or after.

15 Q. But you did interview him?

16 A. Yes.

17 Q. And -- have you spent the eight years at the
18 sheriff's department as an investigator?

19 A. No.

20 Q. How long have you been an investigator?

21 A. About four years.

22 Q. And in that time I'm sure you've investigated a
23 number of different cases?

24 A. Yes, sir.

25 Q. And so -- if you are an inexperienced

1 investigator, I would like for you to tell that to
2 the Jury. If you consider yourself an experienced
3 investigator?

4 A. With four years of experience, yes, sir.

5 Q. And so I guess the only point I'm trying to make
6 and it maybe a pretty obvious one and is that when
7 you're doing these actions, you need to make sure
8 that you're documenting everything you do,
9 correct?

10 A. Yes.

11 Q. And documenting what you find out?

12 A. Yes, sir.

13 Q. And making sure that you're not putting things
14 that are wrong in your report?

15 A. Yes, sir.

16 Q. Correct? And not leaving things out of your
17 report that are important, correct?

18 A. Yes, sir.

19 Q. In fact, do you have anybody who reads over your
20 report to make sure that there's no errors,
21 somebody who proofreads it for you?

22 A. Yes, sir. Our supervisor over investigations
23 reads over the report and signs off on it.

24 Q. And that's why if they think that there's
25 something missing or there's something you should

31

1 take out or something you should add or what have
2 you , correct?

3 A. Yes, sir.

4 Q. And there's no reason that this was any different
5 than any other case like that?

6 A. Correct.

7 Q. So when you -- when you spoke with Mr. Holmes, he
8 told you that when there was a knock at his door
9 that he observed both Marion Bonds and his cousin
10 at the door, correct?

11 A. No, sir. He observed Marion Bonds, his cousin,
12 and Jason at the door. Marion Bonds being his
13 cousin.

14 Q. All right. I guess the commas are different. But
15 Marion Bonds is the cousin and he also says he
16 sees Jason at the door?

17 A. Yes, sir.

18 Q. Not that he just sees Marion Bonds?

19 A. Yes, sir.

20 Q. He tells you that he allows both Marion Bonds and
21 Jason into the house?

22 A. Yes, sir.

23 Q. And in fact, you actually made a recording of this
24 interview, didn't you?

25 A. Yes, sir.

1 Q. And when you asked him about letting both of them
2 in, you asked him did you give them a little back
3 and say what's up or did you greet them; you asked
4 him about that?

5 A. Yes, sir. I did.

6 Q. And he says, "Yeah, I was just waking up or
7 whatever. Open the door. I went to sit down.
8 Next, I mean, I turn around and they had guns up"?

9 A. That sounds about right.

10 Q. So he's -- so both Jason and Marion are supposed
11 to be in the house, according to what he's saying?

12 A. Yes, sir.

13 Q. You wrote in your report that the gun was a small
14 caliber pistol?

15 A. He described it to me as a small caliber pistol.

16 Q. Is a nine millimeter a small caliber pistol or is
17 that a big caliber?

18 A. In my opinion, it would be a mid-range.

19 Q. A mid-caliber?

20 A. Yes, sir.

21 Q. What is a small caliber?

22 A. It's a number of calibers.

23 Q. I don't think we need, probably, to get into all
24 of that. Is .380 a small caliber? That's going
25 to be my last question on the calibers.

1 A. I'm not a firearm expert, sorry.

2 Q. Fair enough. He never told you that Jason or
3 Marion took anything, did he?

4 A. I don't believe he did.

5 Q. I mean, you said you're the one who charged Marion
6 after all of this was done, correct?

7 A. No.

8 Q. Oh, you didn't? I guess the question was what was
9 he charged with?

10 A. Yes, sir.

11 Q. And what he was charged with was attempted armed
12 robbery, correct?

13 A. That's right.

14 Q. If something had of been taken, it would have been
15 an armed robbery, correct?

16 A. Yes, sir.

17 Q. And you said that both Marion and Jason were
18 charged with this or was that question -- was
19 Jason also charged with attempted armed robbery?

20 A. I believe so. I don't know.

21 Q. Reggie told you, not that he went to his cousin's
22 house, but that he went next door to his uncle's
23 house, correct?

24 A. Yes, sir.

25 Q. And he had also told you that he'd seen Marion the

1 day before?

2 A. Yes, sir. He did.

3 Q. So when you leave the hospital, you go back to the
4 Eddings White address, [REDACTED] Eddings White?

5 A. We met with Investigator Kelleher on Eddings White
6 Road. We were at the end of the road on Seaside
7 Road when we met with him.

8 Q. And I think you told the Solicitor that you were
9 looking for Marion Bonds at this time, correct?

10 A. Yes, sir.

11 Q. And you were looking at family members houses,
12 correct?

13 A. Yes, sir.

14 Q. And you were also keeping an eye out just in the
15 neighborhood, correct?

16 A. Yes, sir.

17 Q. Definitely keeping an eye out for a camouflage
18 jacket, right?

19 A. Yes, sir.

20 Q. And you never saw Marion Bonds after that? Nobody
21 from the police department ever observed Marion
22 Bonds until you were at [REDACTED] Ball Park Road?

23 A. No, sir. I don't believe so.

24 Q. Would you agree that [REDACTED] Ball Park Road is about
25 two and a half miles from the Eddings White Road

1 address?

2 A. Yes. That does sound right.

3 Q. So when you arrive at ■■■ Ball Park Road, you make
4 contact with Richard Lewis, correct?

5 A. Yes, sir.

6 Q. And you enter the house not with a warrant but
7 with consent from Mr. Lewis?

8 A. Yes, sir.

9 Q. Did you personally see Mr. Holmes coming out of
10 the bathroom?

11 A. Yes, I did.

12 Q. And that's the same bathroom where the other crack
13 was supposed to have been found?

14 A. Yes, sir. It had been searched in between the two
15 of us.

16 Q. Did you search it?

17 A. I looked through it. Yes, sir.

18 Q. Did you ever make a note in your report about
19 searching the bathroom?

20 A. I don't believe I did.

21 Q. You only made a note about searching the bedroom?

22 A. Yes, sir.

23 Q. And searching the persons?

24 A. Yes, sir.

25 Q. So if you were the one who searched the bathroom,

1 you would have left it out of your report?

2 A. Not intentionally. I may have overlooked it.

3 Q. It would have been a mistake?

4 A. Yes, sir.

5 Q. Because that is the type of thing you would've
6 wanted to have in your report, right?

7 A. Yes, sir.

8 Q. And in fact, when do you actually write this
9 report?

10 A. That day. After I looked in the bathroom, nothing
11 was found after the initial incident which is why
12 I probably didn't document it.

13 Q. And in fact, you don't have a report generated
14 from that second visit to ■ Ball Park Road, do
15 you?

16 A. No, sir. I went out there and helped secure it
17 for the drug task force.

18 Q. So back to your first visit. Everybody in the
19 house is secured before you start searching the
20 bedroom, correct?

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

22 Q. And the first thing that you did is take
23 photographs before you start moving things around;
24 is that correct?

25 A. Yes, sir.

1 Q. And the -- you said I guess that -- that you see -
2 - you have to force open the door; isn't that
3 correct?

4 A. Yes, sir. Well, I didn't have to force it open.
5 I hit the door and it opened. There was a
6 reaction to hearing the slamming, some what.

7 Q. Got ya'. And you see Jason in the main part of
8 the bedroom?

9 A. Yes, sir.

10 Q. And at that time, you do not see Marion Bonds?

11 A. That's correct.

12 Q. What you see are his hands coming out from the
13 closet area?

14 A. On the floor. Yes, sir.

15 Q. So you don't see his body but his hands which
16 would presumably be connected to his body letting
17 you know that that's where he is?

18 A. His arms are on the floor. Yes, sir.

19 Q. Because his hands are down low?

20 A. His whole arm is down low, not just his hands.

21 Q. Were you yelling "get down, get down", something
22 like that?

23 A. No, sir. I just hollered, "Let me see your
24 hands."

25 Q. Now I guess then you take pictures of the closet?

1 A. Yes.

2 Q. And you take those pictures before anything is
3 searched, correct?

4 A. Yes.

5 Q. And I think State's Exhibit Seven represents a
6 picture of the floor of the closet, correct?

7 A. Yes, sir.

8 Q. And it also shows the jacket and the shoe,
9 correct?

10 A. A shoe. Yes, sir.

11 Q. A shoe. Now the shoe that you collected is the
12 shoe that's in this picture, correct?

13 A. I don't recall if it is or not.

14 Q. Can I let you look at the picture and let you look
15 at the shoe and see if it's the same one? I mean
16 there's obviously a left shoe and a right shoe.

17 A. Yes, sir. I can't tell, sir.

18 Q. Can't tell? Can you tell?

19 A. No.

20 Q. Can you see what side of the shoe the tan scratch
21 is on?

22 A. Yes, sir. It would appear that it was this side.
23 I really can't tell if that's a left or right shoe
24 in the picture there.

25 Q. So are you trying to say -- so was the shoe in the

1 picture the shoe that had the stuff that you found
2 in it?

3 A. Yes, sir. When I pulled -- I pulled the jacket
4 out of the closet to look at the shoes. And the
5 shoe that I collected is the shoe with the crack
6 cocaine in it.

7 Q. Is the shoe with the crack cocaine in it, the shoe
8 you found underneath the jacket?

9 A. I believe they both were. You can see that one
10 was also slightly under the jacket.

11 Q. Was the shoe that you recovered the crack cocaine
12 from more hidden by the jacket than the shoe
13 that's in this picture?

14 A. I don't recall.

15 Q. Did you testify in pretrial that the shoe with the
16 crack in it was the shoe -- a shoe that was hidden
17 under the jacket?

18 A. I believe I said under the jacket and that one is
19 too, slightly.

20 Q. Do you agree that you see no drugs in plain view
21 in this picture?

22 A. I don't see them there, no, sir.

23 Q. So what you're saying is that there is plain view
24 drugs here and you've got a camera and yet you
25 don't take a picture of them?

1 A. Sir, I was photographing the camouflage jacket. I
2 had no idea that there was drugs anywhere around.
3 I was looking at the jacket from the armed robbery
4 and the attempted -- the assault and battery with
5 a highly aggravated nature, not looking for drugs.

6 Q. Well isn't it true that the reason you had no idea
7 there were any drugs around is because there's not
8 drugs in plain view?

9 A. Once you remove the jacket there is.

10 Q. So do you think that by removing the jacket from
11 this shoe you would expose the drugs that you were
12 talking about?

13 A. I would assume.

14 Q. You would assume? Weren't you the one who did it?

15 A. Sir, I didn't look at the shoes before I removed
16 the jacket. I removed the jacket because of the
17 crime that I knew had been committed. And when I
18 looked inside the closet further, looking for
19 guns, I looked down at the shoes and there was
20 crack cocaine.

21 Q. So I guess what you're trying to say is that there
22 is possibly plain view crack in this shoe?

23 A. Yes, sir.

24 Q. That that's a possibility?

25 A. Yes, sir.

1 Q. Even though that it is not reflected in the
2 picture?

3 A. Yes, sir. That's a picture taken at a different
4 angle. Once you remove the jacket and you look
5 down, there it is.

6 Q. Or is it that the drugs were hidden further into
7 the shoe than would be exposed from a picture?

8 A. No, sir.

9 Q. And in order to find them, you'd have to actually
10 reach in there and look in the shoe?

11 A. No, sir.

12 Q. And you took pictures of the pill bottle
13 underneath the mattress?

14 A. Yes, sir. I did.

15 Q. You told us Jason Thomas was in the main part of
16 the room, correct?

17 A. Yes, sir.

18 Q. You know that Jason Thomas had an empty pill
19 bottle in his pocket when he was searched?

20 A. I believe I recall that. Yes, sir.

21 Q. Did you search him?

22 A. I don't think I did. No, sir.

23 Q. Did you write was found down in your report? Did
24 you write down that the pill bottle was found on
25 his person?

- 1 A. May I look at my report?
- 2 Q. You certainly. Do you need a copy?
- 3 A. I have one. Do you have a specific number
- 4 paragraph?
- 5 Q. I think page three of four, it's in bold, number
- 6 one.
- 7 A. Number one?
- 8 Q. On page three of four.
- 9 A. Yes, sir. I'm looking at three of four, in bold.
- 10 Q. Do you see it in bold?
- 11 A. Yes, sir. I do. Yes, sir. A cell phone, pill
- 12 bottle, empty in Jason Thomas' pocket.
- 13 Q. Jason Thomas was never charged with any drugs, was
- 14 he?
- 15 A. I -- I don't know, sir.
- 16 Q. Larry Holmes, the guy that was leaving, he was
- 17 never charged with any drugs, was he?
- 18 A. No, he was not.
- 19 Q. In fact, he was able to leave while you were
- 20 there?
- 21 A. That's correct.
- 22 Q. And out of this amount that was found in the
- 23 morning, Richard Lewis was never charged with any
- 24 drugs, right?
- 25 A. Not in the morning. No, sir.

1 MR. IAN DEYSACH: I'm begging the Court's
2 indulgence.

3 Q. All right. Just briefly on the shoes. There were
4 two pairs of shoes?

5 A. Two pairs of shoes?

6 Q. I mean one pair of shoes, two shoes. Sorry.

7 A. Yes, sir.

8 Q. So one of the shoes, you left behind?

9 A. Yes, sir.

10 MR. IAN DEYSACH: That's all I have, Your
11 Honor.

12 THE COURT: Solicitor?

13 MS. ANGIE TANNER: Your Honor, I just need to
14 move State's Eighteen into evidence. That is the
15 crack found under the sink. Because we went
16 backwards in chain, I had Sargent Rice enter it.

17 THE COURT: Any objection other than the
18 subject to the previous objection in pretrial
19 motions?

20 MR. IAN DEYSACH: The same objections as in my
21 pretrial motions. Yes, Your Honor.

22 MS. ANGIE TANNER: Nothing further.

23 THE COURT: Anything further, Mr. Deysach?

24 MR. IAN DEYSACH: Nothing further, Your Honor.

25 THE COURT: You may step down.

1 MS. TANNER: Your Honor, the State calls
2 Renita Berry.

3 Being first duly sworn, **RENITA**
4 **BERRY**, testified as follows:

5 THE CLERK: Please state your name and spell
6 your last name.

7 THE WITNESS: Renata Berry. B-e-r-r-y.

8 **DIRECT EXAMINATION**

9 BY MS. ANGIE TANNER:

10 Q. Good afternoon, Ms. Berry.

11 A. Good afternoon.

12 Q. And where are you employed?

13 A. Beaufort County Sheriff's Office.

14 Q. And in what capacity?

15 A. I'm a forensic chemist.

16 Q. What is a forensic chemist?

17 A. Forensic chemist is someone who applies science to
18 the law when it comes to areas of chemistry.

19 Q. What is your training and background to be a
20 forensic chemist?

21 A. I have a Bachelors of Science Degree in Chemistry
22 from the University of South Carolina. Plus, I
23 have a Masters Degree in Management from Western
24 University. Right after college, I was employed
25 by South Carolina Department of Health and

1 Environmental Control, commonly known as DHEC. I
2 was an analytical chemist there for about four
3 years. Once leaving DHEC, I was then employed by
4 South Carolina Law Enforcement Division, commonly
5 known as SLED. And I was with SLED for a little -
6 - almost four years. And it was there that I
7 received a majority of my training as a forensic
8 chemist. While there, I completed their training
9 program. I also was certified by the Drug
10 Enforcement Administration as a drug chemist.
11 Throughout the years, I have attended various
12 training seminars and training courses related to
13 controlling dangerous substances along with
14 instrumentation and methodology that goes along
15 with that.

16 Q. And now you have a new responsibility. You're the
17 head of the new County's lab; is that correct?

18 A. Yes, I am.

19 Q. And that includes not only Chemistry but also DNA?

20 A. Yes. I'm the new lab director so all the
21 supervisory responsibilities fall on me.

22 Q. And when did that lab open?

23 A. That lab opened in May of this year, May of this
24 year.

25 Q. And how long has the drug lab been open in

1 Beaufort County?

2 A. We started the drug lab in March of -- March of
3 2002. I was hired in November of 2001 but we
4 actually open the doors up to the lab in 2002.

5 Q. And have you ever testified in court as a forensic
6 chemist?

7 A. Yes, I have.

8 Q. And have you been qualified as an expert in that
9 field?

10 A. Yes, I have.

11 MS. ANGIE TANNER: Your Honor, at this time
12 the State moves to have Ms. Berry qualified as an
13 expert in forensic chemistry.

14 MR. IAN DEYSACH: No voir dire, Your Honor. I
15 don't have an objection.

16 THE COURT: Ladies and gentlemen, as I told
17 you before, we allow people who are deemed to
18 experts either by education or their experience to
19 testify as to opinions. Ms. Berry is going to be
20 allowed to testify in the area of forensic
21 chemistry. Again, her opinion is to be used as
22 you see appropriate. Of course as you compare it
23 to other facts that's found in the case.

24 BY MS. TANNER:

25 Q. Ms. Berry, can you kind of describe for the Jury

1 when you receive an item of evidence, what do you
2 do with it?

3 A. When evidence comes in, we inventory and make sure
4 everything's okay with it, that it's properly
5 sealed. Sometimes it's placed into a safe or our
6 evidence room that we have at the lab. And I
7 think with this case, we were still at USCB. It
8 was in a safe. It was placed in a safe. Once I'm
9 ready to work it, I then take it out. Again,
10 inventory it and make sure that everything is
11 still in tact.

12 Q. When you receive that packaged, is it completely
13 sealed?

14 A. Yes, it is.

15 Q. Do you have the ability when you receive it to
16 tell if it's been tampered with?

17 A. Yes.

18 Q. And if something has been tampered with, would you
19 go forward with your analysis?

20 A. No. We don't work anything that has been tampered
21 with or is not properly sealed.

22 Q. I'm going to ask you about some particular pieces
23 of evidence that you had analyzed. Starting with
24 what has been marked as State's Exhibit Eleven.
25 Actually, I'm going to put Eleven, Thirteen, and

1 Fourteen together. I believe that's how you
2 received it.

3 A. Okay.

4 Q. I'm going to show you these items starting with
5 State's Exhibit Eleven.

6 A. Okay.

7 Q. Can you tell me if you performed analysis on that
8 item which has previously been introduced to the
9 Jury as potential crack removed from a shoe?

10 A. Yes, I did.

11 Q. And how can you tell that you actually touched
12 this item?

13 A. After receiving the evidence and analyzing it, it
14 was placed in this plastic bag, this outer bag.
15 And it was heat sealed along this line. And if
16 you look at that line, you will see my initials
17 along with the date it was sealed. If you look at
18 the inner bag, it is what we call a control bag.
19 And that control bag has my initials, the word ok,
20 along with the date, and something else that it
21 has is a control number. On the opposite side it
22 has a label and it has a case number, control
23 number, and some other information.

24 Q. And when you receive items for analysis, do you
25 give it another number?

1 A. Yes. We also give it a lab number, a laboratory
2 number.

3 Q. And in this case for these three items, what is
4 the lab number?

5 A. Laboratory number is L10-0049 and it's items one,
6 two, and three.

7 Q. And the State's Exhibit Eleven is going to be your
8 item number one; is that correct?

9 A. Yes, it is.

10 Q. Can you tell us if you performed an analysis on
11 that?

12 A. If you look at that bag, you will see that lab
13 number along with my initials and the bag that's
14 in the inside also has my initials along with the
15 lab number and I did perform the analysis on that.

16 Q. And what were the results of your analysis --

17 MS. ANGIE TANNER: May I approach, Your Honor?

18 Q. --on State's Exhibit Eleven?

19 A. Cocaine base found and it was a combination weight
20 of 43.04 grams.

21 Q. And you say cocaine base. What does that mean?

22 A. Cocaine base is commonly referred to as cocaine
23 crack or crack cocaine.

24 Q. And what is the difference in cocaine, cocaine
25 crack, and cocaine base?

1 A. Cocaine crack and cocaine base are the same.

2 Cocaine base is made from or derived from cocaine
3 hydrochloride. Cocaine hydrochloride is the soft
4 form. After adding, in most cases, baking soda
5 and after going through a heating process, it's
6 then turned into to cocaine crack or cocaine base.
7 Cocaine hydrochloride usually in powdered form is
8 smoked or it can be dissolved in -- not smoked,
9 I'm sorry. It can be snorted, dissolved in water
10 and then injected. Whereas cocaine base or
11 cocaine crack, you can actually heat it up and
12 inhale the vapors from it. That's inhaling the
13 drug itself.

14 Q. So crack is smoked; is that correct?

15 A. Crack is smoked.

16 Q. But the original form of powder is ingested some
17 other way?

18 A. Yes. Either through snorting it or dissolving it
19 in water and injecting it.

20 Q. And the item in Eleven, this is what?

21 A. Cocaine based ---

22 Q. Crack?

23 A. -- commonly called. Yes, cocaine crack.

24 Q. I'll ask you to look at your item number two under
25 this lab number and State's Thirteen which is a

1 pill bottle collected from the bedroom?

