

IN THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

AUG 18 2014

Appeal from Lexington County
Court of General Sessions

Honorable Alexander S. Macaulay, Circuit Court Judge

S.C. Supreme Court

Appellate Case No. 2014-001449

The State,

Respondent,

v.

Benjamin J. Newman,

Petitioner.

**APPENDIX
TO
PETITION FOR WRIT OF CERTIORARI**

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Attorney General

TARA DAWN SHURLING
Attorney and Counselor at Law
S.C. Bar No. 5099

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Chief Deputy Attorney General

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ATTORNEYS FOR RESPONDENT

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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.

Benjamin J. Newman, Appellant.

Appellate Case No. 2012-213383

Appeal From Lexington County
Alexander S. Macaulay, Circuit Court Judge

Unpublished Opinion No. 2014-UP-034
Submitted December 1, 2013 – Filed January 29, 2014

AFFIRMED

Robert T. Williams, Sr. and Benjamin Allen Stitely, both
of Williams, Hendrix, Steigner & Brink, PA, of
Lexington, for Appellant.

Attorney General Alan McCrory Wilson and Assistant
Attorney General Jennifer Ellis Roberts, both of
Columbia, for Respondent.

PER CURIAM: Affirmed pursuant to Rule 220(b), SCACR, and the following
authorities:

1. As to whether the trial court erred in denying Newman's motion to suppress the drug evidence: *State v. Missouri*, 361 S.C. 107, 111, 603 S.E.2d 594, 596 (2004) ("When reviewing a Fourth Amendment search and seizure case, an appellate court must affirm the trial [court's] ruling if there is *any* evidence to support the ruling."); *State v. Wright*, 391 S.C. 436, 443, 706 S.E.2d 324, 327 (2011) ("Under the 'plain view' exception to the warrant requirement, objects falling within the plain view of a law enforcement officer who is rightfully in a position to view the objects are subject to seizure and may be introduced as evidence."); *State v. Abdullah*, 357 S.C. 344, 351, 592 S.E.2d 344, 348 (Ct. App. 2004) (noting law enforcement may enter a dwelling "to prevent a suspect from fleeing or where there is a risk of danger to police or others inside or outside [the] dwelling").

2. As to whether the trial court erred in denying Newman's motion for a directed verdict: *State v. Williams*, 346 S.C. 424, 430, 552 S.E.2d 54, 57 (Ct. App. 2001) ("In reviewing the denial of a motion for a directed verdict, the evidence must be viewed in the light most favorable to the State. If there is any direct evidence or substantial circumstantial evidence reasonably tending to prove the guilt of the accused, the appellate court must find that the case was properly submitted to the jury."); *id.* ("Where contraband materials are found on premises under the control of the accused, this fact in and of itself gives rise to an inference of knowledge and possession which may be sufficient to carry the case to the jury.").

AFFIRMED.¹

SHORT, WILLIAMS, and THOMAS, JJ., concur.

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

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appellate Case No. 2012-213383

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FEB 24 2014

SC COURT OF APPEALS

The State,

Respondent,

v.

Benjamin J. Newman,

Appellant.

Appeal from Lexington County
Alexander S. Macaulay, Circuit Court Judge
Case Nos. 2011-GS-32-2259, 2011-GS-32-2261

PETITION FOR REHEARING

TARA DAWN SHURLING
Attorney and Counselor at Law
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ATTORNEY FOR APPELLANT.

NOW COMES the Appellant in the above-captioned action, acting by and through undersigned counsel, seeking rehearing on this Court's unpublished opinion in this matter. *State v. Benjamin J. Newman, Opinion No. 2014-UP-034 (S.C. Ct. App. Filed January 29, 2014)*. Pursuant to *Rules 221(a) and 219, SCACR*, the Appellant petitions for rehearing on the ground that certain issues of material fact or law have either been overlooked or misapprehended by the Court in the opinion in question. In support of this position, the Appellant would show unto this Honorable Court the following:

Issue 1.

The Trial Court erred when it denied the Appellant's Motion to Suppress the drug evidence obtained as a result of an unlawful search.

The Appellant would respectfully note that the opinion of this Court appears to have overlooked or misapprehended material facts which supported his Motion to Suppress the drug evidence in his case. The testimony was that a team of officers entered the residence in question after audio surveillance of a drug transaction with the Appellant, a confidential informant and undercover police officer. According to the testimony adduced at trial, the Appellant ran out of the back door as the SWAT team entered the residence. R. p. 202, ll. 2-15. Despite seeing the Appellant go out the back door of the residence, the record below indicates that the CI, the undercover agent and some members of the SWAT team remained inside the residence for fifteen – twenty minutes while they waited for a search warrant for this residence. R. p. 39, ll. 10-22. It was during this time period when officers allegedly observed the drugs in question in plain view. The Appellant would respectfully submit that once the residence was checked for any immediate threat to the officers at the scene, law enforcement had no authority to remain inside this residence pending their receipt of a search warrant. Agent Paige Barnes testified that she observed the cocaine in this case in an open book bag after

looking near the counter where she had been told the cocaine was located. Her testimony reflects that they waited inside the house for approximately thirty minutes before the search warrant arrived. R. p. 293, l. 21- R. p. 298, l. 24. In addition, the audio recording of this operation documented a conversation between law enforcement officers at the scene in which it was stated that "officers were searching around for cocaine prior to the search warrant being there." R. p. 247, ll. 5-7. This recording was entered in its entirety during the pre-trial hearing on the Appellant's Motion to Suppress. It was marked and introduced as Court's Exhibit No. 7. R. p. 42; ll. 5-24.

Based on all the foregoing, the Appellant would respectfully ask this Court rehear the issue of whether or not the lower court erred in failing to suppress the drug evidence in this case.

ISSUE II

The Trial Court erred in failing to grant the Appellant's Motion for a Directed Verdict on the charge of Trafficking in Cocaine, 400 grams or more.

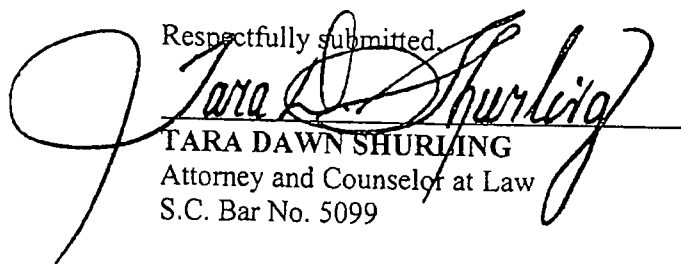
The record below indicates that a confidential informant and an undercover agent set up a drug transaction with the Appellant in the course of which he exchanged a quantity of cocaine for a quantity of marijuana. In this monitored drug transaction, Agent Carver testified that the Appellant was suppose to trade twenty-five ounces of cocaine for fifty pounds of marijuana, but added two extra ounces. R. p. 199, ll. 4-17. His testimony in fact establishes that the cocaine was ultimately found in a book bag that had been brought to the residence by law enforcement carrying the marijuana for this drug transaction. Thus, the Appellant would respectfully submit that the evidence conclusively establishes that the transfer of the cocaine for the marijuana had already taken place prior to the raid of law enforcement on this residence. Therefore, according to the evidence introduced by the State, the law enforcement agents involved in this drug

transaction had taken physical custody of the cocaine prior to the Appellant's arrest. For that reason, the Appellant would respectfully submit a directed verdict of acquittal should have been granted on the cocaine charge. On the facts of this case, the cocaine in question was, according to the State's own evidence, used as currency to purchase the marijuana traded for it. The Appellant would respectfully submits that all the evidence in this case indicates that the only cocaine involved in this transaction was clearly under the exclusive dominion and control of the law enforcement agents who had taken possession of the cocaine in question. There being no evidence of any other cocaine being in the Appellant's possession, the Motion for Directed Verdict on that charge should have been granted. For these reasons, the Appellant respectfully asks this Honorable Court to rehear the issue of whether or not he was entitled to a directed verdict of acquittal on the charge of trafficking in cocaine.

CONCLUSION

For all the reasons set forth above, the Appellant now asks for rehearing on these issues.

Respectfully submitted,


TARA DAWN SHURLING
Attorney and Counselor at Law
S.C. Bar No. 5099

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Columbia, S.C. 29204
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ATTORNEY FOR APPELLANT

This 24th day of February, 2014.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appellate Case No. 2012-213383

RECEIVED

FEB 24 2014

SC Court of Appeals

The State,

Respondent,

v.

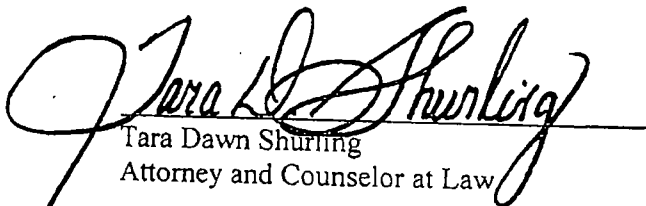
Benjamin J. Newman,

Appellant.

Appeal from Lexington County
Alexander S. Macaulay, Circuit Court Judge
Case Nos. 2011-GS-32-2259, 2011-GS-32-2261

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a copy of the Appellant's Petition for Rehearing in the above-entitled case have been served upon opposing counsel, Jennifer Ellis Roberts, Assistant Deputy Attorney General, P O Box 11549, Columbia, SC 29211, by depositing in the U.S. Mail, postage prepaid, postage prepaid, this 24th day of February, 2014.


Tara Dawn Shurling
Attorney and Counselor at Law

S.C. Bar No. 5099

February 24, 2014

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Lexington County
Honorable Alexander S. Macaulay, Circuit Court Judge
Appellate Case No. 2012-213383

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APR 23 2014

SC Court of Appeals

THE STATE,

Respondent,

vs.

BENJAMIN J. NEWMAN,

Appellant.

RETURN TO PETITION FOR REHEARING

On January 29, 2014, this Court issued an unpublished opinion in which it unanimously affirmed Appellant's convictions for trafficking in marijuana and trafficking in cocaine. State v. Newman, Op. No. 2014-UP-034 (S.C. Ct. App. filed Jan. 29, 2014): Pursuant to Rule 221(a), SCACR, Appellant petitioned this Court for rehearing, and this Court requested that Respondent ("the State") file a return to Appellant's petition. For the following reasons, Appellant's petition for rehearing should be denied.