2 A. Yes.

3 Q. And did you perform an analysis on that item?

4 A. Yes, I did.

5 Q. What would that be? What were the results?

6 A. It was determined to be cocaine based, 5.80 grams.

7 Q. And that again is crack?

8 A. Yes, it is, crack cocaine.

9 Q. And I'll ask you to look at State's number

10 Fourteen, your item number three under this and

11 ask if you performed analysis on that item?

12 A. Yes, I did.

13 Q. And what were your results?

14 A. Cocaine base, crack cocaine found 16.30 grams.

15 Q. Did you prepare a report with your results?

16 A. Yes, I did.

17 Q. And what did you do with that report?

18 A. A copy of that report was sent to General Sessions

19 and then submitted to court, I'm assuming.

20 MS. ANGIE TANNER: I'm going to approach the
21 witness.

22 Q. Show you State's Exhibit Twenty-one. Can you
23 identify that item?

24 A. Yes, I can.

25 Q. What is State's Twenty-one?

1 A. It's a copy of the report generated by me.

2 Q. And does that list the results that we went just
3 through on these three items?

4 A. Yes, it does.

5 Q. And that is 43 grams, 5.8, and 16; is that
6 correct?

7 A. Yes.

8 MS. ANGIE TANNER: Your Honor, State moves
9 Twenty-one into evidence.

10 MR. IAN DEYSACH: I don't object to the report
11 other than just as it follows the previous
12 objection that I made.

13 THE COURT: Twenty-one is in evidence.

14 BY MS. TANNER:

15 Q. Now, Ms. Berry, did you also analyze other items?
16 I'm going to show you what has been identified or
17 marked as State's Exhibit Eighteen. Jury has been
18 informed State's Eighteen was collected under a
19 sink. Did you perform analysis on that item?

20 A. Yes, I did.

21 Q. Again, how do you know that?

22 A. Again, it's in the outer bag I mentioned earlier
23 that has my initials and the date it's been
24 sealed. You'll also find that control number here
25 along with my initials and the same with all of

1 the other bags.

2 Q. And what was the result of your analysis on that
3 item?

4 A. Cocaine base, crack cocaine found, 20.40 grams.

5 Q. So just over 20 grams of crack; is that correct?

6 A. Yes.

7 Q. And did you prepare a report with these results?

8 A. Yes, I did.

9 Q. And does this have a different lab number than the
10 first group?

11 A. Yes, it does.

12 Q. What's the lab number for these items--for this
13 item?

14 A. L10-0045.

15 MR. IAN DEYSACH: No objection, Your Honor.

16 MS. ANGIE TANNER: State moves Twenty-two.

17 THE COURT: In without objection.

18 BY MS. TANNER:

19 Q. And we have --

20 MR. IAN DEYSACH: (inaudible)

21 THE COURT: Excuse me, sir?

22 MR. IAN DEYSACH: As it relates to the
23 previous motions for objections, Your Honor.

24 THE COURT: Thank you.

25 BY MS. TANNER:

1 Q. State's Twenty-Two, is that the report that you
2 prepared?

3 A. Yes, it is.

4 Q. Thank you, ma'am.

5 MS. ANGIE TANNER: Move Twenty-two into
6 evidence.

7 Q. Thank you, Ms. Berry. I have no further
8 questions. Please answer anything Defense Counsel
9 has.

10 THE COURT: Mr. Deysach?

11 MR. IAN DEYSACH: Just very quickly.

12 **CROSS EXAMINATION**

13 BY MR. IAN DEYSACH:

14 Q. You say that what you find in the substances is --
15 you find that cocaine is present in the
16 substances; is that correct?

17 A. I identified the substance as cocaine.

18 Q. Did you say that there was also baking powder in
19 there or baking soda?

20 A. No. I mentioned that sometimes that's how it's
21 made.

22 Q. Okay. And so if you make it with the baking --
23 what did you say baking soda or baking powder?
24 Baking soda?

25 A. Baking soda.

1 Q. That there is some baking soda in the finished
2 product, correct?

3 A. It usually dissolves.

4 Q. Were you able to get a concentration of how much
5 cocaine was found?

6 A. No. I did not analyze for the quantity of it --
7 for the quality of it, excuse me.

8 Q. So basically you weigh the whole amount that you
9 get, correct?

10 A. Yes.

11 Q. But you don't know what the concentration of
12 cocaine is, correct?

13 A. We don't do that.

14 Q. Thank you.

15 MR. IAN DEYSACH: That's all I have.

16 THE COURT: Anything further?

17 MS. ANGIE TANNER: Nothing further. May this
18 witness be excused?

19 THE COURT: Any objection?

20 MR. IAN DEYSACH: No, Your Honor.

21 THE COURT: You may be excused. Mr. Deysach,
22 will you please come up here.

23 (Whereupon lawyers approach the Bench)

24 THE COURT: Solicitor, if you call your next
25 witness.

1 MS. ANGIE TANNER: Thank you, Your Honor.
2 State recalls Andrew Rice. Your Honor, if I can
3 unplug my computer. They need to StarBoard in the
4 other court room.

5 THE COURT: Yes, ma'am. Let's go ahead and
6 bring Investigator Rice back.

7 Being first duly sworn, **ANDREW**
8 **RICE**, testified as follows:

9 **DIRECT EXAMINATION**

10 BY MS. ANGIE TANNER:

11 Q. Good afternoon, Investigator.

12 A. Good afternoon.

13 Q. Welcome back. Just briefly. You said yesterday
14 that you are employed with the Beaufort County
15 Drug Task Force?

16 A. Yes, I am.

17 Q. And what is the purpose of the drug task force?

18 A. The purpose of the drug task force is to combine
19 agencies from all around Beaufort and Jasper
20 Counties as far as NCIS, CID on the bases, DEA,
21 Beaufort Police Department, Bluffton Police
22 Department, Ridgeland, Jasper to combat the drugs
23 that are coming into Beaufort County as a focused
24 effort.

25 Q. And is part of that -- being part of that task

1 force and working those kind of cases on the
2 street, do you -- is it part of your job to stay
3 up-to-date on the trade, on what these street
4 drugs are worth?

5 A. Yes.

6 Q. And can you give the Jury an idea what one gram of
7 crack cocaine would be worth on the street?

8 MR. IAN DEYSACH: Your Honor, I don't think he
9 can give that opinion without being qualified as
10 an expert.

11 BY MS. TANNER:

12 Q. How long have you been working with the drug task
13 force?

14 A. Just over two years now.

15 Q. How many cases or investigations have you been
16 involved in that involve street drugs?

17 A. I couldn't count. It's several.

18 Q. And is this something you deal with daily?

19 A. Yes.

20 Q. And are you familiar with the business of crack
21 cocaine?

22 A. Yes.

23 Q. And that's something you have to stay on top of as
24 part of your job?

25 A. Yes.

1 MS. ANGIE TANNER: Your Honor, I would move as
2 an expert in drug investigations.

3 THE COURT: I'm not going to qualify him as an
4 expert in that specific area. But I am going to
5 allow you to ask the question that you proposed.
6 You've laid the foundation.

7 BY MS. TANNER:

8 Q. Investigator, are you familiar right now with the
9 going rate for one gram of cocaine?

10 A. Yes. Depending on the area.

11 Q. And what would be the range for one gram?

12 A. Anywhere from 60 to 100, maybe just over a 100
13 depending on where the area you might buy from --
14 the dealers might buy from.

15 Q. So \$60 to \$100 for one gram?

16 A. Yes.

17 Q. Are you also familiar with how much crack a user
18 would use at one time to get high?

19 A. The most common that we see would be a \$40 amount,
20 a 40 pack, or a \$20 amount, 20 pack of crack
21 cocaine.

22 Q. A dove?

23 A. A dove.

24 Q. Now math wise, how big is a dove or a single use
25 or a single hit of crack cocaine?

1 A. Typically, goes by tenths of a gram. A dove would
2 be two-tenths of a gram, .02 grams.

3 Q. So just two-tenths, not even a full gram?

4 A. Yes.

5 Q. So the State's Exhibit Eleven has been determined
6 to be 43 grams, what do you think the street value
7 would be of this item?

8 A. It would probably be about thirteen, fourteen
9 hundred dollars if you bought like this.

10 Q. If you bought like this. If I broke it down and
11 sold it to individual users at .02 grams for a
12 dove, how much are we talking about then?

13 A. Quite a bit. It'd take me a while to do the math
14 in my head but quite a bit.

15 Q. So .02 divide into 43--I'm not going to do the
16 math either but the same with this, 20 grams of
17 crack cocaine. That's not one hit?

18 A. No, that's several.

19 Q. So .02 divided into 20, that's how many times this
20 can be used?

21 A. Yes.

22 MR. IAN DEYSACH: Your Honor, I move to object
23 to this line, I guess for the relevance. I don't
24 think that the value of the crack is anything
25 that's an element that needs to be proven.

1 MS. ANGIE TANNER: Your Honor, the charge is
2 trafficking not possession. It's trafficking.

3 THE COURT: All right. On to the last
4 question.

5 MS. ANGIE TANNER: No further questions.

6 THE COURT: Mr. Deysach, anything further?

7 MR. IAN DEYSACH: No, Your Honor.

8 THE COURT: Ladies and gentlemen of the jury,
9 I know we got somewhat of a late start this
10 morning, but I do think we need to go ahead and
11 break for lunch. Despite that you've only been
12 here since 11:30, the employees have been here all
13 day, of course. I am going to ask that you all be
14 back in the jury room at 2:30 where we are going
15 to continue trying the case. This gives you a
16 little less than an hour and hopefully you will
17 have time to go get something, a bite to eat, get
18 back here at 2:30 and we will begin immediately.

19 Again ladies and gentlemen, I caution you are
20 not to discuss this case among yourselves or with
21 anyone else. So go get a bite and we look forward
22 to seeing you all back in the jury room at 2:30.

23 (Whereupon the Jury was dismissed for lunch at 1:34
24 P.M.)

25 THE COURT: Is there anything we need to take

1 up outside the presence of the Jury?

2 MS. TANNER: Nothing from the State.

3 MR. DEYSACH: No, Your Honor.

4 THE COURT: Okay. Y'all have a nice lunch.

5 We will see you back at 2:30.

6 (Whereupon Court was dismissed for lunch at 1:36 P.M.)

7 (Whereupon Court resumed at 2:40 P.M.)

8 THE COURT: State ready to go?

9 MS. TANNER: State's ready, Your Honor.

10 THE COURT: Defense?

11 MR. DEYSACH: Yes, Your Honor.

12 THE COURT: Let's bring in the Jury.

13 (Whereupon the Jury enters the courtroom at 2:51 P.M.)

14 THE COURT: Welcome back, ladies and
15 gentlemen. All right. Solicitor, if you would
16 call your next witness.

17 MS. TANNER: Yes, ma'am. The State calls
18 Richard Lewis.

19 Being first duly sworn, **RICHARD LEWIS**,
20 testified as follows:

21 THE CLERK: Please, state your full name and
22 spell your last name for the record.

23 THE WITNESS: Richard Lewis. L-e-w-i-s.

24 **DIRECT EXAMINATION**

25 BY MS. TANNER:

1 Q. Good afternoon, Mr. Lewis.

2 A. Good afternoon.

3 Q. I need you to talk into your microphone so we all
4 can hear you back here.

5 A. Good afternoon.

6 Q. Were you born and raised here?

7 A. No, I wasn't.

8 Q. Where were you raised?

9 A. New York City.

10 Q. When did you get here in Beaufort County?

11 A. Two-thousand one.

12 Q. Do you have family here?

13 A. Yes, I do.

14 Q. Who lives here?

15 A. My mother.

16 Q. And where do you live?

17 A. Ball Park Road.

18 Q. What's your address?

19 A. ■ Ball Park Road.

20 Q. And how long have you been living there?

21 A. About four or five years.

22 Q. So you were living there February 17, 2010?

23 A. That's correct.

24 Q. Is that on St. Helena?

25 A. Yes, it is.

1 Q. Now, do you own that property?

2 A. No. My mother owns the property.

3 Q. Do you live in the property?

4 A. Yes, I do.

5 Q. So you have any room mates?

6 A. No.

7 Q. Okay. On February 17 of this year was anyone
8 living with you?

9 A. No. No one was living with me.

10 Q. Now, do you have a nickname?

11 A. Yes.

12 Q. What's your nickname?

13 A. Old School.

14 Q. Old School?

15 A. Yes.

16 Q. All right. Now, prior to February of this year
17 had you had someone living with you before that?

18 A. Yes, I did.

19 Q. And who was that?

20 A. Marion and his girlfriend.

21 Q. And when did they move out?

22 A. I'm exactly -- I'm not exactly sure it was a
23 couple months before.

24 Q. A couple of months before the February date?

25 A. Yes.

1 Q. All right. Now, I'm going to ask you about
2 February 17.

3 A. No problem.

4 Q. Okay. Tell me how that day kind of started for
5 you?

6 A. I was home. I had company. I got a call from
7 Marion and said he wanted to come and freshen up.
8 And he came over with Jason and Larry and sure I
9 let him in as usual he's a friend. I had no
10 problem letting so he came in. He went on about
11 his business to freshen up or whatever, and I
12 stayed in the back with my company.

13 Q. Now, my company, who was that?

14 A. A female.

15 Q. Female company. So, let me get this right. About
16 what time does Marion call you?

17 A. It must have been about 8:30 or nine o'clock,
18 somewhere around in there. Early morning.

19 Q. Early morning?

20 A. Yes.

21 Q. And when he calls you what does he ask you?

22 A. Nothing, he just wanted to come freshen up and
23 change clothes that sort of stuff.

24 Q. And when he -- when he gets there does he walk on
25 in, does he have a key to your place?

1 A. No.

2 Q. Did you have to let him in?

3 A. Yes, I did.

4 Q. And once he gets in the house where does he go?

5 A. I have a bedroom in the front and he has a change
6 of clothes, there's a bathroom that's where he
7 went. I let him go on about his business he and
8 his friends I had no problem with it. He knows
9 what to do if I let him in my house he has free
10 rein in that bedroom and bathroom.

11 Q. He can use it when he's there?

12 A. Yes.

13 Q. But he wasn't living there at the time?

14 A. No.

15 Q. So where do you go once he comes inside?

16 A. Back in my bedroom in the back with my company.

17 Q. And do you know -- did you hear somebody taking a
18 shower?

19 A. No. I know somebody's in the bathroom. I really
20 wasn't paying attention I was occupied.

21 Q. I got ya'. Now, not too long after that you get
22 some more company?

23 A. Yeah.

24 Q. Let's talk about the next people that show up at
25 your house?

1 A. That was Detective Fraser and about six or seven
2 police officers.

3 Q. Six or seven police officers?

4 A. Yes, ma'am.

5 Q. All right. Tell me how you found out they're
6 there?

7 A. They knock on the door.

8 Q. Okay.

9 A. They knock on the door. I came out and Detective
10 Fraser was there. I had talked to him before so
11 I knew who he was he knew I was and, yeah, so
12 that's what happened. That's basically what
13 happened.

14 Q. And when you see him what does Detective Fraser
15 want?

16 A. Marion and Jason.

17 Q. Okay. And do you tell Investigator Fraser where
18 they are?

19 A. Not a first.

20 Q. Okay.

21 A. Not at first. But they called me outside and they
22 said this is what happened they allegedly shot his
23 cousin and we're looking for them, so I told them
24 that--

25 MR. DEYSACH: Your Honor, I object to this.

1 It's hearsay, I mean, somebody told him about what
2 he was about to say and I want to stop him from
3 doing that.

4 MS. TANNER: We talked about hearsay.

5 THE COURT: Okay. Sustained.

6 BY MS. TANNER:

7 Q. So you said you eventually told them where they
8 were?

9 A. Yeah.

10 Q. How did you do that?

11 A. They heard something inside wrestling so...

12 Q. At that point you had to tell them?

13 A. Yes.

14 Q. And once you do that do you let them in go in your
15 house?

16 A. Yeah. They kind of check out what they are gonna
17 do. I would say go to Marion and them and tell
18 them what's going on so it's no incident that he
19 was worried about him being armed and dangerous so
20 I said it was no problem. He's a friend of mine.

21 Q. When Marion came into your house did you see him
22 with a gun?

23 A. No.

24 Q. And that was about 9:30 you said?

25 A. Yeah.

1 Q. Okay. So the police are there and you let them
2 know that Marion is there, do you let the police
3 into your house?

4 A. Yes. They came in with me. They were supposed to
5 wait at the door but as we were coming in someone
6 knocked the screen out my window in front and they
7 all rushed the house the same time.

8 Q. And you had talked to the police about giving
9 consent to come in; is that correct?

10 A. Yes.

11 Q. Did you sign a piece of paper about that?

12 A. Yes.

13 MS. TANNER: State's Exhibit 24. May I
14 approach the witness?

15 THE COURT: You may.

16 BY MS. TANNER:

17 Q. I'm going to ask you if you can recognize this, if
18 you've seen it before?

19 A. Yes. I signed it.

20 Q. You signed that?

21 A. Yes.

22 Q. Is that about consent for them to come into your
23 house?

24 A. Yes.

25 Q. And that was on February 17?

1 A. Yes.

2 MS. TANNER: Your Honor, the State moves 24
3 into evidence.

4 THE COURT: Any objections?

5 MR. DEYSACH: No, Your Honor.

6 THE COURT: Is in evidence without objection.

7 BY MS. TANNER:

8 Q. All right. Once all that breaks lose and they
9 get in your house, did you see what comes out of
10 there?

11 A. No, after all of that I removed myself from the
12 area and let them handle their business. I had to
13 come in the back I stayed in the back that was it.

14 Q. And once they were done with their business do you
15 talk to the police?

16 A. Yeah. They talk to me after.

17 Q. Did you cooperate and tell them what you knew?

18 A. Yeah, sure.

19 Q. Okay. Now, after they leave--

20 A. Uh-huh.

21 Q. --What do you do?

22 A. Gather myself basically and basically I just went
23 and cleaned up and had my company and wound down
24 and just relaxed after that.

25 Q. How long do you think the police were at your

1 house that time?

2 A. No more than an hour.

3 Q. All right. Now, let's talk about you for just a
4 little bit.

5 A. All right.

6 Q. You've had some troubles over the years?

7 A. Yes, I have.

8 Q. What's -- what's your biggest problem?

9 A. Drugs. Addiction.

10 Q. Okay. How long -- how long have you been a user?

11 A. About 35 years.

12 Q. Thirty-five years. How old are you?

13 A. Fifty -- Fifty-one.

14 Q. Would you say that that's something you struggle
15 with even today?

16 A. Yes. At times. Yes.

17 Q. And because of that, had you gotten into trouble
18 with the police before?

19 A. Yes, I have.

20 Q. And what kind of trouble have you had with the
21 police?

22 A. Possession, criminal sales in the past.

23 Q. Drugs?

24 A. Yes.

25 Q. And the most recent trouble you got into, what was

1 that about?

2 A. Forgery.

3 Q. What did you forge?

4 A. Checks.

5 Q. Whose checks?

6 A. My mother's.

7 Q. And did you get into a little trouble for that?

8 A. A lot.

9 Q. Besides with the police?

10 A. More trouble with my mother than the police.

11 Q. All right. So let's go back to February 17?

12 A. Uh-huh.

13 Q. You are at your house, the police are gone; do you
14 talk to anybody that afternoon?

15 A. I got several calls from Larry the one individual
16 that came in with Marion.

17 Q. Who else did you get phone calls from?

18 A. I got one phone call from Marion.

19 Q. So you get phone calls that afternoon from Larry
20 and Marion; is that correct?

21 A. Yes.

22 Q. Now, when you talk to Marion, what does he want?

23 MR. DEYSACH: I think this is subject to the
24 objection I made in pretrial, Your Honor. I
25 object for the record.

1 THE COURT: You are protected for the record.

2 Thank you.

3 BY MS. TANNER:

4 Q. What does Marion want when he calls you in the
5 afternoon?

6 A. Basically to retrieve something out of the garbage
7 can.

8 Q. And what is he asking you to retrieve?

9 A. A cookie.

10 Q. A cookie?

11 A. Yes.

12 Q. Now, are we talking about a chocolate chip cookie?

13 A. No.

14 Q. What kind of cookie are we talking about, Mr.
15 Lewis?

16 A. Drugs.

17 Q. What kind of drugs?

18 A. Crack cocaine.

19 Q. And when he makes that phone call to you, do you
20 know that's what you're looking for?

21 A. Not until he told me.

22 Q. What did he tell you?

23 A. That he left something in the garbage. That he
24 left something in the garbage can.

25 Q. Okay. And while you were on the phone with him

1 what happens?

2 A. I was on the phone with him and Corporal Green,
3 one of the Sheriff's, was there as well. I was
4 outside when I got the call from Marion and I went
5 inside and the police, of course, followed me to
6 the door. So between the police officer and
7 Marion, I've got him on the phone and me trying to
8 hold the police at the door, basically, after I
9 retrieved it the Corporal came to the door told me
10 to come out of the house and that's basically,
11 what happened.

12 Q. Are you telling me that at some point you were in
13 between a rock and a hard place?

14 A. Pretty much.

15 Q. So you're on the phone with Marion--

16 A. Yeah.

17 Q. --and Marion is telling you to do what?

18 A. To get what he left in the garbage can out.

19 Q. And did you go do that?

20 A. Yes.

21 Q. Did you find anything in the garbage can?

22 A. Yes.

23 Q. What did you find?

24 A. I found cocaine.

25 Q. And once you found it what did you do with it?

1 A. I panicked at first so I didn't know what to do so
2 the police at the door tried to come in then I've
3 got him on the phone, I got company over here,
4 basically, at that point I just tried to put it
5 somewhere and get it out of my hands.

6 Q. Where did you put it?

7 A. In the bathroom.

8 Q. Where in the bathroom?

9 A. I just threw it. I just reached and I threw it in
10 the bathroom. My cabinet is right there so I just
11 threw it inside.

12 Q. When you threw it, was it inside a bag or was it
13 just in your hand?

14 A. It was in my hands.

15 Q. So you just throwed the crack ---

16 A. In the sink.

17 Q. Bathroom sink?

18 A. Bathroom sink.

19 MS. TANNER: If I may approach the witness,
20 Your Honor.

21 THE COURT: You may.

22 BY MS. TANNER:

23 Q. All right. I'm going to show you what's in
24 evidence State's Exhibit 15. Does that look
25 familiar?

1 A. Yeah. That's my bathroom.

2 Q. And what is that?

3 A. That's what I found in the garbage can.

4 Q. You found that in the garbage can and that's after
5 you through it?

6 A. Yes.

7 Q. Okay. And once you do that, do you go outside and
8 talk to Deputy Green?

9 A. No. He took me outside. He said I had no choice-
10 -

11 Q. He said come on outside?

12 A. I was simultaneously going out and I was in cuffs
13 in the car for the next four hours.

14 Q. And during that time period, do you cooperate with
15 the police?

16 A. Yes.

17 Q. Did you tell them what you just told us about what
18 you did?

19 A. Yes.

20 Q. And did you show them where it's at?

21 A. I did.

22 Q. And did you consent to doing that?

23 A. Yeah.

24 Q. You went willingly?

25 A. Yeah.

1 Q. Now, Mr. Lewis, I'm going to have to ask you
2 because you said you had a problem with crack, is
3 that your crack cocaine that was in the house that
4 day?

5 A. I didn't know it was there.

6 Q. You didn't know it was in there?

7 A. No. If I had of known it was there I probably
8 would have been hiding it. I didn't know it was
9 in there. I would've been high. I didn't know it
10 was there.

11 Q. And did you know that that phone call between you
12 and Marion was being recorded?

13 A. No. Not until Detective Fraser told me it was
14 recorded and asked me where it was. He say they
15 heard it over the phone and told me the details of
16 the conversation.

17 Q. And since then have you had an opportunity to
18 listen to that phone call again?

19 A. Yes. I have.

20 Q. Did you recognize your voice on that?

21 A. Yes, I did.

22 Q. Did you recognize Marion's voice on it?

23 A. Yes, I did.

24 Q. Now, this Marion that we've been talking about, do
25 you see him in the courtroom?

1 A. Oh, yeah.

2 Q. Could you point to him for me please?

3 A. (Pointing at the Defendant)

4 Q. Could you tell me what color shirt he is wearing?

5 A. Blue

6 MS. TANNER: Please have the record reflect he
7 has indicated the Defendant. Thank you, Mr.
8 Lewis. Please answer anything that Mr. Deysach
9 asks you. Okay?

10 CROSS-EXAMINATION

11 BY MR. DEYSACH:

12 Q. Good afternoon, Mr. Lewis?

13 A. Good afternoon.

14 Q. All right. I guess the first thing I wanted to
15 talk to you a little bit about is your past and
16 what you spoke to Solicitor Tanner about. It was
17 what you got in trouble for in the past. I think
18 you were saying that it was -- the whole problem
19 is that you got a crack -- a drug addiction;
20 correct?

21 A. I've had problems with drug addictions. I have.

22 Q. And the charges like forgery wouldn't have
23 occurred if you didn't have the drug addiction?

24 A. More than likely not.

25 Q. Okay. But didn't -- you were convicted in 2003

1 for breach of trust?

2 A. Yes.

3 Q. Okay. In 2005 there was two forgeries that you
4 were convicted of; correct?

5 A. Yes.

6 Q. And then in 2009 you were convicted of -- of three
7 forgeries?

8 A. Yes.

9 Q. And those were the ones where you were stealing
10 from your own mom?

11 A. Yes.

12 Q. And so -- are you still on probation?

13 A. No. I'm not.

14 Q. And then with all this stuff that happened on
15 February 17th, you picked up a charge for that
16 also; correct?

17 A. Yes, I did.

18 Q. You got charged for the drugs that the police
19 found that afternoon?

20 A. Yes.

21 Q. And you got charged with trafficking, was it ten
22 to twenty-eight grams?

23 A. That was the charge.

24 Q. Okay. And you've actually -- You've also gotten
25 charged with possession with intent to distribute

1 within a school zone, crack cocaine; correct?

2 A. Yes.

3 Q. And you have cut a deal with Ms. Tanner?

4 A. No, I haven't.

5 Q. Well have you -- have you plead guilty?

6 A. I plead guilty.

7 Q. Did you plead guilty to trafficking crack?

8 A. Guilty to possession.

9 Q. Okay. You pled guilty to possession of cocaine?

10 A. Correct.

11 Q. So there was a reduction in your charge from
12 trafficking in crack to possession of cocaine;
13 correct?

14 A. Correct.

15 Q. And it wasn't just possession of cocaine first
16 offense, it was possession of cocaine third
17 offense that you pled to; correct?

18 A. Correct.

19 Q. And you know that being charged with trafficking
20 in crack, ten to twenty-eight grams ,third offense
21 carries from --

22 MS. TANNER: Objection, Your Honor.

23 THE COURT: Y'all need to approach.

24 (Whereupon the lawyers approached the Bench)

25 BY MR. DEYSACH:

1 Q. Okay. You know that the charge you were initially
2 charged with, trafficking crack from ten to
3 twenty-eight grams, carries a mandatory minimum
4 penalty of 25 years and a possible maximum of 30
5 years; correct?

6 A. I know now.

7 Q. Your lawyer didn't tell you?

8 A. No.

9 Q. Okay. The possession with intent to distribute in
10 a school zone carries a minimum of ten years and a
11 maximum of 15 years; correct?

12 A. Yes.

13 Q. And that was dismissed as a part of your deal with
14 the Solicitor's office, wasn't it? Wasn't it?

15 A. I did plead to a lesser sentence.

16 Q. And you -- You pled to something lesser than the
17 trafficking; correct?

18 A. Correct.

19 Q. And the school zone element was completely
20 dismissed; correct?

21 A. I believe so.

22 Q. And like you said, you pled guilty; correct?

23 A. Yes.

24 Q. You came before this court and you swore on the
25 Bible just like you did today?

1 A. Yes.

2 Q. And you promised to tell the truth to the Judge
3 that day; correct?

4 A. Yes.

5 Q. And you told that Judge that you did indeed
6 possess crack cocaine; correct?

7 A. Yes.

8 Q. But you just told the jury that you didn't know
9 that any of that was there.

10 A. I didn't.

11 Q. You haven't been sentenced yet for your possession
12 of -- of cocaine third charge; correct?

13 A. No. I haven't.

14 Q. Do you know that the maximum you can get is ten
15 years on that; correct?

16 A. Yes.

17 Q. When you plead guilty -- Okay. You're not going
18 to get sentenced until this trial is over;
19 correct?

20 A. Correct.

21 Q. And so what happens at that sentencing hearing --
22 how you do today or what you say from the stand
23 today is going to have an impact on that, isn't
24 it?

25 A. I couldn't say that.

1 correct?

2 A. Correct.

3 Q. And so what happens at that sentencing hearing --
4 how you do today or what you say from the stand
5 today is going to have an impact on that, isn't
6 it?

7 A. I couldn't say that.

8 Q. You're not sure?

9 A. I don't know.

10 Q. And in fact, after you plead guilty to this
11 possession charge, you agreed to a modification of
12 your bond with the Solicitor's office; correct?

13 A. Yes.

14 Q. Right. And that was by agreement, right? That
15 was something you agreed to at the Solicitor's
16 office, wasn't it?

17 A. (Inaudible)

18 THE COURT REPORTER: I can't hear what he is
19 saying.

20 BY MR. DEYSACH:

21 Q. Okay. My question is whether that was something
22 that you agreed upon with the Solicitor or was
23 that something the Judge did for you?

24 A. I guess both.

25 Q. Okay. So what you're saying is that after you

1 pled guilty the Solicitor didn't have a problem
2 with you getting out of jail?

3 A. He gave me a bond reduction.

4 Q. Reduced to something where you didn't have to post
5 any kind of money to get out of jail; correct?

6 A. No. Incorrect.

7 Q. You did have to post some money?

8 A. Yes, I did.

9 THE COURT: Mr. Lewis, please talk into the
10 microphone so my Court Reporter can hear you.

11 BY MR. DEYSACH:

12 Q. Okay. So let's talk about, I guess, what we're
13 here about today. You told the jury that you got
14 a call from Marion asking if he could come over
15 that morning?

16 A. Correct.

17 Q. Make sure you're speaking up and everything?

18 A. Right. Right. Right.

19 Q. And you said that call came about nine o'clock?

20 A. Somewhere around there. Yes.

21 Q. Okay. That when Mr. Bonds asked to come over you
22 said, "no problem"?

23 A. Yes.

24 Q. You told the jury that he wanted to freshen up;
25 correct?

1 A. Correct.

2 Q. And you said that that meant -- that included
3 changing clothes?

4 A. Sure.

5 Q. So he had the change of clothes at your house?

6 A. Yes.

7 Q. When he showed up did he have anything with him?

8 A. Not that I know of. Other than Larry and Jason.
9 I didn't even pay any attention.

10 Q. Would you have let Larry and Jason in without
11 Marion?

12 A. No.

13 Q. So they were Marion's guests?

14 A. Yes.

15 Q. They all arrived together?

16 A. Yes.

17 Q. Nobody was carrying a shot gun or anything, were
18 they?

19 A. No.

20 Q. Do you -- Had Marion stayed there within the last
21 couple of days?

22 A. I'm not sure. From time to time he would stay
23 over.

24 Q. Does anybody else stay in that room?

25 A. No.

1 Q. So the only person who stays there is Marion?

2 A. I let him use the room.

3 Q. Pardon?

4 A. I let him use the room from time to time. I don't
5 have a problem with that.

6 Q. He -- He used to rent the room from you?

7 A. Yes. They rented the room. Yes.

8 Q. Now, are you saying that when he stays at your
9 house he doesn't have to pay anymore?

10 A. No. If he's going to stay overnight he gives me a
11 couple of dollars to stay overnight.

12 Q. Does he give you that money before or after he
13 stays over?

14 A. Before.

15 Q. How much money did he give you that day?

16 A. (Inaudible)

17 Q. Pardon?

18 A. I didn't get money that day. I didn't get a
19 chance to.

20 Q. But you would have?

21 A. He wasn't staying. He was just going to freshen
22 up and leave.

23 Q. All right. Okay. You never saw Marion Bonds take
24 a shower, did you?

25 A. No. Not that I would want to but...

1 Q. That was a silly question. But whether it was--
2 Okay. You heard something in the bathroom but you
3 don't know who it might have been?

4 A. I heard movement up there. It's not something
5 that I ever paid attention to cause I trusted him.

6 Q. All right. And then it's shortly after that that
7 you get the knock on the door?

8 A. Yes.

9 Q. So when you're outside the house and the police
10 are talking to you, you tell them, well, I'll go
11 inside and tell Marion and Jason that you want
12 them and tell them to come on out and everything
13 will be, you know, that way we can handle this
14 with the least amount of problems; correct?

15 A. Correct.

16 Q. And that's what -- that's what you tried to do?

17 A. Correct.

18 Q. And so you said you walked into your house--

19 A. Uh-huh.

20 Q. --going to do what you say--what you're saying,--

21 A. Correct.

22 Q. --get the people out of your house?

23 A. Correct.

24 Q. And instead you hear some sort of a crash on your
25 screen?

1 A. Everybody heard it. I heard it. The screen was
2 knocked out of my window and I heard it. The
3 police were outside of my window.

4 Q. What -- What window are you talking about?

5 A. The back bedroom.

6 Q. Okay. So the bedroom window is where the screen
7 is?

8 A. The back bedroom. Screens all across there.

9 Q. Okay. And you don't know who knocked that out?

10 A. No. Cause I was coming back in the house.

11 Q. All right. Who was with you when you were coming
12 back in the house?

13 A. Detective Fraser and two officers were at my
14 door.

15 Q. Right.

16 A. My back door.

17 Q. Cause your plan was just to let them stay outside
18 so you could come on in?

19 A. Exactly.

20 Q. All right. But that's not what they do?

21 A. No. But after the window was knocked out--

22 Q. After that noise occurs then that's when they come
23 in?

24 A. Yes.

25 Q. All right. So the Solicitor had you look at this

1 kind of voluntary consent to search form that you
2 signed?

3 A. Sure.

4 Q. Can you tell me -- I'm going to hand it to you,
5 it's State's Exhibit 24. I'm going to hand it to
6 you and ask you what time it has marked on it?

7 A. Ten thirty-seven.

8 Q. Ten what?

9 A. Ten thirty-seven.

10 Q. Ten thirty-seven?

11 A. Yes.

12 Q. Okay. Okay. Yeah. I see it. 10:37. That's
13 after they've already entered your house; correct?

14 A. Yes.

15 Q. So what you're saying is that when they entered
16 your house they didn't -- you hadn't given them
17 that consent yet?

18 A. To search the house, no.

19 Q. Okay. And so after it happens, the police handle
20 their business, you get out of the way?

21 A. Yeah.

22 Q. When they come back, you are outside on the phone?

23 A. Yes. Checking my mailbox.

24 Q. And you are approached by a police officer?

25 A. Yes.

1 Q. After you have contact with that police officer
2 you walk back into your house?

3 A. Yeah. I'm still on the phone and the police
4 officer's with me.

5 Q. So does the police officer follow you into your
6 house?

7 A. They follow me to my front steps.

8 Q. Does he come through your -- your front door?

9 A. No, he didn't come in the front door at that time.

10 Q. He did or did not?

11 A. He did not. He came to my door.

12 Q. Do you use your front door or your back door?

13 A. Both.

14 Q. When you're talking about when this happened, what
15 door was it?

16 A. Front door.

17 Q. Okay. So you're inside your house and Corporal
18 Green is outside your house?

19 A. He's outside the door. I tried not to let him in.

20 Q. Okay. Did you shut the door?

21 A. I did shut it.

22 Q. Okay. And that's when you're describing this
23 activity with the crack in the bathroom?

24 A. This was all being done from the mailbox to the
25 house that's when I went back inside.

1 Q. I hear you. And when it comes to getting rid of--
2 of -- of -- You said you put the crack in the
3 bathroom?

4 A. Yes.

5 Q. You said you threw it in the bathroom?

6 A. Yes, I did.

7 Q. So I guess what you're saying is that you've got
8 an open cabinet underneath your sink?

9 A. It is right there.

10 Q. Okay. And it has doors on it, right?

11 A. Yes.

12 Q. And the doors were open?

13 A. They must have been.

14 Q. They must have been? Is that how you keep them?

15 A. No. I was --It was probably still open from all
16 that searching my house. My house was torn apart.

17 Q. Got you. So even though you said you cleaned up
18 after the police officers left, you still might
19 have left that cabinet open?

20 A. Sure.

21 Q. So while this is happening, do you invite Corporal
22 Green inside your house?

23 A. No. Corporal Green is at the door. The screen
24 door was closed.

25 Q. Uh-huh.

1 A. So to get to the bathroom I still had Corporal
2 Green there and he could still see me.

3 Q. Uh-huh.

4 A. Corporal Green is right there and he could still
5 see me because the solid door was not closed and I
6 had the screen door and he could still see me.
7 And he told me I had to come outside I reached
8 around and threw it in the bathroom.

9 Q. Does he grab you out of your house?

10 A. No.

11 Q. He never came in your house, at that time at
12 least?

13 A. Oh, he did come in. Yes, he did.

14 Q. After that?

15 A. He came in prior to me throwing when I was
16 still on the phone.

17 Q. Okay. And you made him leave?

18 A. No. He basically said, "you have to go outside".
19 I said, "I'm coming outside".

20 Q. He said that from inside your house?

21 A. Yeah, from inside the house.

22 Q. Okay. All right.

23 MR. DEYSACH: Courts indulgence. I don't have
24 any more questions, Your Honor. I think in light
25 of what he has testified to I would want to renew

1 my pretrial objections.

2 MS. TANNER: I would like to redirect.

3 **REDIRECT EXAMINATION**

4 BY MS. TANNER:

5 Q. Mr. Lewis?

6 A. Yes.

7 Q. Corporal Green that came back the second time?

8 A. Yes.

9 Q. Did he touch that crack you threw?

10 A. No, he didn't.

11 Q. And when Corporal Fraser went back or Sergeant
12 Fraser went back in with you later, was that with
13 you?

14 A. Yes.

15 Q. With your permission?

16 A. Yes.

17 Q. All right. Now the first time when the police
18 come, showed you that piece paper that was signed,

19 A. Uh-huh.

20 Q. That was signed after everything calmed down; is
21 that correct?

22 A. Yeah, because there was commotion. I signed it
23 cause they said they wanted to look for a weapon.
24 They were looking for a weapon that was the sole
25 purpose of me signing that paper. They were

1 looking for a weapon.

2 Q. So you agreed to let them search your house?

3 A. Yes, I did.

4 Q. With your permission?

5 A. Yes, I did.

6 Q. Before that--

7 A. Uh-huh.

8 Q. --When they went in and crashed, did you talk to
9 them about them coming in your house? I know you
10 said you wanted to talk to Marion first, but did
11 you talk to them about coming in?

12 A. Honestly speaking, I'm really not sure.

13 Q. You're not sure?

14 A. But I do know that I was going to try to be in
15 between the two party's.

16 Q. You wanted to try it your way first?

17 A. Right.

18 Q. But do you disagree that they had your permission
19 to come in your house?

20 A. I think I implied permission I would say. I would
21 say that.

22 Q. All right. Let's talk about the agreement that
23 you and I have.

24 A. Yeah.

25 Q. Mr. Deysach has mentioned that you were looking at

1 a lot of time because this is your third drug
2 offense?

3 A. Correct.

4 Q. And every time you get one of those it goes up; is
5 that correct?

6 A. Yes.

7 Q. And you are aware of that?

8 A. Yes.

9 Q. And the agreement you and I had, you pled guilty
10 to possession third offense?

11 A. Yes, I did.

12 Q. But you know that you're looking at a lot of time?

13 A. Yes, I do.

14 Q. Has that had any effect on your testimony today?

15 A. None what so ever.

16 Q. What you told me and what you told the jury today
17 is that any different than what you told the
18 police on February 17, 2010?

19 A. No, it's not.

20 Q. And at that time you and I had never met?

21 A. No.

22 Q. So is what you said today the truth?

23 A. Yes, it is.

24 MS. TANNER: Thank you.

25 MR. DEYSACH: No re-cross, Your Honor. But I

1 think -- I want to -- I think it's appropriate to
2 revisit the pre-trial ruling in light of the new--
3 the testimony that Mr. Lewis has just offered --
4 the State has offered through Mr. Lewis.

5 THE COURT: Okay. Anything further from this
6 witness with the State?

7 MS. TANNER: No, ma'am. May this witness be
8 excused?

9 THE COURT: Any objection?

10 MR. DEYSACH: I don't think he should be
11 excused quite yet but we'll see how we'll proceed
12 on any revisiting of the pre-trial motion. I ask
13 that he still be kept under the subpoena.

14 THE COURT: Okay. Mr. Lewis, I'm going to go
15 ahead and excuse you from the stand but I want you
16 to stay around for us and I'll let you know
17 shortly if I need you. All right, sir. Ladies
18 and gentlemen of the jury, there's a matter of law
19 that I need to take up with attorney's so I need
20 to go ahead and send you back to your jury room.
21 Get a cup of coffee or some water and I will be
22 back with you shortly. Again, you're not to
23 discuss this case. It would not be appropriate to
24 do so at this time. Thank you.

25 (Whereupon the Jury is dismissed from the Courtroom at

1 3:26 P.M.)