Suppression Issue

In his petition for rehearing, Appellant first contends that this Court erred in affirming the trial judge's decision to deny Appellant's motion to suppress the drug evidence obtained as a result of an allegedly unlawful search. In support of that contention, Appellant initially maintains that the law enforcement officers had no authority to remain inside Appellant's residence pending their receipt of a search warrant. (Pet. for Reh. p. 2). Appellant further

maintains the audio recording at the scene documented that “officers were searching around for cocaine prior to the search warrant being there.” (Pet. for Reh. p. 3). Contrary to Appellant’s contentions, neither this Court nor the trial judge committed any error in finding Appellant’s motion to suppress the drug evidence in his case to be meritless, and Appellant’s conviction was properly affirmed on appeal.

As this Court noted in its opinion, “Under the ‘plain view’ exception to the warrant requirement, objects falling within the plain view of a law enforcement officer who is rightfully in a position to view the objects are subject to seizure and may be introduced as evidence.” State v. Wright, 391 S.C. 436, 443, 706 S.E.2d 324, 327 (2011). Furthermore, this Court noted that law enforcement may enter a dwelling “to prevent a suspect from fleeing or where there is a risk of danger to police or others inside or outside [the] dwelling.” State v. Abdullah, 357 S.C. 344, 351, 592 S.E.2d 344, 348 (Ct. App. 2004).

Ample evidence existed to support the trial court’s denial of Appellant’s motion to suppress the drug evidence. The trial court held a thorough suppression hearing, during which multiple witnesses testified. The agent who participated in the drug deal testified he could have arrested Appellant immediately following the deal because it occurred in his presence and he was inside the residence by consent. He also testified that no one was searching the house during the time Appellant was removed, that officers were merely clearing out the house and removing the people, and that no one was searching while they waited for the search warrant. He explained that officers were merely looking around the backyard for both Appellant and the cocaine after Appellant fled. He testified that when the officers entered the residence, the marijuana was readily visible.

The testimony demonstrates the drug evidence was obtained without the need for a search warrant because the transaction occurred in the presence of a law enforcement agent, who had the authority to arrest Appellant as soon as the exchange took place. Also, the marijuana was in plain view when the officers lawfully entered the residence when attempting to arrest Appellant during the drug bust. In addition to the lawful entry to arrest, the agent was lawfully in the residence by consent. Under either scenario, the initial intrusion that afforded the plain view was lawful. Similarly, the cocaine was located in plain view in an open book bag without officers having to search underneath items or manipulate items. Thus, the drug evidence fell within the plain view exception to the warrant requirement and was properly admitted. Accordingly, Appellant's petition for rehearing should be denied.

Directed Verdict Issue

In his petition for rehearing, Appellant next contends this Court erred in affirming the trial judge's denial of his directed verdict motion on the trafficking cocaine charge. In support of that contention, Appellant submits the transfer of the cocaine for the marijuana had already taken place prior to the law enforcement raid on Appellant's residence. Accordingly, he contends a directed verdict of acquittal should have been granted on the cocaine charge because law enforcement had taken physical custody of the cocaine prior to Appellant's arrest and the cocaine was under the dominion and control of law enforcement agents.

As this Court correctly noted in its opinion, "In reviewing the denial of a motion for a directed verdict, the evidence must be viewed in the light most favorable to the State. If there is any direct evidence or substantial circumstantial evidence reasonably tending to prove the guilt of the accused, the appellate court must find that the case was properly submitted to the jury."

State v. Williams, 346 S.C. 424, 430, 552 S.E.2d 54, 57 (Ct. App. 2001). Furthermore, this

Court noted, "Where contraband materials are found on premises under the control of the accused, this fact in and of itself gives rise to an inference of knowledge and possession which may be sufficient to carry the case to the jury." Id.

The details of the drug transaction demonstrate Appellant's dominion and control over the drugs when he invited the agent and the confidential informant into his home and engaged in a drug transaction by accepting the fifty pounds of marijuana in exchange for twenty-seven ounces of cocaine. The audiotape provided further evidence of Appellant's participation in the drug deal. Appellant was heard asking for 1,000 pounds of marijuana for the next deal and was also heard giving the agent two extra ounces of cocaine and telling him how to work with the cocaine when he unwrapped it. Sufficient evidence existed to support the denial of Appellant's directed verdict motion and the trial court properly submitted the case to the jury for its resolution. As a result, the trial judge properly denied Appellant's motion for a directed verdict on the trafficking cocaine charge, and this Court correctly affirmed the trial judge's ruling. Appellant's petition for rehearing should be denied.

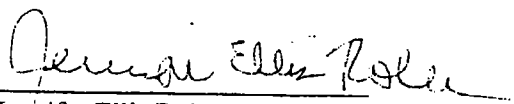
Conclusion

Based on the foregoing, coupled with the arguments raised in the Final Brief of Respondent, the State respectfully requests that Appellant's petition for rehearing be denied.

Respectfully submitted,

ALAN WILSON
Attorney General

JENNIFER ELLIS ROBERTS
Assistant Attorney General

By: 
Jennifer Ellis Roberts

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

April 23, 2014

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Lexington County
Honorable Alexander S. Macaulay, Circuit Court Judge
Appellate Case No. 2012-213383

THE STATE,

Respondent,

vs.

BENJAMIN J. NEWMAN,

Appellant.

PROOF OF SERVICE

I, Angela Bennett, certify that I have served the within Return to Petition for Rehearing on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Tara Dawn Shurling, Esquire
3614 Landmark Drive
Suite A
Columbia, SC 29204

I further certify that all parties required by Rule to be served have been served.
This 23rd day of April, 2014.


ANGELA BENNETT
Legal Assistant

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

The South Carolina Court of Appeals

The State, Respondent,

v.

Benjamin J. Newman, Appellant.

Appellate Case No. 2012-213383

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.

Paul E. Spert, Jr. J.

Id B. Woe J.

Paul W. Thomas J.

Columbia, South Carolina

cc: Jennifer Ellis Roberts, Esquire
Benjamin Allen Stitely, Esquire
Alan McCrory Wilson, Esquire
Tara Dawn Shurling, Esquire
The Honorable Alexander S. Macaulay

FILED

June 3, 2014

IN THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

AUG 18 2014

S.C. Supreme Court

Appeal from Lexington County
Court of General Sessions

Honorable Alexander S. Macaulay, Circuit Court Judge

Appellate Case No. 2014-001449

The State,

Respondent,

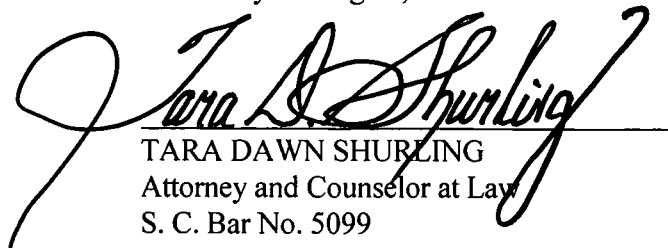
v.

Benjamin J. Newman,

Petitioner.

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Appendix in the above matter has been served on opposing counsel, Jennifer Ellis Roberts, Assistant Attorney General, by mailing in an envelope properly addressed to the Office of the Attorney General, P. O. Box 11549, Columbia, SC 29211, with postage prepaid on this the 18th day of August, 2014.


TARA DAWN SHURLING
Attorney and Counselor at Law
S. C. Bar No. 5099

3614 Landmark Drive, Suite A
Columbia, South Carolina 29204
(803) 738-8622

ATTORNEY FOR PETITIONER.

SWORN TO BEFORE me this 18th day
of August, 2014.


NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires 2/28/24

20500

STATE OF SOUTH CAROLINA
COURT OF APPEALS
APPEAL FROM LEXINGTON COUNTY
COURT OF GENERAL SESSIONS

The Honorable Alexander Macaulay, Circuit Court Judge

Indictments Nos. 2011-GS-32-2259, 2011-GS-32-2261

The State of South Carolina Respondent,

v.

Benjamin J. Newman Appellant.

RECORD ON APPEAL

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FILED
CLERK OF COURT
LEXINGTON COUNTY, SOUTH CAROLINA
2011

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WITNESSES

Lexington County Sheriffs Department

Brannon D. Slice

Law Enforcement Case #: 11022609

ARREST WARRANT NUMBER

M302783

ACTION OF GRAND JURY

Foreperson of Grand Jury

Date: 8/8/11

VERDICT

GUILTY

Foreperson of Petit Jury

Date: 10-17-12

DOCKET NO. 2011GS3202259

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

AUGUST TERM 2011

THE STATE

vs.

Benjamin J. Newman

CDR #: 2360

Indictment for

**TRAFFICKING MARIJUANA (10 POUNDS
OR MORE, BUT LESS THAN 100
POUNDS)**

§ 44-53-0370(e)(1)(a)(1)

DONALD V. MYERS, SOLICITOR

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

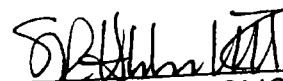
)
) INDICTMENT FOR
) TRAFFICKING MARIJUANA (10 POUNDS OR
) MORE, BUT LESS THAN 100 POUNDS)

)
§ 44-53-0370(e)(1)(a)(1)

At a Court of General Sessions, convened on AUGUST 2011, the Grand Jurors of Lexington County present upon their oath:

That **Benjamin J. Newman** did in Lexington County, South Carolina on or about June 5, 2011, knowingly sell, cultivate, manufacture, deliver, purchase, or bring into this State, or did provide financial assistance or otherwise, aid, abet, attempt, or conspire to sell, manufacture, cultivate, deliver, purchase, or bring into this State, or was knowingly in actual or constructive possession of or did knowingly and intentionally attempt to become in actual or constructive possession of marijuana, a controlled substance under the provisions of § 44-53-110, *et. seq.* of the South Carolina Code of Laws (1976), as amended, in a quantity of ten (10) pounds or more, but less than one hundred (100) pounds, in violation of Section 44-53-370 (e)(1)(a)(1) of the South Carolina Code of Laws (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



ASSISTANT SOLICITOR

WITNESSES

Lexington County Sheriffs Department

Brannon D. Slice

Law Enforcement Case #: 11022609

ARREST WARRANT NUMBER

M302782

ACTION OF GRAND JURY

Foreperson of Grand Jury

Date: 8/2/11

VERDICT

GUILTY

Foreperson of Petit Jury

Date: 10-17-12

DOCKET NO. 2011GS3202261

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

AUGUST TERM 2011

THE STATE

vs.