2 THE COURT: I guess my question is is implied
3 consent enough? Do you have any case law?

4 MR. DEYSACH: I believe I do. There are a
5 couple of things I wanted to -- it's a motion in
6 liming, obviously that can be revisited during the
7 trial. I think now that we've got this new
8 information -- whether something such as implied
9 consent exists, I do not know of any cases that
10 stand for that proposition where you can say can I
11 have consent to -- to enter and then somebody
12 stands silent and you therefore have consent to
13 enter. I do want to point out that I think that
14 Mr. Lewis was clear that when -- when Marion stays
15 there he does pay rent and so that he has made him
16 more of a tenant or more like a hotel operator
17 that we talked about at the pre-trial. And so
18 certainly even if he could imply the consent --
19 and I think Ms. Tanner did a nice job of trying to
20 rehabilitate him, but what he said was, "I tried
21 to go in and keep them from coming into my house
22 and then they came in anyway". And so I don't
23 even think their -- He said, "yeah, I'm implying",
24 but I think we should take what he's saying with a
25 little bit of a grain of salt because we know the

1 type of deal that he has with the Solicitor and if
2 he upsets her it could effect, in his mind at
3 least, his deal even if that weren't the case.
4 But at any rate, the implied consent other than in
5 the DUI realm, I've never heard of that term really
6 used legally as a way to enter somebody's home.
7 And anyway, given the stronger relationship that
8 Mr. Lewis described that he could not -- he could
9 not consent to a search of a tenant's room in that
10 situation that's Lofton -- State v. Lofton and
11 State v. Moultrie, and I think there's U.S. v.
12 Chapman. So...

13 THE COURT: I think we need to go ahead and
14 take about a ten minute break and do a little bit
15 of research---

16 MS. TANNER: But before we do that the ruling
17 was Marion Bonds has no expectation of privacy.
18 That didn't change. If he has no expectation of
19 privacy in that room, he can't challenge an entry
20 into someone else's home. He has no standing to
21 challenge how they enter into his home. Now, I'm
22 not saying anything -- I'm saying they had consent
23 to go in. I'm not arguing that. Worse case
24 scenario, if officers didn't have consent to go
25 in, Marion Bonds doesn't have the standing to

1 challenge it. He had no expectation of privacy.
2 That was the ruling. The fact that he came and
3 went, he did not pay rent that day, he was not
4 staying in that room that day. Mr. Lewis said he
5 stopped by to freshen up, he wasn't staying, he's
6 not living there, he moved out two months prior
7 was the testimony. That hasn't changed the
8 ruling. It hasn't changed the basis for the
9 ruling. The ruling was no expectation of privacy.
10 You can't challenge now Mr. Lewis' rights whether
11 or not to give consent.

12 MR. DEYSACH: That's not -- I think that's not
13 entirely what the framework is but I think that
14 she's right that there is still a threshold
15 question about the expectation of privacy. And
16 what has happened, that we learned from Mr. Lewis,
17 is that he -- he -- he really probably -- I mean
18 he does have an expectation of privacy -- that he
19 pays rent when he stays there. He -- he brings
20 guests there. He -- he brings Larry and Jason who
21 couldn't have come by themselves only with Marion
22 are they allowed in. That -- if he were to stay
23 overnight he would pay, that he didn't get any
24 money that day but I think he said something -- he
25 may have said something like, "not yet I didn't

1 get a chance to" And so we do have this
2 expectation of privacy that exists that--

3 THE COURT: Well, I think what y'all need to
4 do, other than argue the facts, which we all know
5 what the facts are. Why don't y'all go see if
6 there is any case law that you can -- if there's
7 any kind of scenario just someone borrowing a
8 room. I don't think we are quite to the level of
9 a hotel. But that's probably the closest.

10 MS. TANNER: He's there 30 minutes and he uses
11 the bathroom and that's it. That's his only use
12 of this house.

13 THE COURT: Solicitor, he has changes of
14 clothes there from the testimony. I don't think
15 it's just that. I think there is a bit more.

16 MR. DEYSACH: And nobody else ---

17 THE COURT: I'm going to go ahead and give --
18 Y'all don't need to argue what we've just heard.
19 I heard the same testimony you did.

20 MR. DEYSACH: Yes, Your Honor.

21 THE COURT: I heard that same testimony at
22 the pre-trial and I just heard from Mr. Lewis, so
23 why don't y'all see what you could find and see if
24 there's anything. I'll just give you about ten
25 minutes to do that. Okay?

1 MR. DEYSACH: Thank you.

2 (Whereupon the Court took a short break at 3:32 P.M.)

3 (Whereupon Court resumed at 3:54 P.M.)

4 THE COURT: Other than State v. Missouri,
5 did any one find a case before we bring in the
6 jury?

7 MS. TANNER: Yes, ma'am. Yes, ma'am. I
8 found one directly on point. State versus
9 Flowers. It was about a guest. Now, in that case
10 it was a boyfriend and they were looking for him
11 at his girlfriend's house. Testimony was he
12 stayed there four or five nights a week, Officer's
13 came there, he refused to give consent and came
14 back and talked to the girlfriend, who was the
15 homeowner, she gave consent. Obviously, drugs and
16 guns were found. His conviction was upheld. The
17 holding is that a guest refusing to consent does
18 not the deprive the homeowner the right to grant
19 consent. The guest does not have standing to
20 challenge an owners' consent. So at best -- at
21 best Mr. Bonds was a guest using the bathroom. He
22 had not paid rent, he was not staying there, he
23 was a guest at best. He had been there 30 minutes
24 using the bathroom. That would like -- be like me
25 saying I have and expectation of privacy over the

1 bathroom in this courthouse because I had used it.
2 But they go on to say that even if he had some
3 expectation of privacy as a guest, you can not
4 override a homeowners right to consent.

5 MR. DEYSACH: All right.

6 MS. TANNER: That's 2004, it was upheld this
7 year in 2010 by State v. King.

8 MR. DEYSACH: Okay. That case seems to
9 indicate that there is an expectation of privacy
10 by the defendant and it's a case about whether or
11 not a third party may consent. Now, that is
12 really the U.S. v. Matlock and it's progeny. I
13 think you have to first figure out is there the
14 expectation of privacy -- is -- and if there is
15 only then do you start talking about if a third
16 party may consent and under what circumstances
17 that may -- may happen. So Flowers actually
18 indicates they did pass the expectation of privacy
19 and now you've got somebody who has consented.
20 Whereas, in this case we had Richard Lewis who
21 gave consent, it sounded like, after they had
22 already come in when he was trying to handle it
23 himself. And we talked about this implied consent
24 and we're not talking about implied consent in
25 that case. And so now we're talking about whether

1 or not a person may consent -- whether or not a
2 person may consent -- a third-party consent case.
3 That's what it is. It's a third-party consent
4 case. And so I said you don't get to there unless
5 after a reasonable expectation of privacy. Now, I
6 think it's the Georgia v. Randolph case which is
7 the U.S. Supreme Court case that I think is the --
8 probably the most illustrative in a third party,
9 you know, a humane consent case. You know, we're
10 talking about -- we're not talking a boyfriend
11 girlfriend relationship here, so it's certainly
12 distinguishable on those grounds. We're talking
13 about somebody who when they stay pays rent but
14 probably according to him --

15 THE COURT: Tell me about the Georgia case,
16 because I already know the facts in this case.

17 MR. DEYSACH: Georgia v. Randolph, a co-tenant
18 may not consent to search when another present co-
19 tenant objects.

20 THE COURT: Okay. And certainly we know that
21 rule. But I need to know the facts--

22 MR. DEYSACH: Okay.

23 THE COURT: --of the case on Georgia v.
24 Randolph to figure out if they're anywhere close.

25 MR. DEYSACH: (looking thru papers)

1 THE COURT: Okay. And certainly we know that.
2 rule. But I need to know the facts--

3 MR. DEYSACH: Okay.

4 THE COURT: --of the case on Georgia v.
5 Randolph to figure out if they're anywhere close.

6 MR. DEYSACH: (looking thru papers)

7 THE COURT: And in most cases that's what
8 we're talking about, you have co-tenants, you
9 have separate bedrooms and this is one bedroom
10 belonging to one person and this is one bedroom
11 belonging to another person.

12 MR. DEYSACH: This is a -- this is a wife and
13 a husband in this case and so, although an
14 estranged wife, gave police permission to search
15 the marital residence for items of drug use after
16 the respondent, who was also present, had refused
17 to give consent. And so in this case -- in our
18 case we've got the forced opening of the door, and
19 the slamming of the window, certainly no consent
20 from the present co-tenant. It is a little bit
21 different from a -- a -- what we have at home.
22 Because of the roommate relationship as opposed to
23 the marital relationship.

24 THE COURT: The Georgia v. Randolph case says
25 a warrantless search of a shared dwelling for

1 evidence over express refusal of consent by the
2 physically present resident can not be justified
3 as reasonable.

4 MS. TANNER: And I would point out that's a
5 co-tenant ---

6 THE COURT: Right ---

7 MS. TANNER: Again, that is someone sharing.
8 There has been no testimony that these guys are
9 co-tenants. He stops by even in Mr. Deysach's --
10 he stops by willy-nilly. He is a guest. He is
11 not a co-tenant. There are four other residences
12 that are searched for him before they get to this
13 residence. So it's not even -- it's not a primary
14 resident, he is not a co-tenant, he has no
15 property rights to it.

16 THE COURT: They are not co-occupants.

17 MR. DEYSACH: He's much more of a co-occupant,
18 I think, than the Missouri guy. Their person in
19 Missouri, I think, falls on the other side of
20 Marion Bonds in this case. And so really we are
21 looking for -- for -- and the thing is you don't
22 have to be a tenant to enjoy that reasonable
23 expectation of privacy.

24 THE COURT: You can be a guest. We agree with
25 that, but I still don't think that that doesn't

1 trump if the homeowner or the owner gives
2 permission.

3 MR. DEYSACH: We probably could agree that if
4 money had been paid that that would mean that the
5 homeowner could not give permission; correct?

6 THE COURT: No. I wouldn't say -- I wouldn't
7 say necessarily correct.

8 MR. DEYSACH: That's U.S. v. Chapman and State
9 v. Lawson where the -- where the -- the landlord
10 came and ---

11 THE COURT: I'm going to go through Minnesota
12 versus Olson. It all talks about that an
13 overnight house guest has an expectation of
14 privacy in temporary quarters. And again in this
15 case we've got someone that showed up at 9:30 in
16 the morning to shower and change clothes.
17 Arguably he had clothes there. I just don't think
18 it rises to that level and I can tell you I am
19 still comfortable with my earlier ruling on my
20 motion in limine, regardless of the testimony
21 given by Mr. Lewis.

22 MS. TANNER: Your Honor, may I just add just
23 for the record.

24 THE COURT: Yes.

25 MS. TANNER: There is a case, the Brannon

1 case and it's talks about consent. And I know
2 there are some questions from Mr. Deysach that at
3 what point Mr. Lewis consented to their entry.
4 But they -- they discussed looking at the length
5 of time between entering from our intervening
6 circumstances. And I would just say that he
7 clearly gave consent even on the stand he said it
8 was implied. I was gonna let them in even if I
9 hadn't said go yet. He signs the paperwork within
10 minutes, he never objects, he never withdraws
11 consent, so at all times they are consensually
12 within Mr. Lewis' home, the homeowner.

13 THE COURT: And there is no out right refusal
14 at the time by the person that is being charged
15 with the drugs which is Mr. Bonds, as well.

16 MS. TANNER: Yes, Your Honor.

17 THE COURT: That seems to be the difference in
18 all this case law I'm -- looking at Illinois--
19 Illinois versus Rodriguez, which is cited in
20 Georgia versus Randolph, it basically says that
21 when you have one occupant giving permission and
22 the second one saying no and the one saying no is
23 the one who the evidence is seized is trying to be
24 used against them. I think that his -- his denial
25 would be paramount, but that's not what we have

1 here.

2 MR. DEYSACH: Rodriguez was asleep in that
3 case.

4 MS. TANNER: And those are cases where they
5 are further along than this when as far as being
6 co-tenants or marital property where they both
7 have an interest in it. It's not this situation
8 when you're having guests who stop by.

9 MR. DEYSACH: Obviously, we're going to have
10 to put more than one case together in order to
11 opine a ruling--

12 THE COURT: They're all factored in which is
13 why we're looking at it. No facts are ever going
14 to be exactly the same. I'm going to tell you,
15 Mr. Deysach, just in reading this right now I
16 still feel comfortable with my own ruling. And
17 I'm going to go ahead and again, respectfully deny
18 your motion.

19 MR. DEYSACH: There is one last case I wanted
20 to put on the record was -- stands for the
21 proposition of a guest may not -- does not need to
22 be an overnight guest in order to have standing--
23 now, that's a -- that's a ninth circuit case that
24 is U.S. v. Davis of the Ninth Circuit three
25 thirty-two Federal third eleven sixty-three. I

1 recognize that that wouldn't be necessary
2 mandatory on, Your Honor, but there is certainly a
3 requirement overnight. I think that the question
4 is -- I think as far as the ruling goes are we
5 saying that he doesn't have expectation of privacy
6 or that we -- the third party gives valid consent.
7 I'm not sure what the ruling is.

8 THE COURT: I don't think he has an
9 expectation of privacy, I can tell you that. I
10 don't, not based on the facts. All right. Are we
11 ready to go, Solicitor, with your next witness?

12 MS. TANNER: I am ready. Before they go I
13 just want to put on the record for appellant
14 purposes cause it might be where this goes. There
15 were arguments earlier about other exigent
16 circumstances about protective sweeps and things
17 of that nature. You overruled on the expectation
18 of privacy that did not need to go further on the
19 ruling for that. I did want those topics on the
20 record for appellant purposes.

21 MR. DEYSACH: I mean I would -- we -- we don't
22 argue about those because of what the ruling is
23 and so...

24 THE COURT: All right. Let's bring them in.
25 (Whereupon the Jury enters the courtroom at 4:06 P.M.)

1 THE COURT: Welcome back. Solicitor, will you
2 call your next witness.

3 MS. TANNER: Thank you. Okay. The State
4 calls Jeff Vortisch.

5 Being first duly sworn, **JEFF VORTISCH**,
6 testified as follows:

7 THE CLERK: Please state your name and spell
8 your last name.

9 THE WITNESS: Jeff Vortisch. V-o-r-t-i-s-c-h.

10 **DIRECT EXAMINATION**

11 BY MS. TANNER:

12 Q. Good afternoon, Mr. Vortisch.

13 A. Good afternoon.

14 Q. Where are you employed?

15 A. Beaufort County Detention Center.

16 Q. And what do you do at the detention center?

17 A. Internal Affairs Officer.

18 Q. And as part of that is one of your duties
19 monitoring the phone system at the jail?

20 A. Yes.

21 Q. Can you describe, for the jury, exactly what that
22 setup is and what you do with it?

23 A. Okay. Basically, the inmates have the ability to
24 use the phone in the housing units. The phones
25 are recorded. They are notified at the beginning

1 of each call that the phone call has the ability
2 to be monitored and recorded, and that they are
3 monitored and recorded. They're recorded
4 electronically in Dallas, Texas where they are
5 retained for about thirteen months give or take.
6 I'm the only one at the retention center. I
7 manage and supervise the program. That's one of
8 my responsibilities.

9 Q. So anytime an inmate makes a phone call from
10 inside the jail you can monitor that?

11 A. Yes, ma'am.

12 Q. And you can record that?

13 A. Yes, ma'am.

14 Q. And what notice is the -- is the inmate given that
15 that phone call is being recorded?

16 A. If they call a house phone it's given to them at
17 the very beginning. It's an advisement. When a
18 person answers the phone the person answering the
19 phone is given the advisement, as well. If they
20 call a cell phone, they are given the advisement
21 every fifteen seconds. This is subject until the
22 call is answered.

23 Q. And is that at the very beginning of the phone
24 call?

25 A. Yes, ma'am.

1 Q. And is that something you said both parties can
2 hear it?

3 A. Well, initially the inmate hears it and when the
4 other person answers the advisement is given to
5 them, as well.

6 Q. So the advisement is given twice?

7 A. Yes.

8 Q. What about in writing?

9 A. Yes, ma'am. It's in the inmate handbook and it's
10 posted inside each pod, inside a bulletin
11 showcase, we have to have certain documents.

12 Q. And what does it say?

13 A. It says that all phone calls are monitored and are
14 subject to be monitored and recorded.

15 Q. What is the language on the phone when you make
16 the phone call?

17 A. It advises that the phone call is subject to being
18 monitored and is being recorded.

19 Q. Now, how will you know as the person who monitors
20 this thing which inmate is making the phone call?

21 A. Back in June of 2002, 2009 we initiated a system
22 called PIN System. Every inmate has a new five
23 digit number assigned to them that they have to
24 put into the phone. The phone system is web
25 based. When they put the five digit number into

1 the phone my computer program tells me to advise
2 that number to an inmate. Then the inmate by our
3 rules and policies must also say their name, first
4 and last name. And then we have an approved
5 calling list. That if the number that they are
6 calling is not on their list the phone system
7 doesn't let it go through. As soon as the phone
8 is picked up I see it on my computer, I see the
9 PIN number, the ID number being entered then the
10 computer tells me who's on the phone. I'm
11 listening to it and in this case I hear Jeff
12 Vortisch and the computer identifies that as being
13 me.

14 Q. What happens if another inmate uses another guys
15 PIN number?

16 A. Before we initiated the system that could happen.
17 Now, he would have to call the same numbers as the
18 other inmate. Because if you were in jail and I
19 was in jail and I took your number I would have to
20 call somebody on your list, I couldn't call my
21 numbers.

22 Q. Is that phone call terminated or is it just not
23 allowed to go through?

24 A. It doesn't go through.

25 Q. And do you have the ability while monitoring these

1 phone calls to shut them down?

2 A. Yes, ma'am.

3 Q. Is the same PIN number ever given to two inmates?

4 A. No, ma'am, that's a unique number. Once a person
5 actually walks out of jail, the phone account is
6 closed, should he come back that number is given
7 back to him and that number never changes.

8 Q. So if I went to jail last week and then I come
9 back, I'm going to have the same PIN number
10 assigned to me?

11 A. Yes, ma'am.

12 Q. Now, in your position were you given a subpoena
13 from investigators for the phone calls made by
14 Marion Bonds on February 17th, 2010?

15 A. Yes, ma'am.

16 Q. And did you record those phone conversations and
17 provide them to law enforcement?

18 A. I did.

19 Q. In what format?

20 A. CDR.

21 MS. TANNER: May I approach the witness?

22 THE COURT: You may.

23 BY MS. TANNER:

24 Q. Mr. Vortisch, I'm going to show you what has been
25 marked as State's Exhibit 23. Tell me if you can

1 identify this item?

2 A. Yes, ma'am. This is the disc that I provided to
3 the law enforcement of the phone calls requested.

4 Q. And this is a disc that you prepared?

5 A. I did prepare this disc.

6 Q. And the information on that disc includes phone
7 calls made by Marion Bonds?

8 A. Yes. It has certain writing on it. It has the
9 disc, zero three zero one, which indicates it's
10 been marked. This was the recording for subpoena
11 number zero three zero one. It's for the subpoena
12 I received in March. At the bottom I wrote the
13 inmates name Marion Bonds and I initialed the disc
14 myself, those are my initials.

15 MS. TANNER: Your Honor, the State moves 23
16 into evidence.

17 MR. DEYSACH: Your Honor, I have the -- sthe
18 prior objection in pre-trial. And also I do not
19 believe that the requirements of rule 901 of the
20 rules of evidence for the voice identification or
21 telephone conversations have been complied with by
22 the Solicitor, so I object on those counts also.
23 That's rule 901, five and six.

24 BY MS. TANNER:

25 Q. Mr. Vortisch, before turning this over to law

1 enforcement did you review that CD that you
2 created?

3 A. I did.

4 Q. And you have confirmed information on that CD are
5 the voice recordings of Marion Bonds?

6 A. I have.

7 MS. TANNER: Your Honor, the State's
8 position, we have met rule 901.

9 THE COURT: All right. I do find that you
10 have met the requirements under the rule of
11 evidence.

12 MR. DEYSACH: Okay. Just for the record, I'm
13 going to give voice to the requirements. I think
14 there is no testimony that Mr. Vortisch can
15 recognize the voice from hearing it at any other
16 time under the circumstances connecting it with
17 the alleged speaker and it doesn't fit under
18 number six cause what number six refers to is
19 calling the person whose recorded phone number and
20 by authenticating it by matching it up to their
21 phone number and that's not what the situation is
22 here.

23 THE COURT: Respectfully, I overrule the
24 motion. Go ahead.

25 MS. TANNER: I have no further questions.

1 Please answer anything defense counsel has.

2 CROSS EXAMINATION

3 BY MR. DEYSACH:

4 Q. When -- just very briefly, Mr. Vortisch, Sergeant
5 Vortisch?

6 A. Mr. Vortisch.

7 Q. Mr. Vortisch, when people are making phone calls
8 from these phones you can't see them can you?

9 A. I don't understand that question.

10 Q. When--

11 A. Oh, see the person?

12 Q. Yeah.

13 A. No. No, sir.

14 Q. Okay.

15 MR. DEYSACH: I don't have any other
16 questions.

17 THE COURT: Anything further?

18 MS. TANNER: Nothing further. May this
19 witness be excused?

20 THE COURT: Any objection?

21 MR. DEYSACH: No, Your Honor.

22 THE COURT: Call your next witness, please.

23 MS. TANNER: The State calls Brian Chapman.

24 Being first duly sworn, **BRIAN**

25 **CHAPMAN**, testified as follows:

1 THE CLERK: Please state your name and spell
2 it for the record.

3 THE WITNESS: Sergeant Brian, B-r-i-a-n
4 Chapman, C-h-a-p-m-a-n.

5 DIRECT EXAMINATION

6 BY MS. TANNER:

7 Q. Good afternoon, Mr. Chapman.

8 A. Good afternoon.

9 Q. Where are you employed?

10 A. The Beaufort County Sheriff's Office.

11 Q. And how long have you been working there?

12 A. Since 2003.

13 Q. In what capacity are you employed with the
14 Sheriff's Office?

15 A. I'm a sergeant with the criminal investigation
16 division.

17 Q. Now, as part of your job as an investigator, were
18 you working on February 17th, 2010 on the case
19 involving Marion Bonds?

20 A. Yes, ma'am.

21 Q. And as part of that investigation did you have the
22 opportunity to review phone calls being made by
23 Marion from the detention center?

24 A. Yes.

25 Q. Explain to the jury how that was working?

1 A. I logged on to the system and began viewing phone
2 calls that Mr. Bonds was making outside -- from
3 the inside outside on the phone.

4 Q. And were you listening to this live?

5 A. Yes, ma'am, I was.

6 Q. So as he's making the phone call, you're listening
7 to it?

8 A. Yes, ma'am.

9 Q. Based on what you hear, do you take any action?

10 A. Yes, ma'am. I hear conversations about narcotics
11 and then based on that information I relayed that
12 information to the drug task force.

13 Q. And you have had an opportunity now to review
14 those phone calls again?

15 A. Yes, ma'am.

16 MS. TANNER: If I may begin publishing the
17 relevant parts of these phone calls?

18 THE COURT: You may.

19 BY MS. TANNER:

20 Q. Investigator Chapman, start first, there is a
21 phone call -- Did you listen to a phone call place
22 by Marion Bonds and his girlfriend?

23 A. Yes, ma'am.

24 Q. And in listening to that phone call what do you
25 hear Marion Bonds discussing?

1 A. During that phone call I heard Mr. Bonds
2 discussing something about that he was there -- I
3 didn't know what he was referencing at the time
4 but he was there and he shouldn't have done it.
5 And I also heard conversations about narcotics,
6 specific things about narcotics during the
7 conversation.

8 (Recorded phone call being played in the courtroom.)

9 BY MS. TANNER:

10 Q. Now, Investigator Chapman, did you also hear a
11 phone call placed by Marion Bonds to Larry Holmes?

12 A. Yes, ma'am.

13 Q. Have you had an opportunity to review that again?

14 A. Yes, ma'am.

15 Q. What was the conversation by Marion during that
16 phone call with Larry?

17 A. During that conversation Mr. Bonds tells Little
18 Larry, Larry Holmes about specific weight of
19 narcotics inside the house and he also --he also
20 references the shoes, the red and black shoes
21 again.

22 (Recorded phone call being played in the courtroom.)

23 BY MS. TANNER:

24 Q. And, Investigator Chapman, did you review a phone
25 conversation placed by Marion Bonds to Mr. Richard

1 Lewis also known as Old School?

2 A. Yes, ma'am.

3 Q. And what was the content of that conversation?

4 A. Again, this phone call from Mr. Bonds to Old
5 School or Richard Lewis basically referenced
6 narcotics in the trash can, a location he directs
7 Old School to go the trash can and remove the
8 narcotics. Language is used specific to the
9 narcotics about what the cookie is referenced. He
10 also then directs Old School, Richard Lewis to
11 hold the -- hold the items for him.

12 Q. Can you also tell from the conversation what's
13 going on in the background at Richard Lewis' home?

14 A. Yes, ma'am. You can also hear Officer Paul Green
15 from the Beaufort County Sheriff's Office, you can
16 hear him in the background directing Mr. Lewis to
17 come out of the house and stay outside.

18 (Recorded phone call being played in the courtroom.)

19 BY MS. TANNER:

20 MS. TANNER: Thank you. I have no further
21 questions.

22 THE WITNESS: Yes, ma'am.

23 **CROSS-EXAMINATION**

24 BY MR. DEYSACH:

25 Q. Okay. Good afternoon, Investigator Chapman.

1 A. Good day, sir.

2 Q. This wasn't -- your only part in the case wasn't
3 just listening in on the phone calls, was it?

4 A. No, sir, it wasn't.

5 Q. You went to the hospital with Investigator Fraser?

6 A. Yes, I did.

7 Q. You observed Reggie's wound, correct?

8 A. Yes.

9 Q. Did you speak with the doctor before you went and
10 viewed the wound?

11 A. I don't remember speaking to the doctor.

12 Q. When you saw Reggie had his wound been dressed?

13 A. I believe it had. I couldn't say for sure.

14 Q. Show you State's Exhibit number two. Does that
15 reflect the hospital's dressing on the wound?

16 A. Yes, sir, it does.

17 Q. You were -- you were present -- actually took part
18 in interviewing Reggie?

19 A. Yes, sir. I was there.

20 Q. The -- he told you that both Jason -- he told you
21 that Jason had come into the house, didn't he?

22 A. I don't remember exactly what he said, he made
23 reference to Jason.

24 Q. Did you make any notes on this interview in your
25 report?

1 A. I did. He told me -- he told us Marion Bonds and
2 he also made reference to Jason.

3 Q. Okay. Is it true that you left most of the note
4 taking from that interview to Investigator Fraser?

5 A. Yes, sir. He took most of the notes.

6 Q. Okay. Were you, at least at the beginning part of
7 the day were you connected with -- with
8 Investigator Fraser, were you guys working
9 together?

10 A. I believe I was already at the office, the
11 investigations' office, when the incident occurred
12 and then I was asked to go to the hospital.

13 Q. And you met at the hospital?

14 A. Yes, sir.

15 Q. Okay. And after you went to the hospital you
16 eventually ended up at ■ Ball Park Road?

17 A. I think so, yes.

18 Q. And you were the one who actually took Larry
19 Holmes into custody; correct?

20 A. Yes, sir.

21 Q. You took a statement from Larry Holmes?

22 A. Yes, sir, I did.

23 Q. You -- and you listened in on the phone calls that
24 Marion made to Larry Holmes?

25 A. Yes, sir.

1 Q. Isn't it true that on one of those phone calls
2 that Larry admitted to not getting all of his
3 stuff out of ■■■ Ball Park Road?

4 A. I don't remember that. There may have been a
5 conversation with Larry representing his stuff, I
6 don't remember exactly what the conversation said.

7 Q. Did it ever say, "you ever went and got your stuff
8 or what" and his answer was, "no I ain't got it"?

9 A. If -- if that's on the recording then that's what
10 he said.

11 Q. Larry Holmes was never arrested for anything was
12 he?

13 A. Not to my knowledge.

14 Q. You ever heard Reginal tell you that anything was
15 taken from him?

16 A. As in--

17 Q. I guess I'm -- I kind of did jump. Going back to
18 what happened -- the incident at Eddings White,
19 you're interviewing Reginal Holmes, he tells you
20 that he never turns anything over to the robbers?

21 A. I don't recall exactly. I remember him making
22 reference to the suspects but I don't recall
23 exactly what he said took place.

24 Q. Well, there's a difference between an attempted
25 armed robbery and armed robbery, isn't it?

1 MR. DEYSACH: I don't have anything further,
2 Your Honor.

3 MS. TANNER: Nothing further, Your Honor. May
4 this witness be excused?

5 THE COURT: Yes you may.

6 MS. TANNER: Your Honor, with that the State
7 rests.

8 THE COURT: Ladies and gentlemen of the jury,
9 I'm going to send you back to your jury room and
10 at this point the State has rested their case.
11 Please, do not, again discuss this case. We will
12 be back with you shortly.

13 (Whereupon the Jury breaks at 4:37 P.M.)

14 THE COURT: Are there any motions?

15 MR. DEYSACH: There are, Your Honor. When
16 you're ready.

17 THE COURT: I am ready.

18 MR. DEYSACH: I certainly want to renew all of
19 my objections. I also want to -- I think we have
20 given full -- full discussion to the
21 constitutional issue of the search and the arrest.
22 There was also a motion to sever that was denied,
23 I want to renew that motion at this time. All the
24 other objections that I've have made to the
25 evidence that have come in. Pursuant to

1 objections from the pre-trial motion as well the
2 other objections I want to renew and preserve for
3 the record.

4 I guess one -- one motion I want to make
5 right now is the merging of the two trafficking
6 charges. What we have is, in the first search,
7 three separate amounts all combined to create the
8 sixty-six grams that they charged him with, in the
9 first place and then when they don't find
10 everything that's in the house they come back.

11 Obviously, Marion Bonds has been removed from
12 the house and so that -- that -- if he's the one
13 who in fact possessed those drugs to get them
14 there, as I believe is the State's theory, nothing
15 could have changed once he was taken into custody
16 in order to bring those drugs there. So they had
17 to be there based on what the State has presented
18 when they did the initial search. And I don't
19 think that just because they have -- they didn't
20 find everything the first time that they can split
21 up the amounts to make separate traffickings, just
22 like they didn't charge him for trafficking for the
23 forty-four grams, PWID for the five grams of one
24 pill bottle, another trafficking for the sixteen
25 grams in the other pill bottle, anymore than they

1 did that, they can't split up those charges.

2 Looking up case law, Your Honor, it's hard to
3 find the four-legged cow, the case that fits
4 exactly. The one case that we have from South
5 Carolina is -- is State v. Brown is one case,
6 there may be more, but one that I located, one
7 where a deal was set up by police to buy four
8 ounces of drugs, I can't exactly remember whether
9 it was crack or cocaine, the police decide to only
10 buy two. They charge the defendant for the sale
11 and then for the possession with intent to
12 distribute for two ounces that they didn't buy at
13 the time. And while there's obviously factual
14 differences because that's a sale and those types
15 of things. I think that there is an analogy here
16 where simply leaving behind a certain amount of
17 drugs and then coming back and finding it later
18 shouldn't be the basis of a whole new charge.

19 When you add up, even if you include the amount of
20 drugs under the mattress, things which you didn't
21 hear are referenced to on the tape, things that
22 were probably closer in proximity to somebody else
23 even if you don't -- even if you included that
24 amount of drugs with what was found the twenty
25 grams in the bathroom you are still in the twenty-

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1 eight to a hundred slot it doesn't raise up to a -
2 - to a over a hundred slot that our drug laws have
3 carved out. And so I don't think that it's
4 appropriate as I said for the Solicitor's office -
5 - anymore appropriate for them to come back and
6 charge Mr. Bonds with more crack that they found
7 later as a different charge than it would be for
8 them to leave what was underneath the mattress and
9 come back and get that. Which they didn't do and
10 so they can't just break up each individual, I
11 mean, they could have I guess technically taken
12 separate pieces of the crack that were there and
13 then charged based on each one of those separate
14 pieces but when they find all the drugs in one
15 place, that are left there at one time, it needs
16 to be part of one charge and so I think that
17 merger is what I'm looking for. I think there --
18 I think that there is probably -- I'm trying to
19 figure out how to constitutionalize it. It's kind
20 of like them giving themselves multiple bites of
21 the apple if you're able to try to convict him of
22 trafficking for this amount or for that amount,
23 like, to give the Solicitor's office the chance at
24 the forty-four grams in the shoe and if that
25 doesn't work take another chance at the twenty

1 grams underneath the -- underneath the-the
2 bathroom sink would not be fair. I think we've
3 violated a due process right that my client has.

4 So that's what I would like for you to
5 consider, really merging those two into one
6 trafficking, twenty-eight to a hundred.

7 THE COURT: Okay.

8 MS. TANNER: Your Honor, these are two
9 separate charges. The initial forty- four grams
10 plus the two pill bottles, those are found in one
11 instance. It is the defendant's further criminal
12 behavior after that. He was charged with
13 conspiracy to traffic not following the same
14 statue, it's got the same sentence guidelines, but
15 the State had to present more evidence to prove
16 that batch of drugs, I mean, would have. There
17 was no way we could have stopped with the first
18 batch of drugs and included to second batch.
19 There is further evidence that goes to this
20 conspiracy and that one, Mr. Lewis was charged,
21 these two are charged with conspired -- conspiring
22 to traffic, based on his phone conversations of "I
23 need you to go get it, I need you to hold it. I'm
24 going to need it when I get out. I've got a lot
25 of work in that shoe". So the intention is he was

1 conspiring with Mr. Lewis to traffic that cocaine
2 when he gets out of jail. That is above and beyond
3 the crack that is found in the closet where he is
4 hiding which is based on inference weight, which
5 was over twenty-eight grams.

6 So these are separate charges. I think,
7 absolutely, at the time of sentencing, Your Honor,
8 can take into consideration that it would be
9 concurrent versus consecutive. No -- no problem
10 with that, absolutely you could take that into
11 consideration but to consolidate the two charges
12 they are proved with different evidence, they are
13 for different acts and I just don't see how they
14 can be merged into one offense.

15 MR. DEYSACH: I think the one point that I
16 want to make is you've got to -- she's looking at
17 it from how the drugs were found as opposed to the
18 conduct of the defendant and so when they see
19 separate charges it took separate trips to the
20 house to find them but when you talk about being
21 separate charges there are separate things to
22 prove it it's all in the same section, it's all in
23 both indictments. The word conspire is in both
24 indictments and I'm not sure that -- either they
25 can prove conspiracy to possess that amount, I

1 suppose, or they could prove, and actually, they
2 could prove a constructive possession, that he had
3 possessed the drugs before and, I mean, it's not
4 necessarily just that he conspired to possess them
5 in the future. I think the argument is that he
6 possessed them before he put them in the garbage
7 can. And so it's not really necessarily
8 conspiracy as you stated.

9 THE COURT: Now, that's not what I just heard.
10 I heard that -- and correct me if I'm wrong --
11 what I heard you say is -- as to the first drugs
12 it's a constructive possession case, the drugs in
13 the shoe and then the second set is the conspiracy
14 portion of him calling Mr. Lewis and saying the
15 drugs were there and that portion was conspiracy.
16 That's pretty smart.

17 MS. TANNER: That's -- that's why we -- we had
18 to present more evidence. Had I not put up the
19 phone call -- I could -- I could have used the
20 phone call because he talks about the red and
21 black shoe. I can use that to prove that he was
22 in constructive possession while he was in the --
23 in the closet with it, absolutely. An -- and--and
24 -- and, yeah it was used for that. But there is
25 further activity, he is talking to Old School, he

1 is talking to Larry, he is talking to his
2 girlfriend about, "you guys need to get this, you
3 got to hold it for me, it's in the trash can, they
4 didn't find it". It's not -- If it were just
5 based on the weight amount---

6 THE COURT: It's -- It's a separate incident
7 and I akin this to when you talk about, you know,
8 someone doing a number of sales to -- each
9 distribution would be charged separate
10 distribution, even if it's the same CI, even if
11 they are all done on the same day. But the new
12 action which you argued, Mr. Deysach, that there
13 is new action because you're was incarcerated.
14 There was new action. The new action was he
15 called Mr. Lewis and said, "the drugs are there,
16 hide them, move them, get rid of them". That's
17 the new action.

18 MR. DEYSACH: He did the same thing on the
19 other amount though.

20 MS. TANNER: If --If that crack that was
21 under the sink had been found in the patrol car
22 that he was transported to the jail in, no further
23 conversation, no phone calls to his friends, I
24 could agree with Mr. Deysach. He's in possession
25 of it, nothing new happened, he didn't try and

1 commit a new crime. But the thing is he did. He
2 tried to commit a new crime. He tried to get
3 these people together to conspire to hide this
4 crack cocaine, "hold it for me because I'm going
5 to need it when I get out" and he calls it work.
6 So that is a separate crime. It is not about the
7 simple possession of it. It is a separate crime
8 to conspire to traffic cocaine.

9 MR. DEYSACH: The crime is to conspire to
10 sell, manufacture, deliver, purchase, or bring
11 into the state. There is not an allegation that
12 he was conspiring with Richard Lewis to sell. He
13 was not conspiring to manufacture it, he was not
14 conspiring to deliver it, or purchase it, or bring
15 it into the state as it already was in the state.
16 So really it doesn't fall under conspiracy -- the
17 thing that somebody has to conspire to in order to
18 be falling under that statute in the first place.
19 At least as far as their indictment alleges, if
20 that what -- if that's what I'm looking at.

21 MS. TANNER: I believe that is an issue for
22 the jury. They have heard information that this
23 amount of crack cocaine is not a personal use. It
24 is multiple, multiple personal uses. They hear
25 him on the tape saying, "I'm going to need that

1 when I get out, I've got a lot of work in there".
2 That is for them to decide what his intention was
3 that -- that goes beyond just the fact that this
4 is a separate charge and that's getting outside
5 of, I guess what we're arguing right now.

6 MR. DEYSACH: But there --there is no
7 co-conspirator if he was going to be selling or
8 distributing.

9 THE COURT: What about delivering?

10 MS. TANNER: He was definitely planning to
11 deliver it to Mr. Bonds when he got out. At least
12 that what he said. "Okay. Okay. I got it. I'll
13 hold it for you".

14 MR. DEYSACH: How do you--

15 THE COURT: Are y'all now talking to me about
16 the drugs that were in the trash can and he took
17 them out and he dumped them over. That's what I
18 heard on the tape.

19 MR. DEYSACH: That's what Richard Lewis did.
20 That --that was what he was -- he was going to
21 deliver. This is an indictment for Marion Bonds.

22 THE COURT: That's what conspirer's do.

23 MR. DEYSACH: Right. So--

24 THE COURT: Conspiring to.

25 MR. DEYSACH: Conspiring to deliver to

1 himself?

2 THE COURT: Conspiring to deliver.

3 MR. DEYSACH: To himself?

4 THE COURT: It doesn't have to be to himself
5 it just has to be conspire to deliver.

6 MR. DEYSACH: To whom?

7 THE COURT: To put them out.

8 MR. DEYSACH: I think for any deliveries to
9 occur somebody has to be delivered to. And maybe
10 Richard Lewis was going to deliver, I think that
11 could be a theory, but I don't even know how you
12 deliver crack -- how can Marion Bonds conspire to
13 deliver it to himself? That's -- that's really
14 what possession is; I guess.

15 THE COURT: All right. Respectfully, I'm
16 denying your motion. It's definitely and
17 interesting argument, I think if the facts were
18 different I would understand your point. But
19 actually again I think he's charged very
20 interesting and smartly. So I -- I -- I think
21 it's a fair -- I think it's a fair and separate
22 offense.

23 MR. DEYSACH: Okay. Directed verdict motion,
24 Your Honor. I've attempted to read you all of my
25 objections already. And -- and -- and the pre-

1 trial motions, both are the constitution and the
2 severance nature. Now, I want to make my directed
3 verdict motion. I think there is to each charge -
4 - I think that there has not been -- there has not
5 been testimony that -- that an assault and battery
6 with malice of forethought has occurred. There
7 hasn't been any testimony that an intent to kill
8 that -- that it would be appropriate. See I don't
9 think that there is enough evidence to send to the
10 jury when it's based just on Reggie's testimony
11 which has changed as to who was involved as the
12 identity of Marion Bonds was the person who caused
13 the harm as far the assault and battery with
14 intent to kill was concerned. The weapon owned by
15 Bonds -- the weapon--

16 THE COURT: Well, just in looking obviously,
17 again this would need to be proved. You know, the
18 only issue obviously there was an assault and
19 battery, there was a gun shot. The question is
20 whether or not there was malice towards another
21 person requiring just is the intention to do any
22 wrongful act without just cause or excuse and with
23 an intent to inflict an injury. I think there is
24 more than enough evidence in this case from which
25 the jury can determine that malice existed in this

1 case.

2 MR. DEYSACH: The malice that must be proven
3 is a malice of forethought which has the four
4 elements of an intent to kill, a disregard, I
5 guess, during the commission of another felony
6 and---

7 THE COURT: I think it clearly, clearly
8 meets the definition of the further requirements.
9 I'm going to deny your motion as to that charge.