Benjamin J. Newman

CDR #: 0281

Indictment for

**TRAFFICKING COCAINE (400 GRAMS
OR MORE)**

§ 44-53-0370(e)(2)(e)

DONALD V. MYERS, SOLICITOR

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)
)

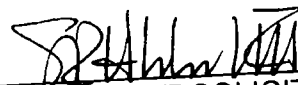
INDICTMENT FOR
TRAFFICKING COCAINE (400 GRAMS OR
MORE)

§ 44-53-0370(e)(2)(e)

At a Court of General Sessions, convened on AUGUST 2011, the Grand Jurors of Lexington County present upon their oath:

That **Benjamin J. Newman** did in Lexington County, South Carolina on or about June 5, 2011, knowingly sell, manufacture, deliver, purchase, or bring into this State, or did provide financial assistance or otherwise, aid, abet, attempt, or conspire to sell, manufacture, deliver, purchase, or bring into this State, or was knowingly in actual or constructive possession of or did knowingly attempt to become in actual or constructive possession of cocaine, a controlled substance under the provisions of § 44-53-110, et. seq. of the South Carolina Code of Laws (1976), as amended, in a quantity of four hundred (400) grams or more , in violation of § 44-53-370(e)(2)(e), of the South Carolina Code of Laws (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

County of LEXINGTON

SEARCH WARRANT

Date 6/5/11

Officer DETECTIVE DENNIS TRACY


6-5-11
2:27 pm

STATE OF SOUTH CAROLINA

SEARCH WARRANT

Form Approved by
S.C. Attorney General
Section 17-13-160
March 16, 1979

COUNTY OF LEXINGTON

0 ANY BONDED LAW ENFORCEMENT OFFICER OF THIS STATE OR COUNTY OR OF THE MUNICIPALITY
OF LEXINGTON

It appearing from the attached affidavit that there are reasonable grounds to believe that certain property subject to seizure under provisions of Section 17-13-140, 1976 Code of Laws of South Carolina, as amended, is located on the following premises:

DESCRIPTION OF PREMISES (PERSON, PLACE OR THING)
TO BE SEARCHED

LOCATED IN THE LEXINGTON AREA OF LEXINGTON COUNTY, SC, DESCRIBED AS A TAN IN
COLOR TRAILER WITH WHITE UNDERPINNING AND GREEN TRIM. THIS WARRANT SHALL INCLUDE ANY VEHICLES
ON THE PROPERTY AS WELL AS ANY LOCKED CONTAINERS AND OUTBUILDINGS. THE NUMBERS "423" ARE ON THE
SIDE OF THE FRONT DOOR IN BLACK.

Now, therefore, you are hereby authorized to search the subject premises for the property described below, and to seize such property if found:

DESCRIPTION OF PROPERTY

ANY AND ALL NARCOTICS INCLUDING, BUT NOT LIMITED TO, COCAINE, MARIJUANA, ECSTASY, HEROIN, CRACK
COCAINE AND METHAMPHETAMINE. ANY AND ALL ITEMS ASSOCIATED WITH DRUG TRAFFICKING INCLUDING
PACKING MATERIALS, CUTTING AGENTS, SCALES, ELECTRONIC AND PAPER RECORDS, AND PHONES. ANY AND
ALL CURRENCY ASSOCIATED WITH DRUG TRAFFICKING, WEAPONS, AND ANY AND ALL OTHER ITEMS OF
CONTRABAND.

This Search Warrant shall not be valid for more than ten days from the date of issuance.

A written inventory of all property seized pursuant to this Search Warrant shall be made to

2206 E. KENNEDY

within ten days from the date of this warrant, such inventory to be signed by the officer executing this warrant, and a copy of such inventory shall be furnished to the person whose premises are searched if demand for such copy is made.

A copy of this Search Warrant shall be delivered to the person in charge of the premises searched at the time of such search if practicable, and, if not, to such person as soon thereafter as is practicable; in the event the identity of the person in charge is not known or if such person cannot be found after reasonable diligence in attempting to locate the person, a copy shall be attached to a prominent place on such premises.

LEXINGTON, S. C.

JUNE 05, 20 11



Signature of Judge

(L. S.)

STATE OF SOUTH CAROLINA

AFFIDAVIT

COUNTY OF LEXINGTON

Personally appeared before me, one DETECTIVE DENNIS TRACY
 who, being duly sworn, says that there is probable cause to believe that certain property subject to seizure under provisions
 of Section 17-13-140, 1976 Code of Laws of South Carolina, as amended, is located on the following premises in this County:

DESCRIPTION OF PROPERTY SOUGHT

ANY AND ALL NARCOTICS INCLUDING, BUT NOT LIMITED TO, COCAINE, MARIJUANA, ECSTASY, HEROIN, CRACK COCAINE AND METHAMPHETAMINE ANY AND

ALL ITEMS ASSOCIATED WITH DRUG TRAFFICKING INCLUDING PACKING MATERIALS, CUTTING AGENTS, SCALES, ELECTRONIC AND PAPER RECORDS, AND

PHONES, ANY AND ALL CURRENCY ASSOCIATED WITH DRUG TRAFFICKING, WEAPONS, AND ANY AND ALL OTHER ITEMS OF CONTRABAND

DESCRIPTION OF PREMISES (PERSON, PLACE OR THING)
 TO BE SEARCHED

LOCATED IN THE LEXINGTON AREA OF LEXINGTON COUNTY, SC, DESCRIBED AS A TAN IN
COLOR TRAILER WITH WHITE UNDERPINNING AND GREEN TRIM. THIS WARRANT SHALL INCLUDE ANY VEHICLES
ON THE PROPERTY AS WELL AS ANY LOCKED CONTAINERS AND OUTBUILDINGS. THE NUMBERS "423" ARE ON THE
SIDE OF THE FRONT DOOR IN BLACK.

REASON FOR AFFIANT'S BELIEF THAT THE
 PROPERTY SOUGHT IS ON THE SUBJECT PREMISES

AGENTS OF THE LCMANET CONDUCTED A BUY-BUST OPERATION AT THE ABOVE LISTED LOCATION, 423
LONGVIEW ~~ROAD~~ ^{STREET}, IN THE WEST COLUMBIA AREA OF LEXINGTON COUNTY, SC. PURSUANT TO THIS BUY-BUST,
AGENTS TRADED APPROXIMATELY 50 POUNDS OF MARIJUANA FOR A QUANTITY OF WHITE MATERIAL
REPRESENTED AS COCAINE. AGENTS REQUEST A SEARCH WARRANT TO RECOVER THE ORIGINAL FIVE BLOCKS OF
MARIJUANA (APPROX 50 POUNDS), THE MATERIAL REPRESENTED AS COCAINE, AND ANY OTHER ITEMS OF
EVIDENCE TO SUBSTANTIATE THE TRAFFICKING AND DISTRIBUTION OF NARCOTICS.

Sworn to and Subscribed before me

this 5TH day of JUNE, 2011

(L. S.)

Signature of Judge

Affiant

Address 521 GIBSON ROADLEXINGTON, SCPhone 803-785-8230

LE# 11022609

007

RETURN

I received the attached Search Warrant 06/05, 20 11, and have executed it as follows:

On 06/05, 20 11 at 230 o'clock 7 M, I searched

(the person) described in the warrant and (the premises)

I left a copy of the warrant with RESIDENCE

Name of person searched or "at the place of search" with.
Together with a receipt for the items seized.

The following is an inventory of property taken pursuant to the warrant:

- (1) FIVE BAGS OF GREEN PLANT MATERIAL CONSISTENT w/ MARIJUANA LOCATED IN AREA BY KITCHEN BY TUCKER (BARNES)
- (2) QUANTITY OF OFF-WHITE MATERIAL CONSISTENT w/ COCAINE LOCATED IN AREA BY KITCHEN BY TUCKER (BARNES)
- (3) ONE MISC. MISC. BULLETS (SEE # K 716763) LOCATED IN LAUNDRY ROOM BY BARNES
- (4) ONE ZIPPER BAG w/ GREEN PLANT MATERIAL LOCATED IN KITCHEN BY BARNES
- (5) THREE AMMUNITION CONTAINING A TOTAL OF 42 7.62MM BULLETS LOCATED IN KITCHEN BY BARNES
- (6) EIGHT 7.62MM BULLETS LOCATED IN KITCHEN BY BARNES
- (7) MISC. SMALL ORANGE BAGS LOCATED IN CLOSET BY BARNES
- (8) 22 SHOTGUN SHELLS LOCATED IN DRAWER IN LIVING ROOM BY BARNES
- (9) MISC. PIPERAZINE LOCATED MASTER BEDROOM BY SETTEE
- (10) TWO SHOTGUN SHELLS AND FIVE 12 BULLETS LOCATED IN LIVING ROOM BY BARNES
- (11) ONE BOX OF 7.62MM BULLETS (20) LOCATED BY SETTEE IN MASTER BEDROOM
- (12) 14 BULLETS OF SHOTGUN SHELLS AND ONE BOX OF BULLETS LOCATED BY SETTEE IN MASTER BATH

This inventory was made in the presence of _____

AND _____

I swear that this Inventory is a true and detailed account of all the property taken by me on the warrant.

SWORN to before me this _____

day of _____, 20 _____

(L. S.)

Signature of Judge

(Signature of Officer Executing Warrant)

- (13) ONE WHEELS CRUIZ LOCATED IN DRIVEWAY BY BASS

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF
STATE

Lexington

VS.