10 MR. DEYSACH: Thank you, Your Honor.

11 THE COURT: What about the attempted armed
12 robbery?

13 MR. DEYSACH: Attempted robbery. We're kind
14 of in the same boat with that. The only person
15 who gives us any evidence that there is an attempt
16 to commit any type of an armed robbery certainly,
17 it is attempted armed robbery. So there is not an
18 allegation of that anything was actually taken.
19 It was Reggie himself -- Reggie has changed his
20 story about what has happened. At first he said
21 nothing was taken now he says that something was
22 taken. Even when you listen to those phone calls
23 they may have referenced the Eddings White area,
24 there is nothing that they alleged Mr. Bonds to
25 say about an attempt to commit a robbery. And so

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1 I don't think whether it was him or Jason that has
2 been proven enough to where you can send it to the
3 jury. And I don't think the intent to rob there -
4 - has also been proven enough to send it to the
5 jury.

6 THE COURT: Well, respectfully, I do think
7 there is evidence taken in light most favorable to
8 the State that there was an attempted armed
9 robbery, so I'm going to deny your motion as to
10 that. What about the unlawful possession of a
11 weapon by a felon?

12 MR. DEYSACH: Obviously, no gun found, no gun
13 put into evidence, GSR kits are negative, and
14 those are the facts -- those are the facts, I
15 think, that the jury would need in order to
16 convict on that charge.

17 THE COURT: Now, the eyewitness from the
18 defendant who was shot by Mr. Bonds, additionally
19 he has a gunshot wound and it's purely
20 circumstantial evidence. Solicitor, you can pipe
21 in at any time.

22 MS. TANNER: I just think in the light most
23 favorable to the State there has been testimony
24 that Mr. Bonds pointed a pistol at Mr. Holmes and
25 pulled the trigger. We saw photographs and we saw

1 scars where the bullet hit him. And I think that
2 that is sufficient evidence in light most
3 favorable to the State for them to consider that
4 Mr. Bonds was in possession of a firearm and we
5 have stipulated to the fact that he was a felon in
6 possession at the time. He was a felon who
7 admitted to possess at the time.

8 THE COURT: All right. Let's go on to.

9 MR. DEYSACH: The trafficking I've already
10 made one -- one motion on. I would also say that
11 just generally I think that the jury doesn't have
12 enough information to send these charges both
13 trafficking the twenty grams and the forty-four
14 grams of the sixty-six gram amount that is being
15 alleged. I certainly would ask you to reconsider
16 the rulings that you've already made. I think
17 that the suppression of the drugs would be
18 appropriate in this matter. I know that it's been
19 explored by us and so I just would bring that back
20 up.

21 THE COURT: All right.

22 MR. DEYSACH: The possession with intent to
23 distribute one half mile of the school. The --
24 the charge is possession with intent to distribute
25 crack within one half mile of the school, not

1 possession within one half mile of the school with
2 intent to distribute. And so my point is that
3 they have to have some evidence that the
4 distribution was going to take place within one
5 half mile of the school and I don't argue that
6 they have the same -- they have to prove an intent
7 to distribute but they don't have to in the
8 trafficking charges, they just really need to
9 prove those are more weight based. This actually
10 includes an intent to distribute that they -- that
11 they need to have some evidence of and of
12 distribution would have occurred within one half
13 mile of the school.

14 THE COURT: Well, I can tell you the elements
15 of this charge, they have to -- the State has to
16 prove that the defendant did, in fact, unlawfully
17 possess with an intent to distribute a controlled
18 substance and the intent to distribute portion
19 being referred on is on the weight. And it actual
20 offense was done within a one half mile radius of
21 the grounds of a school.

22 MR. DEYSACH: Okay.

23 THE COURT: I understand what your argument is
24 but those are the two elements that I think, based
25 on the testimony that was given, I do think that

1 the State has produced evidence for which the jury
2 could determine that Mr. Bonds did, in fact,
3 possess with the intent to distribute a controlled
4 substance.

5 MR. DEYSACH: I -- I just want to clarify,
6 what you're saying is you disagree with me that
7 they have to prove that the distribution point
8 that was intended was in -- was within one half
9 mile of the school. They don't have any evidence
10 that any distribution was going to take place that
11 close but that that's not required?

12 THE COURT: I understand what you're saying.
13 Do you have any case law that says it's the actual
14 distribution portion has to -- distribution has to
15 occur within that half a mile? Part of the
16 statute says we don't want just crack cocaine
17 laying around where kids can pick it up, like at a
18 playground, I mean, I think that was the other
19 intention of the legislature although. You got
20 some case law on that cause that would be really
21 interesting, Mr. Deysach? I've never heard that
22 argument but it's pretty good.

23 MR. DEYSACH: Well, it's--it's--it's not--I--I
24 haven't found any case law. It really is simple
25 sentence and reading grammar sentences as you read

1 it. You know, if they want -- if they meant
2 possession, you know, within one half mile of the
3 school with intent to distribute that's how you
4 would say it, I mean, that's what my -- you know,
5 ninth grade English teacher taught me. But I
6 think with the new law they've attempted to
7 clarify some of that but whether or not that's
8 been actually clarified or not to that extent; I'm
9 not sure.

10 THE COURT: I like your argument, I just -- I
11 just don't buy it. Respectfully, I'm going to
12 deny your motion, as to that charge as well.
13 Anything further?

14 MR. DEYSACH: I do not have anymore motions.

15 THE COURT: All right. Is this an appropriate
16 time for me to discuss with your client his
17 amendment rights?

18 MR. DEYSACH: I think it is.

19 THE COURT: Okay. If you would, Mr. Bonds,
20 I'm going to go ahead and just swear you under
21 oath, sir, if you would just raise your right
22 hand.

23 Being first duly sworn, **MARION BONDS**, testified
24 as follows:

25 THE COURT: All right. Mr. Bonds, I'm going

1 to ask that you speak up so my court reporter can
2 hear you cause I'm having a hard time. Okay?
3 Sir, right now what I'm going to do is explain to
4 you your fifth amendment rights, to testify or not
5 testify in the trial of this case. I want you to
6 understand and know that you have the right to
7 present your defense at this time. It's now your
8 opportunity to present whatever you want to. And
9 I want you to also understand that you have the
10 right to claim the protections that are given to
11 you under the fifth amendment, which means you
12 don't have to testify and no one can make you
13 testify against yourself. And I want you to also
14 understand that if you choose not to testify in
15 this case that I'm going to charge the jury in my
16 jury charge that the fact that you didn't testify
17 cannot even be discussed back in the jury room,
18 because it's not--it's--it's not required and it's
19 not appropriate. The simple fact is you don't
20 have any duty here to prove your innocence. The
21 burden is on the State to prove your guilt beyond
22 a reasonable doubt, but what I want you to
23 understand, sir, is if you do decided to testify
24 you're going to be subject to the same rules that
25 govern the other witnesses. In other words, you

1 could be examined and cross-examined on anything
2 that is relevant to this case or that I rule is
3 relevant to this case. In additionally, sir, if
4 you have any convictions involving dishonesty or
5 false statements or if you have convictions of
6 crimes that are punishable by imprisonment for
7 more than one year, and I've determined the
8 probative value outweighs any prejudice, the State
9 would be allowed to ask you those questions in
10 cross-examining you. Do you understand that, sir?

11 THE WITNESS: Yes, ma'am.

12 THE COURT: And again, they do that to attack
13 your credibility and we certainly understand that.
14 So I just want to make sure you understand that
15 this decision to testify or not testify, while
16 you, absolutely, should counsel with your attorney
17 for his advice, you need to understand that these
18 are personal rights to you and only you can make
19 the final decision. Do you understand that, Mr.
20 Bonds?

21 THE WITNESS: Yes, ma'am.

22 THE COURT: And have you had an opportunity to
23 discuss with your lawyer whether or not you should
24 testify in this case?

25 MR. DEYSACH: I want to jump in. We have

1 discussed it, I think he might after the pro --
2 since he's just heard this whole case.

3 THE COURT: Okay.

4 MR. DEYSACH: Probably, does want--

5 THE COURT: A few more minutes to decide?

6 MR. DEYSACH: Yeah.

7 THE COURT: Okay. All right, sir. So what
8 I'm going to do, I'm going to go ahead and give
9 you an opportunity right now to speak with your
10 lawyer. Mr. Deysach, other than if Mr. Bonds
11 testifies, do you have any other witnesses?

12 MR. DEYSACH: I do not, Your Honor.

13 THE COURT: Okay. Well, then let's do this,
14 gentlemen, I'm going to give you about ten minutes
15 or so to determine whether or not Mr. Bonds wishes
16 to testify. Mr. Bonds, I'm going to come back and
17 ask you whether or not you want to testify,
18 whether or not you understand your rights, whether
19 or not you've counseled with your attorney, Mr.
20 Deysach, and what you wish to do. All right, sir?

21 THE WITNESS: Okay.

22 THE COURT: All right, sir. Okay. We'll go
23 ahead and take about ten minutes. It is, by the
24 clock back there, we're going to go by that clock
25 and it's exactly 5:00 and we'll be back at 5:10.

1 Okay?

2 (Whereupon the Court takes a break at 5:00 P.M.)

3 (Whereupon Court resumes at 5:12 P.M.)

4 THE COURT: Mr. Bonds, if you'll stand again,
5 sir. Thank you. Sir, have you had an opportunity
6 to discuss with your attorney, Mr. Deysach,
7 whether or not you wish to testify in this case?

8 THE WITNESS: Yes, ma'am.

9 THE COURT: All right. Have you had enough
10 time to talk with him about it?

11 THE WITNESS: Yes, ma'am.

12 THE COURT: All right, sir. Are you going to
13 testify?

14 THE WITNESS: No, ma'am.

15 THE COURT: All right, sir. And that is
16 you're decision; is that correct, sir?

17 THE WITNESS: Yes, ma'am.

18 THE COURT: Thank you, Mr. Bonds, you may be
19 seated, sir. All right. What I'm proposed to do
20 -- do you have any other witnesses, Mr. Deysach?

21 MR. DEYSACH: No, Your Honor.

22 THE COURT: What I am proposed to do is bring
23 the jury back in. Why don't you just go ahead and
24 rest your case in front of the jury and I'm going
25 to go ahead and excuse them. For scheduling

1 purposes tomorrow morning, it's my understanding
2 that Judge Brown's jury is out right now, with any
3 luck there will be a verdict tonight. You can do
4 -- Is he planning on doing probation?

5 PROBATION OFFICER: I haven't spoken with him,
6 yet.

7 THE COURT: Okay. Well, whoever is free. He
8 doesn't get to it then I can certainly can do it
9 while our jury is deliberating. All right. Why
10 don't I do this, tell them to be back at 9:30
11 where we can argue and charge in this case, okay?
12 All right. Then you need to stay tight in
13 reference to my jury charge certainly after we
14 send the jury out.

15 (Whereupon the Jury enters the courtroom at 5:18 P.M.)

16 THE COURT: Welcome back, ladies and
17 gentlemen.

18 MR. IAN DEYSACH: Your Honor, the Defense
19 rests.

20 THE COURT: Ladies and Gentlemen, at this time
21 the Defense has also rested their case. What we
22 have left to do in this trial is hear the
23 arguments from the attorneys and my charge on the
24 law. I can tell you based on the hour, it is
25 about 5:15, it is much too late to do that

1 tonight. I could tell you that my Jury charge in
2 this case is probably a good 30 to 40 minutes long
3 and I'm sure the closings will take some time as
4 well.

5 So Ladies and Gentlemen, what I am going to do
6 is send you all home. I'm going to ask that you
7 be back at 9:30 tomorrow morning where we're going
8 to conclude the trial of this case and you can
9 expect stay with me until you all have reached a
10 verdict.

11 Ladies and Gentlemen, again although you have
12 heard all the evidence in this case, you have not
13 heard the arguments from lawyers, you haven't
14 heard my charge on the law, and again it will be
15 inappropriate for you to do any independent
16 research or anything along those lines.

17 Third thing I ask, Ladies and Gentlemen, is
18 that you go home and get a good night's rest.
19 Come back at 9:30 and we will conclude this case.
20 Again, I want to thank you all for your attention
21 today. You all have been a wonderful jury, and I
22 look forward to seeing you again at 9:30 tomorrow
23 morning. Thank you.

24 (Whereupon the Jury is dismissed for the night at 5:18
25 P.M.)

1 THE COURT: All right, y'all. Just for the
2 record I want to discuss my jury charge. I know
3 you both are familiar with my standard charge
4 which is where this comes from. Just to go over a
5 couple of things and I understand that my law
6 clerk, Robin Graham, had asked you all earlier if
7 there is any specific or special request to charge
8 that you have. I think we've got it pretty much
9 covered, considering we all know what we're
10 talking about here.

11 Just to give you an outline and for the
12 record, I'm going to, obviously, charge the
13 presumption of innocence and of course, I always
14 start by saying that the charge in the indictment
15 is not evidence. I'm going to charge reasonable
16 doubt of course. The duties of the jury and the
17 trial judge is that the jury is the judge of the
18 facts and I am the judge of the law. I'm going to
19 charge direct and circumstantial evidence and
20 differences. I'm going to charge on expert
21 testimony and we did have two experts in this
22 case. And I'm also gonna charge on the
23 credibility of the witnesses and weighing the
24 credibility of the witnesses. I'm also going to
25 charge with the fact that the Defendant did not

1 testify cannot even be considered by the jury.
2 That would be highly inappropriate and again I'm
3 adding that the burden of proof remains on the
4 State. I will go ahead and charge that the
5 charges in this case, assault and battery with
6 intent to kill, attempted armed robbery, unlawful
7 possession of a weapon, trafficking in crack
8 cocaine within 28 and 100 grams, trafficking in
9 crack cocaine 10 to 28 grams, and possession with
10 the intent to distribute crack cocaine within a
11 half-mile proximaty of a school, and I'm also
12 going to charge that typical multiple charges just
13 basically saying that the indictments are legible
14 to the charges. Each are a separate, distinct
15 offense. You must weigh them each separately and
16 provide a separate verdict for each of them.
17 Anything else specifically, Mr. Deysach?

18 MR. IAN DEYSACH: I have two that I have. One
19 is an instruction that the stipulation that my
20 client's been convicted of a crime of violence is
21 to be considered only for that charge, not as
22 evidence of any other charge that he's facing.

23 THE COURT: I think that's fair enough.

24 MS. ANGIE TANNER: I have no objection to
25 that.

1 MR. IAN DEYSACH: I also believe---

2 THE COURT: (conversation with law clerk)

3 MR. IAN DEYSACH: The assault and battery of a
4 high and aggravated nature would be appropriate as
5 I read Judge Anderson's charging book that the use
6 of a deadly weapon is an aggravator that is
7 available for assault and battery of a high and
8 aggravated nature, infliction of serious bodily
9 injury. And so I think that there is evidence in
10 the record of a short hospital stay, Reggie
11 reluctant for EMS care, saying he would drive
12 himself to the hospital himself, that the--there
13 wasn't the required malice -- I'm not saying it
14 should be the directed verdict at this point, but
15 that there is enough for an ABHAN charge to go
16 along with the assault and battery with intent to
17 kill.

18 MS. ANGIE TANNER: Your Honor, the State would
19 ask that not be charged. The fact that he's a
20 poor shot and hit in the arm and not a head or a
21 chest, it doesn't change his criminal intent. I
22 think there is sufficient evidence surrounding the
23 incident that it was an assault and battery with
24 intent to kill. He did use a deadly weapon. He
25 was aiming at the victim. He did strike him, but

1 for a couple of inches, it wasn't a murder case.

2 MR. IAN DEYSACH: There is a picture in
3 evidence that appears to show a burn, a blister on
4 Reggie's forearm, that I know the emergency room
5 doctor said that it was the initial contact of the
6 bullet which caused a bruise out of which comes a
7 burn which leads to the injury wound. I think
8 that there's definitely an inference there that
9 the gun was actually pressed up against Mr. Holmes
10 arm. I mean I -- the picture is in evidence.
11 I'll reference it.

12 THE COURT: What are you alleging that shows?

13 MR. IAN DEYSACH: That it's not that he's
14 aiming wildly at Reggie as he's ten feet away, but
15 that the gun is up against his arm and therefore
16 that intent to kill wouldn't be there. It was
17 really just be an intent to cause serious bodily
18 injury.

19 THE COURT: Okay.

20 MS. ANGIE TANNER: There was testimony that
21 actually completely refuted that. Testimony of a
22 professional. The doctor who examined him said
23 that this was absolutely not a contact wound,
24 there was no stippling, there was no burning, and
25 that what you're looking in the photograph is a

1 bruise. He was very specific about that and I
2 know that's not what Mr. Deysach wanted him to
3 say. That's the testimony that that was not a
4 burn. That it was not a contact wound. It was
5 from a distance. And he was asked that, was that
6 a shot from a distance and he said yes.

7 THE COURT: Let me ask you. The only
8 difference between assault and battery with intent
9 to kill and assault and battery with a high and
10 aggravated nature is the malice; am I correct on
11 that?

12 MR. IAN DEYSACH: Well, I wish that it was
13 clearer---

14 MS. ANGIE TANNER: The injury doesn't matter.

15 MR. IAN DEYSACH: I mean both of them require
16 injury, violent injury.

17 THE COURT: It's not the injury, I'm pretty
18 sure. I'm positive I'm correct. The only
19 difference is the malice required.

20 MR. IAN DEYSACH: Right.

21 MS. ANGIE TANNER: That's correct.

22 MR. IAN DEYSACH: And I'm not saying she can't
23 argue for assault and battery with intent to kill.
24 Clearly that was already covered in my directed
25 verdict motion. But whether there's enough

1 evidence to instruct on assault and battery of a
2 high and aggravated nature. And I know she
3 disagrees with me on what inference can be drawn
4 from this photo but I'm certainly not drawing a
5 crazy inference. I think anybody who will look at
6 it, would, you know, automatically assume that
7 that would be a contact wound, not a bruise,
8 caused by a flying bullet that then skims along
9 the skin to eventually cause a contact entry
10 wound. And that is State's Exhibit Two that I was
11 looking at.

12 THE COURT: What are the facts that have been
13 introduced in the case that would make it that
14 there wasn't even implied malice just based on --
15 obviously the specific intent to kill is not
16 required under ABWIK, you can have a general
17 intent. And certainly intent can be inferred from
18 what happened. I guess my question would be, if
19 you had some portion of a self defense -- not that
20 that's ever been raised -- what is in the record
21 that would show that for your client, would show
22 that there was no malice involved?

23 MR. IAN DEYSACH: When they played the tape,
24 one of the lines that were spoken was, by Marion,
25 as the Solicitor played it -- "I shouldn't have

1 been even going along with that". I hope you
2 don't mind if there's salty language here. "I
3 shouldn't have been going along with that shit,
4 man. I've been right there. Yeah, I was outside
5 the f-ing door. The man came out there swinging
6 on me and shit so I just dang-gone---", "hush" is
7 the response. So there is evidence in the record,
8 put in by the Solicitor, that Reggie was swinging
9 on him.

10 THE COURT: Solicitor, can you respond to just
11 that specific -- don't talk to -- again -- just
12 that specific portion he talked about in the tape.
13 Is that on the tape, Mr. Deysach? I didn't hear
14 that but apparently---

15 MS. ANGIE TANNER: He does say that. He's
16 telling, I think it's conversation with the
17 girlfriend. He said, "Man, I'm not gonna lie, I
18 was there." He does say something about, "that
19 man came swinging up on me and I just dang-gone"
20 and then she says, "hush". That's what I heard.

21 THE COURT: I'm going to tell you based on
22 that testimony, I'm inclined to charge ABHAN.
23 Other than that, Mr. Deysach, any other evidence
24 in the case that you are content shows that there
25 was no malice, or evil intent? I think there were

1 evidence for things like, lets say the victim came
2 to his house, that would -- I would then charge
3 and AGHAN, yeah. That would make sense but that's
4 not what we have here. Anything else that you can
5 think of? I'm not saying that the first isn't
6 enough. But is there anything else?

7 MR. IAN DEYSACH: I've already brought up a
8 photo and I don't need to get back into that. "He
9 was swinging on me"--I can't think of anything
10 right this second, to be honest with you.

11 THE COURT: Well, let's do this. I can tell
12 you right now, I'm convinced that I think that's
13 enough just based on that testimony alone. So
14 what I'm going to do is I'm going to have Robin
15 pull up the charge and I'm going to have it put in
16 as a lesser included. If you can think of
17 anything else overnight, why don't we just go
18 ahead and put it on the record. But I can tell
19 you as of right now, that I'm inclined to, just
20 based on that testimony alone. And when I say
21 inclined, I'm going to put it in.

22 MR. IAN DEYSACH: Thanks, Your Honor.

23 THE COURT: Unless, I take it out again. I
24 think that's fair based on that testimony.

25 MR. IAN DEYSACH: Yes, Your Honor.

1 THE COURT: Anything else, Mr. Deysach. So
2 we'll put in obviously the language in regards to
3 how they can use information for the stipulation
4 and also the AGHAN as to a lesser included.