Benjamin J Newman

AKA:

Race: White

Sex: M

Age: 26

DOB:

SS#:

Address:

City, State, Zip:

DL#:

SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Drugs / Trafficking in cocaine, 400 g or more

INDICTMENT/CASE#: 2011GS3202261

A/W#: M302782

Date of Offense: 6/5/2011

S.C. Code § : 44-53-0370(e)(2)(e)

CDR Code #: 0281

SENTENCE SHEET

25-30 yrs
and
\$200,000☒ CONVICTED OF or ☐ PLEADS

in violation of § 44-53-0370(e)(2)(e) of the S.C. Code of Laws, bearing CDR Code # 0281

☐ NON-VIOLENT ☒ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTORNEY

Solicitor

SC Bar# 015294

Defendant

Attorney for Defendant

SC Bar# 6149

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 25 days/months/years or ☐ under the Youthful Offender Act not to exceed years

and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment

of \$, plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. 30 days☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

Fine:

	\$	\$
14-1-206 (Assessments 107.5 %)		\$
14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100
14-1-211(A)(2) (DUI Surcharge)	\$100	\$
56-5-2995 (DUI Assessment)	\$12	\$
56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
14-1-212 (Law Enforce. Funding)	\$25	\$
14-1-213 (Drug Court Surcharge)	\$150	\$ 135
50-21-114 (BUI Breath Test Fee)	\$50	\$
56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ 5
to County (if paid in installments)		\$
TOTAL		\$ 280

Clerk of Court/ Deputy Clerk

Court Reporter:

SCA/217 (03/2011)

days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling ☒Random Drug/Alcohol testing ☒

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning

\$ paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Presiding Judge

Judge Code:

Sentence Date:

10/17/12

STATE OF SOUTH CAROLINA
COURT OF APPEALS
APPEAL FROM LEXINGTON COUNTY
COURT OF GENERAL SESSIONS

The Honorable Alexander Macaulay, Circuit Court Judge
Indictments Nos. 2011-GS-32-2259, 2011-GS-32-2261

The State of South Carolina Respondent,

v.

Benjamin J. Newman Appellant.

NOTICE OF INTENT TO APPEAL

Benjamin J. Newman appeals his conviction and sentence in this case. The sentence was imposed by the Honorable Alexander Macaulay on October 17, 2012.

October 23, 2012


Robert T. Williams, Sr.
Williams, Hendrix, Steigner & Brink, P.A.
206 East Main Street
Post Office Box 849
Lexington, South Carolina 29072
(803) 359-1550

Other Counsel of Record:
Rick Hubbard, Deputy Solicitor
Dale Scott, Assistant Solicitor
Eleventh Judicial Circuit
205 East Main Street
Lexington, South Carolina 29072
(803) 785-8352

RECEIVED
OCT 25 2012
SC Court of Appeals

STATE OF SOUTH CAROLINA
COURT OF APPEALS
APPEAL FROM LEXINGTON COUNTY
COURT OF GENERAL SESSIONS

The Honorable Alexander Macaulay, Circuit Court Judge

Indictments Nos. 2011-GS-32-2259, 2011-GS-32-2261

The State of South Carolina Respondent,

v.

Benjamin J. Newman Appellant.

PROOF OF SERVICE

I certify that on October 23, 2012, I have served the within **Notice of Intent to Appeal** upon the individual(s) named below by placing a copy of same in the United States Mail, postage prepaid and return address clearly indicated to the address(es) below:

Rick Hubbard, Deputy Solicitor
Dale Scott, Assistant Solicitor
Eleventh Judicial Circuit
205 East Main Street
Lexington, South Carolina 29072

I further certify that all parties required to be served have been served.

Dated: October 23, 2012

RECEIVED
OCT 25 2012

SC Court of Appeals


Robert T. Williams, Sr.
Williams, Hendrix, Steigner & Brink, P.A.
206 East Main Street
Post Office 849
Lexington, SC 29072
(803) 359-1550



The Supreme Court of South Carolina

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TITLE OF (V. 2011GS3202259
CASE (
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Notice

Upon request and for good cause shown, Carol Thueme, Court Reporter, is hereby granted an extension up to and including February 01, 2013 to prepare and deliver the Transcript of Record in the above case.

Desiree Allen
Court Services Manager
South Carolina Court Administration

Columbia, South Carolina
01/04/2013

cc: Division of Appellate Defense
Office of Attorney General
Carol Thueme



The Supreme Court of South Carolina

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CASE (
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Notice

Upon request and for good cause shown, Carol Thueme, Court Reporter, is hereby granted an extension up to and including March 01, 2013 to prepare and deliver the Transcript of Record in the above case.

Desiree Allen
Court Services Manager
South Carolina Court Administration

Columbia, South Carolina
02/04/2013

cc: Robert T. Williams, Sr., Esq.
Office of Attorney General
Carol Thueme



The Supreme Court of South Carolina

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Notice

Upon request and for good cause shown, Carol Thueme, Court Reporter, is hereby granted an extension up to and including April 01, 2013 to prepare and deliver the Transcript of Record in the above case.

Desiree Allen
Court Services Manager
South Carolina Court Administration

Columbia, South Carolina
03/04/2013

cc: Robert T. Williams, Sr., Esq.
Office of Attorney General
Carol Thueme

The South Carolina Court of Appeals

The State, Respondent,

v.

Benjamin Newman, Appellant.

Appellate Case No. 2012-213383

ORDER

The request for an extension to serve and file the initial brief of appellant and designation of matter is granted and extended until June 5, 2013. Pursuant to the order of the Supreme Court of South Carolina dated March 18, 2009 (www.sccourts.org/courtOrders/displayOrder.cfm?orderNo=2009-03-18-01), any further extension request must be based on a showing of good cause.

FOR THE COURT

BY V. Claire Allen, Deputy
CLERK

Columbia, South Carolina

cc:

Robert T. Williams, Sr.

Salley W. Elliott

FILED
JES 4/22/13

1 THE COURT: This is the case of State versus
2 Benjamin J. Newman, 2011-GS-32-2259, on a charge of
3 trafficking marijuana in the amount of ten to 100 pounds.
4 2011-GS-32-2261, trafficking cocaine, 400 grams or more.

5 And I understand that we have some motions.

6 Anything from the State?

7 MR. HUBBARD: Your Honor, I guess it's
8 Mr. Williams' motion, and just so I know exactly what he's
9 seeking.

10 MR. WILLIAMS: Your Honor, there are actually
11 two motions; one is a motion to dismiss the charges
12 against my client --

13 THE COURT: Both indictments?

14 MR. WILLIAMS: Yes, sir.

15 And the other motion is to suppress evidence.

16 THE COURT: Well, if you're successful on the
17 first of the two motions, then we don't have get to the
18 second, so let's take up the first.

19 MR. WILLIAMS: Your Honor, what is interesting
20 in this case -- and I'm going to break it down to its
21 simplest terms -- is there was a recording made at the
22 time of the bust that was made, and the Solicitor has a
23 copy of that recording. And in that recording, there
24 is --

25 THE COURT: Is it a video or audio?

1 stating -- because he's critiquing his other officers, and
2 he tells them that they did certain things wrong, that
3 they were searching the location before the search warrant
4 got there. So, Your Honor, that's where the motion to
5 suppress the evidence comes from. And perhaps, Your
6 Honor, the best evidence of that would be the actual
7 playing of the recording that the police officer --

8 THE COURT: Well, let me see. All right. Both
9 indictments you seek to dismiss for, what,
10 prosecutorial --

11 MR. WILLIAMS: For failing -- for, I guess, you
12 know, I hate to use that term, "prosecutorial misconduct,"
13 because I get accused of saying terrible things when you
14 do that. But it's failing to give the evidence that may
15 be supportive of a defense of my client, and that is, the
16 video recording showing how the actual bust went down.

17 THE COURT: All right. Mr. Hubbard?

18 MR. SCOTT: Your Honor, Dale Scott, Assistant
19 Solicitor, 11th Circuit.

20 THE COURT: Yes, sir.

21 MR. SCOTT: Your Honor, I've met with
22 Mr. Williams multiple times, reviewed the discovery. What
23 he's asking for simply does not exist.

24 THE COURT: Well, I was just going to add, the
25 simplest thing is say there is no video.

1 MR. SCOTT: There is no video.

2 I think we're both in agreement that the audio
3 does -- it has -- Brian Setree is the officer's voice you
4 hear. He was with the sheriff's department at this time
5 last year; he's no longer with that department. He's a
6 private investigator now. He's talking about Nick Carver.
7 He was our undercover officer in this case.

8 At the time that this buy-bust went down, he was
9 wearing a recorder, an audio recorder, in his pocket. He
10 also had a wristwatch that was intended to gain video, it
11 failed to do so. There was never any video obtained from
12 the watch. This was a new piece of technology that the
13 sheriff's department was attempting to use.

14 Simply put, there was no video. There was
15 attempted -- they did attempt to gain video; there wasn't
16 any.

17 THE COURT: Was there any sort of permanent
18 recording?

19 MR. SCOTT: No video, Your Honor.

20 THE COURT: I mean, not anything that would
21 be -- that you could use, as much as anything at all?

22 MR. SCOTT: Absolutely nothing, Your Honor.
23 They failed to turn the video device on.

24 THE COURT: Well, I mean, that's what I'm
25 asking.

1 All right. Well, let's listen to the tape.

2 You did say that the audio would be of help in
3 this?

4 MR. SCOTT: The audio did work, Your Honor.
5 We're prepared to play that now.

6 THE COURT: All right.

7 MR. HUBBARD: Your Honor, it's long. I'll try
8 to find that piece.

9 THE COURT: Do you have something that might be
10 of help there, Mr. Williams?

11 MR. WILLIAMS: Yes, sir. I gave that
12 information to the Solicitor earlier, I want to say
13 Friday, it's like --

14 MR. SCOTT: Your Honor, it is worth noting that
15 at the time these statements are made by Agent Setree on
16 the audio, they did not know at that time that the video
17 recording device failed to obtain any video. It wasn't
18 until they got back to headquarters and began reviewing
19 the electronic devices that they realized they had audio,
20 but indeed, no video was obtained.

21 THE COURT: In other words, they were not part
22 of the same system?

23 MR. SCOTT: No, Your Honor. And I think we can
24 proffer testimony from one or two of these agents
25 regarding that.

1 From my understanding, the audio recording
2 device was worn in Agent Carver's pocket. It was probably
3 something similar to what the court reporter has, just a
4 standard audio recording device.

5 The video is disguised as a wristwatch. I
6 believe it has its own, I guess, hard drive that they
7 would obtain the video off of, should it work properly.
8 As I said, it was a new piece of equipment that they
9 didn't have experience using and obviously it did not
10 operate.

11 THE COURT: Are we looking for the audio?

12 MR. HUBBARD: Yes, sir.

13 THE COURT: All right. Well, let's take the
14 witness that you want to rely on.

15 Now I am taking up the motion to suppress.

16 MR. SCOTT: The State offers Brandon Slice, Your
17 Honor, with the Lexington County Narcotics Enforcement
18 Team.

19 THE CLERK: Raise your right hand.

20 BRANDON SLICE, after being duly sworn, testified
21 as follows:

22 THE COURT: Thank you, ma'am.

23 All right. If you would, please give us your
24 full name for the record, spelling your last name.

25 THE WITNESS: My full name is Brandon Slice. My

1 last name is spelled S-L-I-C-E.

2 THE COURT: Very good. Thank you, sir.

3 IN CAMERA DIRECT EXAMINATION

4 BY MR. SCOTT:

5 Q Mr. Slice, where are you employed?

6 A Lexington County Sheriff's Department.

7 Q And how long have you been with that agency?

8 A Going on 13 years.

9 Q Specifically, what area or, I guess, what is the team
10 you're on, what's that called with the sheriff's
11 department?

12 A It's the Lexington County Multi-Agency Narcotics
13 Enforcement Team. It's comprised of a few people from the
14 municipalities and mostly sheriff's department agents.

15 Q Okay. And its primary objective is, what?

16 (Audio recording begins to play but is not
17 transcribed.)

18 MR. HUBBARD: I'm trying to queue it up, Your
19 Honor. I apologize.

20 THE COURT: Well, let's turn the speakers down
21 or off.

22 MR. HUBBARD: I did, Your Honor.

23 THE COURT: All right. You may proceed.

24 BY MR. SCOTT:

25 Q What is the primary objective of the Narcotics

1 Enforcement Team?

2 A To seize narcotics and arrest individuals that are
3 involved in the trafficking and sale of such items.

4 Q Okay. At some point last year, did you learn of the
5 name of Benji Newman?

6 A Yes, I did.

7 Q And how did you hear about Mr. Newman?

8 A It was actually another case involving another
9 individual by the name of Scott Browder, another one named
10 John Barnes, where we had information that Mr. Newman
11 was -- the defendant, Mr. Newman, was involved with the
12 trafficking of marijuana -- of marijuana and cocaine.

13 Q Okay. And did you develop this information from
14 multiple sources?

15 A Multiple sources.

16 Q Okay. And as a result of this information, what did
17 you do?

18 A Well, first we attempted surveillance on Mr. Newman,
19 and then we developed an informant.

20 We actually had an informant come to us, and the
21 informant knew Mr. Newman, and we started making drug
22 purchases from Mr. Newman, and then we were able to
23 actually introduce an undercover agent.

24 Q And were you able to record any of these transactions
25 via audio means?

1 A Yes, every one of them was recorded via audio means.

2 Q Did you attempt to record with video equipment?

3 A Yes, both times we tried to record with video
4 equipment, it actually failed.

5 Q Okay. Let me direct you to June 5th of last year.

6 That would be the date of the incident that we're here for
7 trial today.

8 Tell me about that day. What was supposed to be
9 going on June 5th, 2011?

10 A Well, originally, June 5th, 2011, there was not
11 supposed to be anything going on. We had a plan, but we
12 were to obtain information through the informant that the
13 defendant Mr. Newman was pressing us to -- pressing the
14 informant to bring 50 pounds of marijuana in exchange for
15 27 ounces of cocaine to him.

16 Q Okay. Let me stop you real quick. You said it
17 wasn't supposed to go down June 5th.

18 When was this deal supposed to go down?

19 A We had it planned to go down earlier in the week.

20 Q But you said the defendant became, what you described
21 as, pushy?

22 A Right. He was very pushy. And we were -- we were
23 told through that source that he -- that Mr. Newman had
24 stated if he won't come meet me today, meaning the
25 undercover officer, then he can find -- he can find

1 marijuana somewhere else.

2 Q So is it your experience with the Narcotics
3 Enforcement Team that maybe you have to be flexible with
4 some of these investigations, and just because you
5 initially wanted it to be on the 7th, sometimes you have
6 to change things depending on what the dealer wants to do?

7 A That's correct.

8 Q Okay. So you sort of, I guess, have to get
9 everything ready on June 5th, 2011.

10 You said you had a CI who was giving you this
11 information. Who else was involved in this case?

12 A Agent Setree was involved in this case, Agent Laney
13 was involved in this case, and also Agent Carver.

14 Q Agent Carver, was he with the Narcotics Enforcement
15 Team at the time?

16 A Yes, he was.

17 Q And how long had he been with the Narcotics
18 Enforcement Team?

19 A I believe he would have been with the team about a
20 month.

21 Q Okay. So he was fairly pretty new, I guess, with
22 your team at that point?

23 A That's correct.

24 Q What was the plan? How was it supposed to work that
25 day?

1 A Well, we'd already secured two prior search warrants,
2 one for Mr. -- the defendant's residence on Clermont Lakes
3 Drive. We also had a search warrant for another, 433 Long
4 Spires Road where we had done prior deals on Long Spires.
5 We already had those search warrants in hand.

6 The deal was originally supposed to take place
7 at 433 Long Spires where the search was. That was the
8 plan we had to enact the SWAT team and everybody else to
9 get ready for this raid because once it went, everything
10 had to go at the same time.

11 And once we met -- once myself and Agent Laney
12 and Agent Carver met with the informant, we was under the
13 -- and Agent Setree was briefing everybody about the
14 search warrant on Long Spires, we obtained information
15 through a telephone call from the CI and the defendant
16 that the defendant was at -- he was on the Longview -- at
17 the Longview address, which is also an address that we
18 had.

19 Q So, again, the plan changed. You were supposed to go
20 to 433 Long Spires Road, instead he changed it at the last
21 minute to 423 Longview Road?

22 A Correct.

23 Q Okay. What did you -- what was the plan once you got
24 to 423 Longview, how was this operation supposed to work?

25 A Well, the plan was Agent Carver was to bring in

1 50 pounds of marijuana that Mr. Newman had wanted in
2 exchange for 27 ounces of cocaine. Once the exchange was
3 made and Agent Carver had seized the cocaine, the SWAT
4 team was going to do what we refer to as a buy-bust.

5 Q Okay. Let me stop you one second again.

6 Agent Carver was working undercover. He's a law
7 enforcement officer, but he was going to be working
8 undercover?

9 A Correct.

10 Q So he himself went into 423 Longview Street along
11 with the CI?

12 A Correct.

13 Q What was your role?

14 A Well, my role as the case agent was to meet up with
15 them first, make sure they had the proper equipment on, a
16 wire, recording devices and a back-up device, and then I
17 monitor the deal basically for his safety because I was
18 the only -- myself and Agent Laney were riding together.
19 We were the only ones who could actually hear the deal.

20 Q Who wore the wire?

21 A The wire was worn by the informant.

22 Q Okay. And this is a live audio feed that you're
23 monitoring in realtime?

24 A That's correct.

25 Q Who wore the audio recording device?

1 A Agent Carver.

2 Q And what were the other means of surveillance that
3 you attempted?

4 A Surveillance?

5 Q Or recording.

6 A Recording? We had a new piece of equipment that was
7 a -- it's a watch. It was ordered from China. It's a
8 cheap-made piece of equipment, looks like any old regular
9 Timex Expedition watch.

10 The instructions on it was like on a little
11 sheet of paper, and they were not very clear on how to do
12 it, how to actually get the recorder. It would take
13 pictures and it would take video, and it was one button
14 that you had to push, and there was a very, very tiny
15 light on it that would cut on.

16 So prior to, we searched the informant's car,
17 and we searched the informant, placed the wire, the
18 monitoring device, so we could hear the deal, on the
19 informant and Mr. Carver, Agent Carver, had the watch and
20 the digital recorder.

21 However, when you hit the button -- and I still
22 can't tell you to this day because I haven't used it since
23 then, I wish I -- when you hit the button, you have to
24 hold it down in your hand, and there's a little tiny --
25 it's like a pinhole light that will cut on. And I don't

1 whether it flashes once or twice, but I was under the
2 impression, I believe, that whichever way it flashed, that
3 that was when it was recording. Then the light shuts off
4 and that's it. You don't -- there's no light to cut on
5 that let's you know it's recording. It just -- it's
6 supposed to be recording. And, undoubtedly, when I hit
7 the button, I didn't -- I never cut the recorder on the --
8 the videotape on.

9 Q Well, there's no light on, there's no way to tell if
10 it's recording just by looking at it because the idea of
11 it is that you don't want people to know you're recording;
12 is that fair?

13 A Correct. This was supposed to be a covert piece of
14 equipment.

15 Q And what was your level of experience using that
16 piece of equipment on June 5th, 2011?

17 A That was the second time. And the first time it
18 didn't work, either.

19 Q All right. You said you don't use it anymore. Why
20 is that?

21 A Because I've never been able to get it to work.

22 Q Well, okay. So I think I interrupted you, you were
23 discussing Carver was wearing the audio recording device.

24 Is that just a tape recorder, essentially?

25 A It's just a digital recorder.

1 Q Kind of like you get from Home Depot or somewhere?

2 A Right. It's got a file setting where you can
3 download it.

4 Q And to be clear, are these all separate and distinct
5 recording devices or do they feed into one system?

6 A No, every one of them is separate.

7 Q Okay. Agent Carver -- oh, I did mention this
8 earlier, I think, but to your -- let me cover the
9 operation first.

10 Carver went in wearing a recording device, the
11 wire is on the CI, you're monitoring from the vehicle
12 outside; is that correct?