5 (Talking to law clerk)

6 MS. ANGIE TANNER: Does the charge on the
7 trafficking include the language about the
8 inference weight? I think it does, I just want to
9 make sure.

10 THE COURT: Okay. It's not an instruction
11 right now but we can go ahead and put it in.

12 MR. IAN DEYSACH: I'm not sure that -- my
13 argument is that it's not in there for a reason.
14 And that is if they've proved possession, they
15 don't have to prove an intent to distribute with
16 trafficking. They just need to prove possession
17 or attempted possession of a certain amount. An
18 so the intent to distribute is not an element that
19 they actually have prove and so therefore
20 inference weight -- I guess maybe that would be
21 more appropriate for the PWID charge school zone
22 charge.

23 THE COURT: Hold on a sec.

24 (Judge is speaking to Law Clerk)

25 THE COURT: Solicitor, what are you

1 specifically asking for me to charge?

2 MS. ANGIE TANNER: I believe it's in the
3 statute. I'm trying to find it. There is the
4 language in the statute about if it is an
5 inference possession of more than a gram there is
6 an inference of possession with intent to
7 distribute and that is an element of trafficking,
8 I believe. It is the intent to traffic it and
9 distribute it.

10 THE COURT: It should apply to the possession
11 with the intent to distribute within a half-mile
12 proximity?

13 MS. ANGIE TANNER: I think it applies to the
14 trafficking as well.

15 MR. IAN DEYSACH: I really don't believe that
16 they have to prove intent to distribute.

17 THE COURT: I don't think they do either and
18 I'm just looking at it---

19 MS. ANGIE TANNER: I don't think they have to
20 but I would like to.

21 THE COURT: I don't think they have to. Let
22 me just make sure. Solicitor, I can't find
23 anything as to the inference in the statute of
24 either trafficking or possession with the intent
25 to distribute. But I'm sure case law states that.

1 So I think we just need to go ahead and find a
2 case.

3 MS. ANGIE TANNER: I'm going through 2453 now.
4 The reason I have it in my head is because it's
5 actually a separate line.

6 THE COURT: Well, I looked at the 3737550. I
7 think that's where we might find it. It's after
8 the question 445. Let's just see if we can't look
9 overnight about that inference. Of course if we
10 can't, if appropriate, I will charge it. The only
11 other thing that also just saw in here, that I
12 need to charge is when talk about --never mind.
13 It's the section 545370, it says the weight of the
14 controlled substance in a subsection includes the
15 size then and is the substance in pure form or a
16 compound or mixture of the substance. Again
17 dealing -- when you find crack cocaine, that
18 cocaine is something in and of itself, like Mr.
19 Deysach noted. Cut with, is it baking soda? Do I
20 have that right? Solicitor, obviously you didn't
21 have any objection to charge on that portion of
22 it?

23 MS. ANGIE TANNER: No, ma'am.

24 THE COURT: That is the law.

25 MR. IAN DEYSACH: One last line to draw us

1 away from the drug element of it. I think it's
2 appropriate, an issue in this case is the
3 identification of the defendant as the perpetrator
4 of the crimes charged, the State of South Carolina
5 has the burden to prove identity beyond a
6 reasonable doubt. Identification testimony is an
7 expression of a belief or impression by witness.
8 You may consider the opportunity the witness had
9 to observe. You may consider the credibility --I
10 am jumping because I am reading out of Judge, the
11 Anderson charge.

12 THE COURT: You're requesting a charge on
13 that?

14 MR. IAN DEYSACH: Identification, yes. One
15 that includes they must consider the credibility
16 of each identification witness within the same way
17 as any other witness.

18 THE COURT: All right.

19 (Judge speaking to Law Clerk)

20 MS. ANGIE TANNER: I did find the language I
21 was mentioning. It is under 375B which is the
22 possession of the intent to distribute. And it
23 is, you go to 375 subsection big 'B'. It gives
24 one, two, and three, and then there's one sentence
25 by itself. It says, possession of more than one

1 gram of methamphetamine or cocaine base is prima
2 facia evidence of a violation of a subsection.
3 But it is in 'B' subsection which trafficking is
4 'C'. So it was in the 'B', Mr. Deysach was right.
5 But I had seen it.

6 THE COURT: But do you have charges ---

7 MS. ANGIE TANNER: I would argue that it
8 applies to trafficking as well.

9 THE COURT: I'm already going to put in the
10 trafficking portion, I can tell you that. I'm
11 asking this to the proper limiting charge.

12 MS. ANGIE TANNER: And to the proximity
13 charge, they changed on us. It says that the
14 inferences of intent to distribute are set out in
15 370 and 375 so...

16 THE COURT: Is that what I just read?

17 MS. ANGIE TANNER: Yes, ma'am.

18 MR. IAN DEYSACH: I know that AGHAN has
19 changed name and have become different crime under
20 the old law, makin sure we don't get fouled up by
21 any of that.

22 THE COURT: Well, as of right now I won't
23 charge the inference portion of it unless...

24 MS. ANGIE TANNER: I think the statute as it
25 is written for trafficking is pretty much is

THE COURT: Anything else for tonight for tomorrow?

MS. ANGIE TANNER: No, Your Honor.

MR. IAN DEYSACH: No, Your Honor.

THE COURT: Good night, y'all.

(Whereupon Court was dismissed for the night at 5:45 P.M.)

--- END OF TRANSCRIPT OF RECORD ---

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

COURT OF COMMON PLEAS
2010-GS-07-598, 599, 600,
602, 603 & 634

STATE OF SOUTH CAROLINA,
Plaintiff

VS

MARION BONDS,

Defendant

TRANSCRIPT OF RECORD
VOLUME IV

DECEMBER 16, 2010
BEAUFORT COUNTY,
SOUTH CAROLINA

B E F O R E:

HONORABLE CARMEN T. MULLEN, Judge.

Deborah E. Everett
Official Court Reporter

1 (Whereupon Court resumed at 9:48 A.M.)

2 THE BAILIFF: All rise. Honorable Carmen
3 Mullen presiding.

4 THE COURT: Thank you. Please be seated. Is
5 the State ready?

6 MS. ANGIE TANNER: State's ready, Your Honor.

7 THE COURT: Mr. Deysach?

8 MR. IAN DEYSACH: I am ready, Your Honor. I
9 have, really I guess, two things I want to bring
10 to Your Honor's attention. One is one that I've
11 already discussed with Ms. Tanner. Seems like
12 we've got an agreement that on those phone calls
13 that she introduced that if they were to want to
14 hear them again, they would have to come out here
15 and listen to them. We wouldn't want them to
16 listen to extra stuff that you had ruled on or
17 anything like that.

18 THE COURT: Absolutely.

19 MR. IAN DEYSACH: The next thing I wanted to
20 mention was that after thinking about it last
21 night, our discussion about the school zone
22 charge. I'm going to ask again if you would
23 consider a directed verdict or not instructing on
24 the school zone charge.

25 I think, as you mentioned, the elements were

1 that the act occurs within one half mile of a
2 school zone. And when we're talking about the
3 act, we're talking about the conversation that
4 Marion is having from jail. And while the drugs
5 may have been within one half mile of the school,
6 the person committing the act was in jail on the
7 phone which, isn't in one half mile of the school.
8 Do you understand what I'm saying?

9 THE COURT: I understand your argument.

10 MS. ANGIE TANNER: But the conspiracy was that
11 when he got out, he was coming back to that
12 location to get his drugs that were to be hidden
13 there and held for him. So the drugs are actually
14 within a half mile of the school which, I believe,
15 is what the Legislators are concerned about. That
16 crack is within half a mile of the school and that
17 the intent to distribute occurs with the crack,
18 where it is located.

19 MR. IAN DEYSACH: The act must occur within
20 one half mile of the school. It doesn't say the
21 drugs must be, the act must be.

22 MS. ANGIE TANNER: But the drugs are within a
23 half mile and they have to be present to be
24 distributed. And the conspiracy is to distribute
25 them, they're already there.

1 THE COURT: But wait a minute. I think the
2 drugs do have to be within a half-mile of the
3 school.

4 MS. ANGIE TANNER: And they are.

5 THE COURT: I understand they are but I think
6 they have to be, too. I think that's the whole
7 point of it.

8 MR. IAN DEYSACH: I'm not saying that the
9 drugs aren't within a half mile of the school.

10 THE COURT: I know but I'm just saying --
11 let's just say, theoretically, let's say we put
12 him within a half mile of the school and what he's
13 doing is conspiring to distribute drugs. I don't
14 think that's good enough. I think it's the drugs
15 have to be within a half mile of the school.

16 MR. IAN DEYSACH: It's actually quite funny
17 because she is now taking the opposite position
18 that I took and vice versa from yesterday when we
19 were talking about whether the distribution has to
20 have been intended to occur within a half mile of
21 the school, she's now saying that she doesn't have
22 to prove that the actual -- well, it's slightly
23 different and I don't want to confuse things but--

24 -

25 THE COURT: I know what you're saying. I was

1 actually thinking the same thing.

2 MR. IAN DEYSACH: But she said the plan was
3 for him to come back within a half mile of the
4 school and complete the conspiracy, but that never
5 occurred. There's never any evidence it occurred.
6 He's been in jail the whole time and so it
7 couldn't have occurred. And it must occur is what
8 the element of the offense is; it must occur.

9 THE COURT: The whole point of the conspiracy
10 is is that when people get together to conspire to
11 sell or distribute drugs, the reason why there's a
12 separate charge for that is because it's more
13 difficult for one person to do everything. The
14 idea is to stop people from aiding each other.
15 That's why there is a conspiracy in the first
16 place. We can't just have one person doing it
17 all. So, I think clearly despite him being in
18 jail not being within a half mile of the drugs at
19 the time, I think he is promoting and forwarding
20 the conspiracy which has its own distribution of
21 crack cocaine which is within a half a mile of the
22 school. I'm mean, respectfully --- I understand
23 what your argument is but I don't think it's good.
24 I'm going to say is not good. It's interesting
25 but I'm going to deny your motion for directed

1 verdict. Anything further other than that, ya'll?

2 MS. ANGIE TANNER: Nothing from the State,
3 Your Honor, but just to add to what Mr. Deysach
4 said about the tape, when evidence goes back, we
5 would just ask if the Bailiff confirm that there
6 is nothing in the Jury deliberation room that
7 would allow them to play a CD. That way I don't
8 think there is I've never seen anything like that
9 but if we could confirm that and that way if they
10 want to listen they've got to come back here and
11 we have to play it or them so that we can redact
12 what was redacted initially.

13 MR. IAN DEYSACH: One last request is if you'd
14 maybe reconsider not sending that photo lineup
15 back there. I would hate for something as silly
16 is that to kind of call any -- question any type
17 of verdict that they would return. I take the
18 responsibility for not making the objection
19 contemporaneously but I would hate for that
20 mistake on my part be something that would come
21 back and haunt this case later.

22 THE COURT: I still think because there
23 already is evidence in the case that your client,
24 Mr. Bonds, was in jail. I don't think there's
25 anything prejudicial. Even if it was error, I

1 think the Court would find this a harmless error,
2 The Court of Appeals, The Supreme Court. Again
3 they were all dressed alike. I don't think it's
4 unduly prejudicial, of course because they already
5 know he's in jail. So I respectfully deny that as
6 well. Anything further?

7 MS. ANGIE TANNER: No, ma'am.

8 THE COURT: All right. Are you ready to go?

9 MR. IAN DEYSACH: Thank you, Your Honor. Yes.

10 THE COURT: All right. Let's bring the Jury
11 in.

12 (Whereupon the Jury enters at 9:55 A.M.)

13 THE COURT: Good morning and welcome back
14 ladies and gentlemen of the Jury. At this time,
15 we're going to hear the closing arguments from the
16 attorneys and then I'm going to go ahead and
17 charge you on the law in this case, and we're
18 going to send the case to you for deliberation.
19 So if you give Ms. Tanner your attention, please.

20 MS. ANGIE TANNER: Thank you, Your Honor. May
21 it please the Court?

22 THE COURT: Yes.

23 MS. ANGIE TANNER: Morning, Ladies and
24 Gentlemen.

25 THE JURY: Good morning.

1 MS. ANGIE TANNER: These are just closing
2 arguments. These are our summaries of how we see
3 the case before you go and decide and make a final
4 decision. As I told you at the beginning of this
5 case, that you would see a chain of events. Let's
6 start with the first link in that chain.

7 There is an assault and battery with intent
8 to kill charge and there's an attempted armed
9 robbery charge. Now a lot of information that you
10 got about those two charges came from Reginal
11 Holmes, also known as Reggie. So a lot of your
12 decision will be based on what you heard from him.
13 But as you're considering what you heard from
14 Reggie, I also want you to consider what other
15 evidence corroborated or backed up what Reggie
16 said.

17 Well first, you're going to have to consider
18 was it Marion, was it Marion Bonds who committed
19 the crime. Or consider whether or not Reggie can
20 identify his own cousin, does he know that Marion
21 Bonds, someone he grew up with? Consider whether
22 or not he would be able to identify him. Consider
23 the fact that he was able to give descriptors, not
24 only of what he was wearing, but to the fact that
25 he's got a tattoo under his left eye. Then you

1 have to consider well, was there an assault and
2 battery. Or you have to decide is that an assault
3 and battery, was he shot? Was there a battery
4 committed on the person and the Judge will define
5 for you what a battery is. And it's basically an
6 unwanted, unlawful touching. In this case, with a
7 bullet.

8 Also consider when you're thinking about
9 Reggie's testimony, Dr. Duff's testimony. This is
10 an individual whose job, who every day works on
11 gunshot wounds. He is the one who does that for a
12 living, no one else in this courtroom does that
13 for a living, only Dr. Duff. And I know that the
14 Defense wanted him to say that the gun was somehow
15 pressed against Reggie's arm when it was pulled.
16 I don't know why, but let's say that the guy that
17 does this for a living, says what? He says this
18 is bruising. He said you can actually see the
19 path of the bullet before it enters the arm and
20 then he tells you, that's dried blood. He tells
21 you there was no burn, there was no soot, there
22 was no, what is called stippling, which is what
23 you would see if the gun was pressed against the
24 skin. The doctor told you, that's not there. In
25 fact, he told you that is a distant shot. That

1 was his testimony.

2 What else did he tell you? He told you -- he
3 helped describe for you the trajectory and that's
4 basically -- that's a big word for the path of a
5 bullet. And what did he show you? I asked him to
6 show you on my arm if the bullet enters here and
7 travels through here, and he said that's about the
8 path of a bullet. Reggie told you that when he
9 was shot, he was on his butt, his arm was in the
10 air and he was trying to get up. He said that
11 Marion Bonds was standing on the top of the stairs
12 pointing down at him. And what other evidence do
13 we have that backs up or supports Reggie's
14 description? Well, here's a picture of the bottom
15 of the steps. See that scuff mark? It's his butt
16 or it could be his shoes, as Investigator Kelleher
17 said, as he's scrambling to get up. But that's
18 about location. This is about location. I'm not
19 going to sit on the floor for you, but imagine
20 that's the location. That corroborates Reggie's
21 version of the events.

22 The last thing you heard yesterday was a phone
23 call made by the defendant. These were Marion
24 Bonds words. What did he say about it? He said,
25 "Man, I ain't gonna lie. I was there. I was

1 outside the door, the man came swinging off on me
2 and I just dang-gone" and his girlfriend said,
3 "hush". So we didn't get to hear what he 'dang-
4 gone' did. But what he dang-gone did was he dang-
5 gone shot Reggie Holmes from the top of the steps
6 outside that door.

7 So will your verdict say that pointing a gun,
8 demanding money, and pulling the trigger -- will
9 your verdict say that that is an attempted armed
10 robbery and assault and battery with intent to
11 kill? Because you're gonna be asked to consider a
12 lesser charge of assault and battery of a high and
13 aggravated nature. You're going to be asked to
14 consider that those acts don't include the element
15 of malice.

16 For assault and battery with intent to kill,
17 you must decide that Marion Bonds had malice at
18 the time he pointed a gun, demanded money, and
19 pulled the trigger. Is that malice or is that
20 just a simple assault and battery that ended up in
21 an injury? You must decide.

22 The next link, you must decide the charge of
23 whether or not he's guilty of being a felon in
24 possession of a weapon. You heard the
25 stipulation, you heard that it's admitted, and we

1 all agree that Marion Bonds cannot lawfully
2 possess a gun because of a prior conviction for a
3 violent crime. That is the stipulation.

4 MR. IAN DEYSACH: I know it's a term of art,
5 Your Honor. It's a crime of violence, not a
6 violent crime.

7 THE COURT: Noted for the record. You can
8 continue, Solicitor.

9 MS. ANGIE TANNER: So for that charge, taking
10 that stipulation, you must then decide, was Marion
11 in possession of a gun when he shot Reggie?
12 That's what you have to decide for that charge.
13 And again, each charge will have to be decided
14 separately.

15 Then we move to the drug charges. He is
16 charged, first, with trafficking crack cocaine
17 between 28 and a hundred grams. Again at the end
18 of the day, you heard the phone calls. You heard
19 him telling everybody he talked to, "go get my
20 black and red Jordans", "go get my black and red
21 Jordans". And what did he say was in those black
22 and red Jordans? I'm going to use his language.
23 I apologize but his language was, "I got a ass of
24 dope in my black and red Jordans." Well, the
25 technical term is 43 grams of crack cocaine but

1 you must decide if 43 grams is more than 28 grams.
2 Crack cocaine in his black and red Jordans. But
3 that's not the end of the drug charges. Find out
4 a little more. He also had some located in the
5 trash can. You heard how he called Larry and then
6 he called Old School. He conspired with them to
7 get that dope back. He conspired with them, "hide
8 my dope", "keep it for me", "I'm coming back for
9 it". And something else he called his dope. He
10 had another word for it. Did you catch it? He
11 called it his work. If you missed any of those,
12 you can ask to have that replayed. It's evidence.
13 You can ask to re-hear any evidence you've heard
14 here. But what he calls his dope, is his work.

15 Now you heard from a member of the drug task
16 force, Andrew Rice. And he talked about coke. He
17 talked about the work end of it. What it's worth.
18 What it cost. I didn't do the math on the spot
19 but I started thinking about it. Let's take the
20 small bag, 20 grams, that were in the trash can
21 that Old School grabbed, while he was on the
22 phone, through it under the sink where it was
23 located.

24 This is 20 grams. Investigator Rice told you
25 that for a hit for one user, it takes about .2

1 grams. And that makes five hits in one gram.
2 This is 20 grams. That's a hundred high people in
3 this bag. Each one of them paid about 20 bucks
4 for a hit. It's called a dove. You got some new
5 language to take home for Christmas. A dove is 20
6 bucks of crack cocaine. That's about \$2,000 on
7 the street. That is a lot of work. And that's
8 what he calls it, work. He's conspiring to
9 traffic his cocaine.

10 And finally, he's conspiring to do it and go
11 back to this cocaine that's within a half a mile
12 of a school. You'll see this closer up in your
13 deliberation room. The lighter area is a half
14 mile from St. Helena Elementary School. It's
15 marked by -- the school is marked by the green
16 flag. Old School's house, where all these drugs
17 were hidden, is marked with a red flag. It's
18 inside one half of a mile of the school. So all
19 this work was going on across the street from an
20 elementary school.

21 Now, I've told you this is a chain of events.
22 I've told you this is about choices, and I told
23 you this was about paths chosen. The witnesses
24 that you heard from Reggie, Old School, you heard
25 about their choices. You heard about paths

1 they've chosen. Where it's led them. Where it's
2 taken their lives. And the judge will tell you
3 that a part of your deliberation, you will
4 evaluate the credibility of every witness you
5 heard from. And as you're doing that, I ask that
6 you would evaluate Reggie's credibility. He
7 hasn't lived the perfect life. But I ask you to
8 remember one thing in particular, Reggie admitted
9 to you that in the beginning when this first
10 occurred, he didn't want anything to do with the
11 police. He wanted to handle this himself. And
12 what did he say? "I wanted to go give back what
13 he just gave me." That's what he wanted to do.
14 But I submit to you, Ladies and Gentlemen, the
15 difference is Reggie made a different choice.
16 Reggie chose a different path. Reggie left it up
17 to you to decide. The choice is yours. The
18 verdict in this case is yours. I ask that your
19 verdict speak the truth. I asked that you come
20 back and you find Marion Bonds guilty of
21 everything he's charged with and speak the truth.