13 A I'm monitoring down the street.

14 Q Okay. And what did you hear from the wire?

15 A At first, it was -- it was pretty clear. I heard
16 some wind and background noise, but where the defendant
17 and Agent Carver met up, it was uphill, I was downhill
18 from it. So once they got into the residence, I was
19 unable to hear a whole lot of anything going on because of
20 the inside of the house, the atmosphere can do a lot of
21 things that make you not be able not to hear.

22 Q Well, as lead agent on an undercover operation like
23 this, it's the undercover officer and CI's safety that's
24 the primary concern; is that fair to say?

25 A That's correct.

1 Q So what did you do once you lost, I guess, audio on
2 the wire?

3 A Made a telephone call to the undercover to make sure
4 he was all right.

5 Q And you did this a number of times; is that --

6 A Correct.

7 Q -- fair to say? Okay.

8 At some point, did you get a signal that the
9 exchanged had occurred; in other words, Carver had
10 exchanged the 50 pounds of marijuana for 27 ounces of
11 cocaine?

12 A I believe I called Agent Carver. I said, is
13 everything okay, and he said, yes. He said, done here in
14 a minute, or something to that effect, and I don't want to
15 say his exact words because I can't remember. But it was
16 coming in and out in the -- on my end where I received the
17 signal, and I heard him talking about -- he was talking
18 about the cocaine that he had just given him, given the
19 undercover agent, so I made the call to go ahead, for the
20 SWAT team to go ahead and conduct the arrest.

21 Q Did you enter 423 Longview after the SWAT team
22 arrived?

23 A I did.

24 Q And what did you observe?

25 A I observed marijuana sitting on the table and

1 Agent Carver and the informant laying on the -- laying on
2 the floor. And I observed the defendant in the backyard.

3 Q The defendant was arrested in the backyard?

4 A Correct.

5 Q Okay. What happened next?

6 A Well, I took the informant away from the scene --
7 well, took him out of the house because he had no idea
8 what was going on. And I believe either Agent Setree or
9 Agent Barnes took our undercover out.

10 Q Okay. Was a search warrant obtained for that
11 property?

12 A It was.

13 Q And who obtained the search warrant?

14 A Agent Tracy. We'd already had that in place during
15 the operation plan.

16 Q It was already typed up, but it wasn't signed yet?

17 A I'm pretty sure it would have been typed out because
18 it was there pretty quickly.

19 Q Okay. But he obtained the Judge's signature on it;
20 is that correct?

21 A That's correct.

22 Q Do you know -- I don't know if you know or not, but
23 do you know when that warrant was signed?

24 A It was wrote on the warrant, I think 2:29 maybe.

25 Q P.m.?

1 A P.m. I'd have to look. I'm pretty sure that's about
2 the time it was.

3 Q And when did this operation begin? When did you meet
4 with the CI?

5 A Around 1330, that was 1:30 p.m.

6 Q So approximately one hour after this operation began,
7 the search warrant was signed?

8 A That's correct.

9 Q Did you participate in the search once the warrant
10 was obtained?

11 A I was going to another residence. I participated a
12 little bit in the search, but I was headed to Clermont
13 Lakes.

14 Q Clermont is another piece of property owned by
15 Mr. Newman that you previously obtained a search warrant
16 on?

17 A Correct.

18 Q Okay. After Mr. Newman was arrested and the other
19 search warrants were executed, at what point do you review
20 the audio that Agent Carver obtained, and when did you
21 attempt to download the video from the wristwatch?

22 A It would have been the next day.

23 Q Okay. So you didn't listen to any of that audio on
24 June 5th, 2011?

25 A No. It went well into the night.

1 Q The search?

2 A The search.

3 Q And you didn't attempt to extract any of the video
4 from the watch on June 5th, 2011?

5 A No.

6 Q So is it fair to say you have no way of knowing what
7 you had on either the audio or the video recording device
8 until June 6th, 2011?

9 A Correct.

10 Q Okay. Do you recall, what did it look like when you
11 attempted to download the wristwatch video?

12 A There was nothing on there.

13 Q No --

14 A There was nothing. The video --

15 Q Absolutely nothing is your testimony?

16 A Absolutely nothing. The video's was never
17 recoverable.

18 MR. SCOTT: Thank you.

19 Please answer any question Mr. Williams may
20 have.

21 IN CAMERA CROSS-EXAMINATION

22 BY MR. WILLIAMS:

23 Q Officer, you said that you attempted to download this
24 information. As I understand it is what you're saying is
25 there are actually two audio recordings, and you were

1 trying to have two audio recordings and one video
2 recording?

3 A The watch recovered has video and audio, and we also
4 have a digital recorder.

5 Q All right. But -- okay. So the watch is what you're
6 referring to on Carver as having audio and video, and then
7 you had just an audio on the informant; is that right?

8 A No. I had an audio on Agent Carver, and I had a
9 watch on Agent Carver.

10 Q So you actually were going to have three audios?

11 A No. The informant had a wire that doesn't record.

12 Q Okay.

13 THE COURT: When you say a wire, are you talking
14 about a microphone of some sort?

15 THE WITNESS: It's a transmitter.

16 THE COURT: Oh, a transmitter.

17 THE WITNESS: Right. It just lets is --

18 THE COURT: But not a recording device?

19 THE WITNESS: Correct.

20 THE COURT: All right.

21 BY MR. WILLIAMS:

22 Q So the informant had a wire, and then Carver had an
23 audio tape and the watch?

24 A Correct.

25 Q Now, do you still have the watch?

1 A We have the watch, yes.

2 Q And you said that you were unable to get it to play
3 the next day.

4 What steps have you taken to have the video
5 recorded or checked out by any of the other personnel at
6 the sheriff's department who actually specialize in, I
7 guess, audiovisual stuff or what other outside services
8 have you had to try and pull that information off the
9 watch?

10 A Let me rephrase. I didn't try to extract anything
11 off the watch. Our tech guy, Agent Tracy, is the one that
12 extracts all of our audio and our video off of these
13 things. We don't mess with them because we don't want to
14 accidentally delete anything or anything like that. We
15 just give it to him and he does the downloads.

16 Q All right. So what you're saying is you really can't
17 testify as to whether or not it was on there or not on
18 there because you don't know how to take it down to begin
19 with, it would be some other officer who checks it to see
20 if there's video to it?

21 A Right. I don't know how to.

22 Q All right. So when you were informed by
23 Officer Tracy that the video didn't work, do you know what
24 other agencies or what other efforts were made on behalf
25 of the police to have the video recording downloaded?

1 A Either it's on there or it's not.

2 Q I'm sorry?

3 A Either the recording would be on there or it
4 wouldn't.

5 Q So you're saying you took no steps to have it checked
6 into; is that correct?

7 A I did take steps. I give it to our tech guy.

8 Q But aside from handing it to your tech guy, you did
9 nothing further in regards to see if there's anything on
10 the video?

11 A That's correct.

12 Q Now, as I understand it, there was a search warrant,
13 which was done after the arrest of my client, and it
14 was -- the search warrant was done, you say, approximately
15 an hour after the arrest of my client?

16 A No. We met with the informant and -- to set up
17 the -- to place the wire on the informant, to place the
18 watch on the undercover agent and to place the recorder on
19 the undercover agent at approximately 1330. That's when
20 all monitoring devices were cut on, and they were headed
21 to 423 Longview.

22 Q What was the arrest time that you made on my client?

23 A It would have been however many minutes into the --
24 let's see. It would have been somewhere after 2 o'clock.

25 Q Now, that's in the afternoon, daylight hours?

1 A Afternoon, yes, sir.

2 Q And do you have a copy of the search warrant which
3 you used to execute the search on my client's residence?

4 A I have a copy of all of them.

5 MR. HUBBARD: What was the question?

6 MR. WILLIAMS: A copy of the search warrant that
7 was used to execute the search on my client's residence.

8 THE WITNESS: I have a copy of it.

9 I'm sorry. There's a lot of papers in here.

10 There was a search warrant obtained. It's not
11 in these copies here.

12 BY MR. WILLIAMS:

13 Q Well, here appears to be a copy of a search warrant.
14 Let me ask you if you will look at that and identify that.

15 A This is the search warrant.

16 Q All right. That's the search warrant which you used
17 for purposes of searching the residence; is that correct?

18 A That's correct.

19 Q And how did you obtain a copy of that search warrant?
20 Besides me handing it to you two seconds ago, how did you
21 obtain a copy before you actually searched the residence?

22 A Well, Agent Tracy obtained the search warrant from
23 the Judge. And then afterwards, I had the copy myself.

24 Q All right. And you still -- can you testify as to a
25 period of time that went by, with some sort of proximity,

1 from the time which my client was arrested up until the
2 time which you actually received the search warrant?
3 Because, obviously, you couldn't have had the search
4 warrant until after you reported back to Detective Tracy
5 that you had made the arrest, right?

6 A Right.

7 Q All right. When did you call Detective Tracy?

8 A I didn't call Detective Tracy. It might have been
9 Agent Setree. I'm not sure who called Detective Tracy.

10 Q All right. So how long was it that you sat there at
11 the site and waited on getting a copy of the search
12 warrant?

13 A I guess we sat there -- it was -- I can't tell you an
14 exact amount of time, but it was a matter -- it was a good
15 little while.

16 Q An hour, hour and a half?

17 A No, it wasn't that long. He was ready to get the
18 search warrant moving during the whole operation.

19 Q Maybe an hour, can you say, sir?

20 A No, I don't think it was an hour.

21 Q Well, can you tell us something, then?

22 A Maybe 15, 20 minutes.

23 Q Now, is there any reason why the search warrant that
24 you have reflects a different address on it? It looks
25 like it's been changed.

1 A Well, that's the correct address.

2 Q I'm sorry. What are the two addresses on your search
3 warrant? What's the typed address?

4 A 423 Longview, it says road or street.

5 Q Well, it actually is typed out 423 Longview Road,
6 isn't it?

7 A Correct.

8 Q And then it's marked through, isn't it?

9 A That's correct.

10 Q And then it's changed to street, isn't it?

11 A That's correct.

12 Q Did you make those corrections?

13 A No, I didn't.

14 Q Do you know who made those corrections?

15 A Yes.

16 Q Who made those corrections?

17 A That would be Dennis Tracy.

18 Q Do you know if those corrections were made before or
19 after the search warrant was signed?

20 A It should have been before.

21 Q But you don't know, do you?

22 A You'd have to ask Dennis.

23 Q Now, after you made the arrest of my client, and
24 you're sitting around waiting on someone to get a search
25 warrant, and who -- which judge signed that search

1 warrant?