22 MR. IAN DEYSACH: May it please the Court,
23 Your Honor?

24 THE COURT: Yes, sir.

25 MR. IAN DEYSACH: Thank you. Solicitor

1 Tanner. Good morning. Thank you for your
2 attention. It's been a long trial. I think it's
3 been complex. I really appreciate and I'm really
4 counting on how close attention that you all paid
5 throughout this whole thing. And I think maybe --
6 I guess the first thing I want to say is that it
7 felt like this whole week like there were kind of
8 two trial's going on. The trial about what's
9 happening at the Eddings White Road place, and a
10 trial about what's happening at the 28 Ball Park
11 Road place. And if I would've had my choice, it
12 would've been separate. Because I think it gets
13 more confusing with more information to process
14 and I would've liked to have dealt with each case
15 separately. And I'll tell you the main reason why
16 is that I wouldn't want you to think that just
17 because something had happened at Ball Park Road
18 that means that something definitely happened at
19 Eddings White Road or vice versa. You're not
20 supposed to take that as evidence of somebody's
21 guilt. You're supposed to base it on the fact and
22 not on emotion. That's kind of what the big
23 question that I'm asking you -- the big thing that
24 I'm asking you to do is not to look at the
25 negative light that Marion's been painted in. I

1 mean this -- you're gonna be painted in a negative
2 light when you're the Defendant in a criminal
3 trial. That's always gonna happen. What I'm
4 asking you to do is use your intellect, use logic,
5 and the facts that you heard, the law that the
6 Judge is gonna give you, and make a decision that
7 in the end does speak the truth.

8 And when you talk about a verdict in this
9 case, it's not a verdict, it's verdicts. There's
10 six different charges in this case. All of which
11 need to be analyzed separately. Each charge has
12 multiple elements to it. Each one of those has to
13 be analyzed separately. And because --it's hard
14 work, I know. I mean, I appreciate that it's hard
15 work, but it's something that needs to be done.
16 I'll tell you that when you're done with your jury
17 service, you're gonna want to know that you went
18 through each one of these charges and tested them
19 to see that the proof beyond a reasonable doubt
20 was there for each and every element. Because you
21 won't want to have to look back and say, you know
22 what, that wasn't really based on the facts or the
23 law that I was given. I think maybe throw out the
24 baby with the bath water. Or like hey, why should
25 we give Marion Bonds the benefit of the doubt in

1 any one of these cases when we've heard that --
2 we're sure he did some bad things and we know he's
3 not an angel. Why should I spend my time,
4 especially during the holidays, trying to evaluate
5 whether or not the State proved whether or not it
6 should be one trafficking or two traffickings here
7 the way that they charged it or something like
8 that because it is going to take a little bit of
9 time and brain effort but we all rely on you. The
10 whole court system relies on you and every -- like
11 it was said by the judge and by me in the
12 beginning, there's nothing that can be done to
13 reverse a mistake by y'all. To be honest with
14 you. There's nothing that -- If I mess up, the
15 Judge messes up, or anybody else messes, up we've
16 got a process for that. But not for you guys
17 messing up. And so I know I'm asking you to do a
18 lot but there's no way I can understate the
19 importance.

20 It's easy to think that Marion Bonds is just a
21 defendant but we have to remember that he is a
22 human being, he is one of the residents of
23 Beaufort County, he has a family, and even though
24 nobody chooses to do jury duty, that this is what
25 we've got to do in order to make sure that our

1 process that we have here works. So I really do
2 appreciate it because the level of evidence on
3 different charges is vastly different.

4 The type of evidence that they have at Ball
5 Park Road is a lot different than what they've got
6 at Eddings White. They're two different kinds of
7 cases for one thing, but I mean there's a lot more
8 pictures, there's -- there's a lot more physical
9 evidence, there's more police who are witnesses to
10 the drugs and things like that that happened at
11 the Ball Park Road address.

12 But as far as what happened at Eddings White
13 is more based on what Reggie said. And so while
14 the framework of what happened at Ball Park has a
15 little more corroborations say between, what one
16 person said versus what another did and it fits
17 together. There's tons of police officers there,
18 all who testified before you. What happens at
19 Eddings White Road all really depends on whether
20 or not you can believe Reggie beyond a reasonable
21 doubt. And kind of one way I think about it is if
22 we found out later that Reggie lied about this,
23 how many of us would really be that surprised?
24 Because we know he's lied about certain things and
25 changed his story about others. I'm gonna spend a

1 little more time about Eddings White Road in a
2 little bit but there are some certain things that
3 I want to say about the drugs that were found at
4 the Ball Park Road.

5 You know, I know I'm getting into details here
6 but, I can't stress again how important it is.
7 The last thing we'd ever want to do is convict
8 somebody of something, I don't care if they're
9 Marion Bonds, I don't care they're George
10 Washington himself, you know you wouldn't want to
11 -- anybody have something, a permanent conviction
12 for something that truly wasn't supported by the
13 facts and the law. And that's why I don't think
14 it's appropriate for them to charge Marion for
15 trafficking the stuff in the shoe and then when
16 they don't find everything at the house, come back
17 with yet another trafficking. Were talking about
18 28 to 100 grams. Twenty grams underneath the sink.
19 Forty grams in the shoe. You add them together,
20 whether it's the 40 grams or the 60 grams it's
21 really just the same slot, 28 to 100. But yet
22 he's -- even though we know he hasn't returned
23 back to the Ball Park Road address. It's just
24 that everything wasn't found or the search wasn't
25 as thorough and I submit, if they would have

1 stayed there and searched wherever those drugs
2 happened to be at the time that it would've put
3 that in the group for the drugs that they were
4 charging him with. They charged him with the
5 stuff that was under the mattress. They didn't
6 charge anybody else with the stuff that was under
7 the mattress. I don't really -- haven't heard any
8 evidence that the stuff under the mattress was
9 connected to Marion Bonds at all. There was two
10 other guys either in the room or near room.
11 There's another guy I guess, coming out of the
12 bathroom. Marion Bonds certainly doesn't say
13 anything on the phone about did you get my stuff
14 under the mattress, did you get my stuff from the
15 pill bottle. One of the other guys has an empty
16 pill bottle. So you know I don't want to get too
17 bogged down because when you add the weights
18 together you're still between 28 and 100 whether
19 you include the pill bottles there or whether you
20 don't include the pill bottles, whether you
21 include all of it, including the stuff under the
22 sink or even include some of it. So I mean if
23 it's -- if it's happening it's happening. It's
24 not two traffickings. He's there one time. It's
25 all one case and I submit that only one

1 trafficking would be appropriate. You now...

2 A few words about some of the evidence on the
3 drugs. I don't want to beat a dead horse or
4 anything but it would've been nice if Investigator
5 Fraser had of written a report about walking into
6 Old School's house and actually seeing the drugs
7 underneath the sink instead of not writing a
8 report at all. It would've been nice if he
9 would've told you -- it would've been nice if he
10 would have known really what shoe that it came out
11 of. The shoe that they put into evidence is this
12 shoe, the right shoe. You can tell by the side
13 that the strap is on. He tells you, "I saw the
14 drugs in plain view", takes a picture before he
15 searches the closet, he says, "oh well, I moved
16 the jacket, I saw the drugs in plain view". He
17 takes a picture, you can't see the drugs in plain
18 view and that's the shoe that they're trying to
19 tell you the drugs came in.

20 You now I will like -- first I'd like my I's
21 dotted and my T's crossed a little better than
22 that because this is such a serious event to talk
23 about. Like what's -- let's figure out -- if
24 you're going to take one shoe into evidence, make
25 sure it's the shoe that has the drugs in it. And

1 if you're gonna say that it's in plain view, don't
2 take the picture, admit it into evidence of the
3 shoe, and you can't see the drugs in plain view.

4 It would be nice if the person who located the
5 drugs underneath the sink and turned them into
6 evidence had been fired for dishonesty. You now -
7 - but again to me, I guess it probably sounds like
8 sour grapes to say that kind of stuff. I will
9 like to see, you know, blame the police, you know,
10 on what was found but we are talking about a
11 serious event here and I think that I's need to be
12 dotted and T's crossed.

13 And then finally, the school zone charge. I
14 don't think that is appropriate. The charge is
15 possession with intent to distribute. Yes, he is
16 accused of possession with intent to distribute
17 within a half-mile of the school, not possession
18 within a half-mile of the school with intent to
19 distribute. So, I guess if you were to go to your
20 ninth grade grammar teacher or whatever, what she
21 would tell you is that the word that's being
22 modified by half mile of the school is
23 distribution not possession and that it ~~doesn't~~
24 matter where you possess the drugs. It matters
25 where you plan on distributing them, you know.

1 And so that is -- we're talking about the St.
2 Helena Elementary School. They have the map here,
3 I mean, and they represented what the half-mile
4 is. It's across Highway 21. It's across the
5 street, you know, is the way I heard her say.
6 It's across Highway 21 and there's about 20 or so
7 houses in between the school and near the
8 residences. There's really no connection between
9 the residence and the school other than they
10 happen to be within a half-mile of each other.
11 And when she said across the road, it's across
12 Highway 21.

13 And then the one thing that I do want you to
14 take into account when you hear the Judge's
15 instructions is that possession with intent to
16 distribute within a half-mile of the school has
17 two elements. One of which is the act that they
18 are accusing him of has to have occurred within a
19 half-mile of the school and what the Solicitor is
20 saying is that phone call, where he's trying to
21 get Old School to take the drugs out of the sink,
22 that that's the act. Well, that act occurred at
23 the detention center. That act did not occur at
24 ■ Ball Park Road. And I know I'm talking about
25 technicalities here but this is, sadly, I mean

1 this is the way the facts and the law interface.
2 And just because somebody -- you know, elements of
3 one offense aren't necessarily satisfied, it
4 doesn't mean that there isn't another way of the
5 Legislature has outlawed a certain type of
6 conduct. Just because somebody broke one law here
7 is what I'm saying and doesn't mean that they
8 broke all of the laws they have been charged with.
9 And that's something that I'm lucky to have, like
10 I said, a smart Jury who's willing to do the work
11 and has the brainpower to do this because it is
12 important here.

13 Every decision that you make is important.
14 It's not just guilty or not guilty. It's not just
15 guilty of the Ball Park stuff and not so sure
16 about the Eddings White stuff. It's about each
17 individual charge, each individual element and so
18 I'm really -- I think you've sworn to do it but I'm
19 asking you to want to do it, I guess. All right.
20 That's really what I wanted to talk to you about
21 on the Ball Park Road stuff.

22 The Eddings White is kind of a whole different
23 ball game. Like I said, you know, (cough, cough)
24 the State has -- get a little water here. The
25 State has really kind of piled it up on the Ball

1 Park Road stuff but when you start learning what
2 happened at Eddings White it gets a little bit
3 skimpier. But I think even the Solicitor
4 recognizes that believing Reggie Holmes beyond a
5 reasonable doubt is a key to this case in a big
6 way. You have to believe him in order to believe
7 that, one that the crime he's saying occurred,
8 occurred. That is an attempted armed robbery
9 occurred. There's nobody to say that he was even
10 trying to be robbed except for him. Whether it
11 was Marion who did it, whether it was Marion and
12 Jason, whether it was Marion or some stranger that
13 he's not sure about now.

14 So I'm about to explain to you all the reasons
15 why you cannot, you cannot trust Reginal Holmes,
16 who testified from that chair right there. You
17 got a chance to look at him. You got to judge his
18 demeanor and his body language, the things he
19 said, the way he behaved. You cannot trust him
20 beyond a reasonable doubt.

21 Reggie lied about how it happened, he lied
22 about where happened, he lied about what happened,
23 he lied about who was there, okay. I'll start
24 with he lied about what happened. They tried to
25 act -- he tried to act like whether or not

1 something was taken from him during this event was
2 not a big deal. The police are investigating an
3 armed robbery, they told you he never said
4 anything was taken. He never said anything was
5 taken. We would have asked. It's a difference
6 between an armed robbery and attempted armed
7 robbery whether something is taken. He tells us
8 now for the first time, he tells somebody -- well,
9 at least as far as I know, not in any of the
10 police reports that were referenced during the
11 trial where they talking about something actually
12 being taken. In fact, it would have caused a
13 different charge. They relied on him when they
14 charged an attempted armed robbery that nothing
15 was taken. And yet now he's changed his story.
16 So he's lied about what happened.

17 He has lied about where it happened. You
18 know, scuff marks at the bottom of somebody stairs
19 without a shell casing, without a bullet. You
20 know that's one thing we don't find bullets very
21 often but they're trying to say that the bullet
22 was fired basically at the ground. They're
23 telling you of the trajectory is this, he's on his
24 butt. The bullet or some mark in the ground
25 should exist if this is where it happened. All

1 right. And then Reggie says, "Oh, I went to my
2 uncle's house." But then he says well today, I
3 went to my -- or he said during the trial, I went
4 to my cousins house. And Mr. Green says that he
5 came walking from behind his house. Makes me
6 wonder whether or not he just walked out of his
7 backdoor and came around to his front door.

8 Reggie lied about who was there. The State
9 kept trying to rehabilitate him picking Jason
10 Thomas out of the photo lineup as the person who
11 came into his house, with a shotgun who, is also
12 his cousin who we met, okay. That -- she tried, I
13 think, to rehabilitate him by saying, "oh you're
14 just picking somebody who you know hangs out with
15 Mario Bonds. That's not what Officer Kelleher
16 did. Officer Kelleher is not trying to find out
17 who were some of the guys that hang out with Jason
18 Thomas. They already know from Investigator Green
19 that they're looking for a Jason Thomas. Not
20 Investigator, Corporal Green that they're looking
21 for Jason Thomas. From Fraser and Chapman, they
22 know. From Jason Thomas being at Ball Park Road,
23 they know that they're there looking for Jason
24 Thomas. Not as somebody who hangs out with Marion
25 Bonds, but as the person with the shotgun who

1 either came into the house and shook Reggie
2 Holmes's hand or remained at the bottom of the
3 steps during the whole thing, which you know there
4 is variation there. They try and say, well you
5 know it's -- it's a scary event. It is a scary
6 event. It would be a scary event if that's how it
7 happened. But it is not credible. And the thing
8 is, and I don't want to think the worst of anybody
9 because that -- you know, I probably wouldn't do
10 what I do if I thought the worst of everybody.
11 But were not ponds and Reggie Holmes's game where
12 Reggie can say Jason did it on the day that it
13 happened and then come back and have convenient
14 amnesia and I don't know what's influenced Reggie
15 or if anything influenced Reggie. There's
16 nothing, no evidence in the record of anything.
17 So we're not going to play this little game. You
18 shouldn't play this little game. We all shouldn't
19 be here because Reggie Holmes is saying Marion and
20 Jason did it, no, no now Jason didn't do it
21 because he's trying to keep him from getting in
22 trouble or something like that. We're not --
23 we're not -- I don't work for Reggie. I'll tell
24 you that right now and neither should you. And
25 when somebody plays a game with the police and the

1 Court system like that, they lose all credibility.
2 You shouldn't believe a word they say. They
3 really lost the right for you to believe them.
4 And I'm not talking about believe them beyond a
5 reasonable doubt. I'm talking about believe them
6 when they walk up to you and say how you're doing
7 and that they really care how you're going. I
8 wouldn't believe Reggie Holmes no matter what he
9 says. I won't believe -- there's no reason to
10 because he's already put us -- you know, he's
11 playing a game and you guys don't deserve that. I
12 don't deserve that either and neither does the
13 police or the Judge or anybody. But this
14 convenient amnesia that I want to get Marion in
15 trouble but I don't want to get Jason Thomas in
16 trouble anymore. No, ma'am and No, sir. I do not
17 like that one bit. Okay.

18 Reggie is lying about how it happened. I
19 guess I think it is probably pretty clear to
20 anybody who saw me when the Doctor was testifying
21 that I got a little bit frustrated. And I got a
22 little bit frustrated, I mean, when he told me
23 that basically, as I understand it, that the
24 bullet hits Reggie in the arm, causes a bruise,
25 that he gets hit by a bullet that causes a big

1 bruise, that the bullet continues on, I guess it
2 skips along his skin after the bruise, and I think
3 he said it would have left a mark because it was
4 hot. So we've got a bruise into a burn trail into
5 this bullet wound. And there's a perfect, you
6 know, it's the exact trajectory that he would
7 expect to see if, if the bullet was to cause this
8 bruise. How can -- how does the bullet cause the
9 bruise, skip along the -- he'd have to have--they
10 can do it like this and they point the stick.
11 They use the stick to point but wherever that
12 stick went that she was pointing, didn't touch
13 where that bruise was. So the arm could not have
14 been in the position that she's saying. And you
15 know he's trying to tell you that this stuff is
16 dried blood. And you can look at it yourself.
17 He tried to say that he hadn't dressed the wound
18 but the police said something different, Oh yeah,
19 this is the hospital stuff that the wound was
20 dressed. He told me the extent of the injuries.
21 The Doctor had already seen the wound and he's
22 trying to act like, well, this is the first time I
23 see the wound is when they take the picture. And
24 I don't think it's --he doesn't have a report
25 that reflects one way or the other. And so he's -

1 - he's got to go by memory. And if he's got a
2 problem with his memory, I think it's quite
3 possible.

4 But I also want to talk about this bruise.
5 First of all, I think anybody who's had a bruise
6 knows that the bruise shows up later. You get hit
7 in a spot, you don't immediately bruise. I mean,
8 I can probably punch myself in the face and you
9 wouldn't see a bruise, you know, for another
10 couple of hours. This is right after this
11 happens. That's not how bruises look. It's not
12 what a fresh bruise looks like. I know he's the
13 doctor and he's the expert. But you know what
14 he's an expert in? He's an expert in treating a
15 bullet wound. And I don't know that you need to
16 know how far a bullet wound is shot from you to be
17 able to treat it. He's not a ballistics expert.
18 He's a medical expert who knows how to treat the
19 injury, not how to forensically figure out how it
20 was caused. So you need to decide whether or not
21 this is dry blood or not. And the thing is, is
22 that to me it is quite obvious how the person --
23 how it occurred. I'm not saying who did it but
24 I'm saying how it occurred is quite obvious.

25 I'm going to ask Mr. Sorrell to help me with

1 the demonstration if you could. Point at me just
2 like this. Just stay still, I'm not going to do
3 anything. You grab the hand like this, the gun is
4 right here, it fires, it shoots right out. I mean
5 any police officer -- the police officer -- you
6 can have a seat, thank you. I mean that's exactly
7 what it is. I mean it's a -- to argue something
8 different is like -- I was thinking about it, the
9 way that happened is -- I was going to say the
10 nose on my face up until this morning when I woke
11 up, I had this big pimple. I was going to say
12 it's clear as this pimple that's on my face that
13 the way this gunshot occurs is during a fight.
14 It's during a fight and that there is a slap away
15 at that gun. And what -- one thing that I worry
16 about is I wonder if Reggie's story was that, if
17 the State's theory, which is based on Reggie's
18 story, was different would they be arguing the
19 exact same thing that I'm arguing right now.
20 Would they have enough evidence with them to try
21 and argue that? But I hope that they don't just
22 try and twist evidence to their needs. I hope
23 that it's an honest mistake that they think that
24 that's not a burn, that there is no stippling,
25 even though you can kind of see it with your own

1 two eyes. And that the way that gunshot is caused
2 is kind of -- it seems classic. It's a classic
3 type gunshot wound. And so I guess what I'm
4 saying is, Reggie lied about how it happened
5 because of all those reasons. Okay.

6 So I guess that brings me to this, you know
7 the -- but I have to talk about it again. It's
8 that if the wound happens as part of a fight then
9 that's where that assault and battery of a high
10 and aggravated nature comes in. The difference
11 between assault and battery with intent to kill
12 and assault and battery of a high and aggravated
13 nature doesn't have to do with the injury itself.
14 The injury can be the same. What it has to do
15 with is what is going through the mind of the
16 person who causes it. And so when it happens as
17 part of a fight, he was swinging on me whatever,
18 whatever is what they're trying to say. Then
19 that's where -- that's the ABHAN. That's the
20 assault and battery of a high and aggravated
21 nature. Where one of these is a violent injury
22 with an aggravating circumstance and the Judge
23 will tell you that one of those aggravating
24 circumstances is the use of a deadly weapon. So
25 that's why that fits. So if we're not gonna go

1 with this -- I mean the only evidence that there
2 is an attempted armed robbery is what Reggie says.
3 Even when the State tries to introduce or does
4 these candid conversations that Marion, they're
5 saying, should've known were being recorded but
6 was behaving as if he didn't know they were
7 recorded that he's not saying, "Oh, we were -- the
8 plan was to rob or something like that". Nothing
9 like that even comes up. So the only place that
10 you get attempted armed robbery is from Reggie who
11 doesn't want to say, "yeah, we were fighting". So
12 anything Reggie's says, we're not playing his
13 game, goes out the window. They did introduce
14 that phone call. I'm not saying that's proof
15 beyond a reasonable doubt. I don't think there's
16 any proof of exactly what he's talking about at
17 that situation is the Eddings White Road stuff. I
18 don't think that is a confession at all of what
19 happened at Eddings White Road. But if that's
20 their theory of what happened, and if this is how
21 the gun shot occurred, I would say that what did
22 happen to Reggie wasn't assault and battery of a
23 high and aggravated nature. I'm not saying he
24 wasn't shot, but I'm not telling you that they
25 have proven that Marion did it by any means