2 A Judge Reinhart.

3 Q Do you know where Judge Reinhart was at the time?

4 A No, I do not.

5 Q Is it your testimony that the police officers did no
6 searching of the residence or the location where the
7 marijuana and cocaine was until after they had a copy of
8 the search warrant?

9 A Until after we knew the search warrant was signed,
10 correct.

11 Q And, of course, you wouldn't have known that until
12 after somebody told you it was signed. It wasn't signed
13 until after the bust, right?

14 A That's correct.

15 Q Isn't it true that on this recording when you're
16 talking to your various narcotics officers, you're telling
17 them that one of the things that they did wrong was
18 searching the residence before you had the search warrant?

19 A No, that's not correct.

20 MR. WILLIAMS: Your Honor, I'd request --

21 BY MR. WILLIAMS:

22 Q Did you hear Setree, I guess, make that comment?

23 A I heard Setree talking to Agent Carver about the
24 way -- how we operate and why -- why we cut devices off
25 after operations take place.

1 Q Did you hear Officer Setree say that you-all did
2 something wrong by searching the residence before you had
3 the search warrant?

4 A No.

5 MR. WILLIAMS: Your Honor, I guess that's all
6 the questions I have for him. I would like to play the --
7 or either have the Solicitor play the recording.

8 THE COURT: How do spell Setree that you've been
9 talking about?

10 MR. SCOTT: S-E-T-R-E-E.

11 THE COURT: S-E-T-R-E-E? Very good. Thank you.

12 MR. WILLIAMS: Yes, sir. I have no other
13 questions. I believe that the Solicitor is going to call
14 a different witness on that point.

15 MR. SCOTT: Nothing further from this witness,
16 Your Honor.

17 THE COURT: All right. You may step down.
18 Thank you.

19 MR. SCOTT: The State does call Dennis Tracy.

20 DENNIS TRACY, after being duly sworn, testified
21 as follows:

22 MR. WILLIAMS: Your Honor, could I ask the Court
23 to mark that as an exhibit, that --

24 THE COURT: Certainly.

25 MR. HUBBARD: Your Honor, would you mind if we

1 make a clean copy because that was a working copy. Would
2 that be all right?

3 THE COURT: Well, I mean --

4 MR. WILLIAMS: Just a copy.

5 MR. HUBBARD: It has our markings on it. That's
6 why I was going to suggest making a copy.

7 THE COURT: Well, it's a Court's exhibit, it's
8 not introduced in evidence.

9 MR. HUBBARD: All right. But it was our working
10 copy, is what I was getting at.

11 THE COURT: Oh, well, make a copy for this and
12 you can put -- let's have it marked as a Court's exhibit
13 because that's what the witness was testifying to.

14 Excuse me? Have you got a question?

15 MR. HUBBARD: No, sir. I'm trying to find it.

16 THE COURT: Then let me give you an answer.

17 Make a copy of the exhibit after it's been
18 marked as a Court's exhibit.

19 MR. HUBBARD: After it's been marked?

20 THE COURT: After it's been marked as a Court's
21 exhibit if you need something to work from. But I want
22 the exhibit that the witness testified from as the
23 exhibit.

24 MR. HUBBARD: Right.

25 THE COURT: All right. At the break, we can

1 make a copy of it. We'll just have it marked now as an
2 exhibit. That will be Court's Exhibit 1.

3 (WHEREUPON, The Court's Exhibit No. 1 was marked
4 for purposes of the record.)

5 IN CAMERA DIRECT EXAMINATION

6 BY MR. SCOTT:

7 Q Mr. Tracy, where are you employed?

8 A It's Dennis Tracy, T-R-A-C --

9 THE COURT: Let's see. Has he been sworn?

10 THE WITNESS: I have been sworn, yes, Your
11 Honor.

12 THE COURT: Oh, you have. And your name for the
13 record, please.

14 THE WITNESS: Dennis Tracy, T-R-A-C-Y.

15 THE COURT: Very good. Thank you, sir.

16 BY MR. SCOTT:

17 Q Where are you employed, Mr. Tracy?

18 A Lexington County Sheriff's Department.

19 Q And how long have you been there?

20 A I've been at the sheriff's department for going on
21 four years.

22 Q Specifically, which division of the sheriff's
23 department do you work under?

24 A I'm -- I've been assigned to the Narcotics
25 Enforcement Team for the last 11 years.

1 Q And what are your specific duties with that team?

2 A I'm a narcotics agent. I'm also the technical
3 liaison for all the technical equipment we have. I work
4 with the computer systems and forensic downloading of
5 telephones as well as any kind of tech operations
6 including audio or video surveillance.

7 Q Okay. Did you have to undergo any kind of training
8 to become the tech over there at the sheriff's department?

9 A We've had some in-house training. Nothing --
10 nothing's really formalized that we've been through.

11 Q Okay. So as far as being the -- called the computer
12 guy, I guess, is it just specifically the NET team or
13 throughout the whole sheriff's department?

14 A Just the Narcotics Enforcement Team.

15 Q So you would be responsible for, I guess, recordings
16 that are obtained from undercover purchases or any kind of
17 videos that agents or CIs use?

18 A Due to the sensitivity of the information that
19 narcotics deals with, we keep all of our evidence that is
20 electronic, whether it be pictures, audio or video, we
21 keep that off site from the sheriff's department. And I'm
22 the person that is, for lack of a better term, the
23 custodian of all that information.

24 Q Okay. So these recordings are kept under lock and
25 key --

1 A Yes --

2 Q -- is that fair to say?

3 A -- they are.

4 Q And you said for safety precautions. What do you
5 mean by that?

6 A Narcotic investigations a lot of times have the
7 potential to be -- have targets involved in them that we
8 don't want necessarily everybody at the sheriff's
9 department to know who we are investigating, so our
10 information is kept off site at our substation.

11 Q So you're protecting identities of potential targets,
12 but also potential targets --

13 A Informants.

14 Q -- as well as informants?

15 A Yes, sir.

16 Q Did you become involved with the case we're here for
17 today with Benji Newman as a target?

18 A I did.

19 Q How did you come to be involved with that case?

20 A On the incident date, we were called. I believe we
21 may have been called late the night before that this
22 operation timeline had been sped up. The date that this
23 happened was actually a Sunday. We came out on a Sunday
24 to do this operation.

25 I was at the original briefing for the

1 operation. I was at the location during takedown at the
2 buy-bust location. And immediately upon the successful
3 takedown, I then went back to my vehicle, fired up my
4 laptop and began typing a search warrant, right there,
5 right then.

6 Q What recording devices, to your knowledge, were used
7 in this particular case?

8 A I believe we were using a -- we were using a wire
9 transmitter, we were using an Olympus digital recorder and
10 they were using a -- there's not really a brand name, but
11 they were using a watch that was intended to record audio
12 and video onto a flash memory for evidentiary purposes.

13 Q Did you help set up any of this equipment for this
14 buy-bust?

15 A I did not.

16 Q Are you familiar with this watch we're talking about?

17 A I am.

18 Q Have you had problems with it in the past?

19 A It was an item that was purchased by the agents. It
20 was not a county purchase, but it was something that we
21 were -- we have used to this date other watches that have
22 recorded successful transactions. But as Agent Slice
23 stated, they're very nit-picky in the sequence of pushing
24 the buttons, and if it's not done properly, the device
25 will not record at all. It would be like if you continue

1 to push the off button on any type of recording device,
2 you're not going to get any file. It's just not going to
3 record any data.

4 Q After the buy-bust involved in this case, at some
5 point, did you obtain the audio recorder and this wrist
6 watch we're talking about?

7 A I did.

8 Q And what did you do with it?

9 A I went into the secure computer. I then downloaded
10 the contents of those devices.

11 When I attempted to download any data from the
12 watch itself, there was no file that had been saved on the
13 flash memory, which, to me, indicated that operator error
14 had caused there to be no recording.

15 Q So it's your testimony there's absolutely no video
16 obtained from that wristwatch?

17 A Yes, sir, that is my testimony.

18 Q You were mentioning typing the search warrant from
19 your laptop, I guess, in the car?

20 A Yes, sir.

21 Q And that was on scene at 423 Longview?

22 A It was.

23 Q What did you do after the typing?

24 A I then -- I tried to catch the end of bond court,
25 which should have ended at 2. I was told that

1 Judge Reinhart had already started his travels back to his
2 residence. I contacted him via telephone. He waited for
3 me at the golf cart store there, right before you cross
4 over the dam on Highway 6. I then drove directly to him,
5 met with him to get the search warrant signed.

6 I thanked him for waiting for me, advised him
7 that we were in the middle of a buy-bust operation where
8 we had suspects detained, we were holding the residence,
9 and that we were requesting this warrant to recover our
10 evidence and any other potential evidence that was in the
11 house related to drug transactions.

12 Q Okay. So you did provide some additional oral
13 testimony, other than what is in your typed warrant?

14 A I added that.

15 We were currently -- it had just occurred, and
16 we were currently holding suspects and the residence
17 awaiting the search warrant signature.

18 Q I'm referring to Court's ID No. 1.

19 You heard Mr. Williams asking Agent Slice about
20 some amendments that are done in this search warrant. Let
21 me show you Court's No. 1.

22 A Yes, sir.

23 Q Specifically, the typed address.

24 A Yes, sir.

25 Q I believe it says Longview Road?

1 A It does. The typed part is road.

2 Q Okay. And, what, if any, amendments have been made
3 to --

4 A Every reference where I put "road," which looks like
5 three total instances, I then changed to street when I --
6 after I had printed the warrant, I realized that I had
7 erroneously put road, and it was actually a street
8 address.

9 Q Did you do that -- did you amend it and initial it
10 before or after Judge Reinhart signed it?

11 A To the best of my recollection, it was before the
12 Judge signed it.

13 Q Well, is there any occasion where you would amend a
14 search warrant after a judge signed it?

15 A Not unless we contacted him via phone, and then it
16 would -- then we would have changed it and the original
17 copy goes back to his office. But without contacting the
18 Judge by phone, no, we would never change it without his
19 approval.

20 Q Okay. That search warrant, I believe, lists
21 423 Longview in the West Columbia area.

22 Specifically, where is 423 Longview?

23 A Well, it references both.

24 In the description of the premises, I put
25 423 Longview, correction, Street, located in the Lexington

1 area of Lexington County. And then down in the narrative,
2 I listed it as the West Columbia area of Lexington County.

3 It's in the Red Bank community, but Red Bank is
4 not a geographical distinct address, you can't address and
5 mail to Red Bank. It would be like Oak Grove or any of
6 the other communities.

7 The dividing line is very close there. I would
8 say that Lexington would be the proper street address for
9 it. I believe it is a 29073 address. But West Columbia
10 is probably within three-quarters of a mile to a mile away
11 from there. There are addresses that should come up as
12 West Columbia.

13 So it's a confusing little area, but I
14 erroneously did put West Columbia on the one line in
15 there.

16 Q But did you disclose to Judge Reinhart where this
17 address was to be searched?

18 A I -- it is correct in the description of the premises
19 to be searched.

20 Q Now, after you leave 423 Longview, you said you went
21 basically to the Lexington side, the foot of the dam on
22 the Lexington side?

23 A Yes, sir.

24 Q Approximately how long did it take you to get there
25 from Longview?

1 A Sunday traffic wasn't bad. It may have taken me 20,
2 25 minutes to get there from -- going straight up 6 from
3 where we were at. I can't see it taking longer than
4 30 minutes.

5 Q Okay. And do you have any idea when the Judge signed
6 that warrant?

7 A It's indicated 2:27 p.m. in the Judge's handwriting.

8 Q Okay. And do you know when this operation began?

9 A I didn't until I heard the 1:30 setup time.

10 Q So the setup time when they were wiring the
11 undercover agent and the CI is 1:30, and then that warrant
12 is obtained at 2:27, so approximately an hour after this
13 operation began, the search warrant was signed?

14 A Yes, sir.

15 Q And after you had it signed by Judge Reinhart, what
16 did you do?

17 A I then called the person -- I think -- I believe I
18 called Agent Paige Tucker, and I called her and told her
19 the warrant was signed and in hand, and I was on my way
20 back to them.

21 Q Okay. Oh, the oral testimony, was that sworn oral
22 testimony where you informed the Judge that this was a
23 buy-bust that was currently -- or just occurred, I guess?

24 A This -- there was a -- I was sworn. This happened on
25 the hood of his car, and it wasn't that we were in a

1 formal courtroom, but I did tell him what was going on,
2 and before I affixed my signature, he said: "Do you swear
3 that everything you told me has been the truth," and I
4 stated it was the truth.

5 Q So the supplemental -- essentially, the buy-bust had
6 just occurred some 20 minutes prior to meeting with him
7 and was sworn oral testimony?

8 A Yes, sir.

9 MR. SCOTT: Thank you.

10 Mr. Tracy, please answer any questions
11 Mr. Williams may have.

12 THE COURT: Cross-examine.

13 IN CAMERA CROSS-EXAMINATION

14 BY MR. WILLIAMS:

15 Q Officer Tracy, you've been an officer with Lexington
16 County for how long?

17 A Four years, sir.

18 Q And the reason why that we're all sitting here
19 discussing Longview and things of that nature is because
20 there's actually a Longview Drive also, isn't there?

21 A There very well may be, sir.

22 Q Are you familiar if there is a Longview Drive, which
23 is off of Leaphart Road?

24 A Again, I will take you for your word on that.

25 Q Are you aware of how the warrant was signed in

1 regard -- when I talk about the arrest warrant, what the
2 arrest warrant said when he was arrested, where he was
3 located there?

4 A No, sir, I have no knowledge of the arrest warrant.

5 Q So are you saying that your warrant was based on your
6 understanding -- were you at the location?

7 A I was at the location.

8 Q And where were you when the arrest went down?

9 A I was in the backyard.

10 Q All right. And what was the address that you were
11 at?

12 A It would have been 423 Longview Street.

13 Q Can I see your --

14 A You may.

15 Q And it's your testimony that you changed what you
16 typed in once you got to where the Judge was?

17 A No, sir. When I was reading over it, I saw the
18 street sign that it was actually road instead of street,
19 or whatever correction I made -- I didn't bring -- I
20 didn't even look at it -- but whatever the correction I
21 needed to make was made once I saw the street sign.

22 Q Have you ever tried to Google Longview Road?

23 A Not personally.

24 Q Do you know that when you Google Longview Road, it
25 comes up Longview Drive, which is over off Leaphart Road?

1 A I'm not aware of that, sir.

2 Q Now, on the digital recorder that you have talked
3 about, is it your testimony that you attempted to download
4 the watch, and there was nothing to indicate that it had
5 been activated at all?

6 A Correct.

7 Q Could you tell if it had been erased?

8 A Not -- there's nothing to indicate that any data
9 could be erased off of it.

10 Q Are you saying that you can't tell if it was erased?

11 A It doesn't have the capability to erase in the field.
12 It has to be erased by reformatting the flash memory.

13 Q Can you tell if anyone reformatted the flash memory?

14 A I can testify that nobody reformatted the flash
15 memory because I had the only cable to download it, and I
16 have the only access cable to get into the unit.

17 Q You're saying that you didn't do?

18 A I didn't do. And I have the only key into the tech
19 room, so nobody could do it.

20 Q Where was the watch after the arrest went down?

21 A It was maintained by Agent Slice.

22 Q And when did you get it?

23 A The next day, which was a Monday.

24 Q So you didn't have it until the next day to check it;
25 is that right?

1 A Correct.

2 Q And have you asked anyone else to check the watch out
3 to see if it had been tampered with?

4 A No, sir.

5 Q Tell me about -- what expertise do you have in the
6 audiovisual field?

7 A It's all been self-taught and shadowing people that
8 do have knowledge in the field, but there's no -- I've
9 been through no formalized training.

10 Q What is your -- I assume you have a high school
11 education; is that correct?

12 A Yes, sir.

13 Q Do you have a college education?

14 A I have some.

15 Q All right. And neither one of those dealt with
16 audiovisual stuff; is that right?

17 A That is a true statement.

18 Q Are there persons that you consider to be more expert
19 in this field than you are?

20 A Yes, sir.

21 Q And you have made no attempt to see if there is some
22 sort of video on there?

23 A There's a total byte count on the unit itself, it
24 tells you how much memory is left in the unit. There's no
25 indication that the slightest bit of data has been placed

1 onto that memory at that point in time. The memory hadn't
2 been accessed to put a file onto it.

3 Q Have you ever downloaded anything off of that watch
4 before?

5 A We have.

6 Q So you know that it works?

7 A It does work.

8 Q And since it -- was there an indication that it had
9 been used before by looking at the number of bytes on the
10 memory?

11 A Every time it's used, it's erased completely. So the
12 memory is just fully -- we reformat the flash memory every
13 single time, so that you have the optimum amount of space
14 to record data.

15 This time, there was no -- no written data on
16 the flash memory. The flash memory was completely intact.

17 Q So you can erase the information fairly easy?

18 A I can.

19 Q Obviously, if you can, somebody else can, right?

20 A You have to -- you have to have the right fitting to
21 go in there, which I keep in -- which I keep locked in my
22 office for that reason.

23 Q Where is your office located at?

24 A It's at -- it's at our substation.

25 Q Which substation is that?

1 A Our narcotics substation.

2 Q Where is that?

3 A I'd rather not provide you the address. I can --
4 it's a covert location that is maintained by the sheriff's
5 department.

6 Q When you arrived on scene with the search warrant,
7 who did you first go up to?

8 A I would imagine I would have gone straight to
9 Agent Slice since he was the case agent, and if he wasn't
10 there, I would have handed it off to the next person that
11 had a significant role.

12 Q Do you remember who you gave a copy of the search
13 warrant to?

14 A Actually, I held onto the search warrant when I got
15 there, and I -- I was actually the person that
16 described -- put the items down.

17 Q So you never gave a copy of the search warrant to
18 anyone?

19 A Are you meaning with law enforcement or are you
20 meaning with the -- are you meaning the suspect?

21 Q I'm asking if you gave it to anybody.

22 A Well, I would have given it to Agent Slice
23 eventually.

24 Q When did you give it to Agent Slice?

25 A Well, I didn't -- I couldn't -- I couldn't execute

1 the search warrant because it was signed off by
2 Agent Tucker or Agent Barnes, and I would imagine at that
3 point, it would have been given to Agent Slice.

4 Q But you didn't see it given to him because you had it
5 in your possession for how long?

6 A The entire time we were on the location filling out
7 what we were seizing from the location.

8 Q So as far as you know, the search warrant was never
9 served on anyone?

10 A I can't testify who it was served on or not.

11 Q Because you had the copy?

12 A I had the copy.

13 Q Did you make other copies of it?

14 A I did not make any other copies.

15 Q So, no one would have been served with a copy of the
16 search warrant?

17 A I can't say -- I can't make that conclusion.

18 Q When did you -- when did you release your search
19 warrant to make copies of it?

20 A That evening.

21 Q And when you made copies that evening, where did you
22 make copies at?

23 A I didn't make copies.

24 Q Okay. I --

25 A You said when did I release it to make copies. I

1 didn't --

2 Q Who did you give it to?

3 A It would have either been given to Agent Barnes,
4 who's the one that executed it, or if Agent Slice was
5 there, I would have given it to him since he's the case
6 agent.

7 Q That night?

8 A That night.

9 Q And that was after the defendants had been carted off
10 to jail; is that correct?

11 A I would imagine so.

12 Q Did you leave a copy in the residence?

13 A I personally didn't leave a copy anywhere.

14 Q Obviously, you didn't give it to the defendant
15 because he was in jail then?

16 A I believe he was gone by the time I got back with the
17 warrant.

18 Q And when you got there, what were the other agents
19 doing when you got there?

20 A By the time I got back, they were searching.

21 Q So they were actively searching when you got there
22 with the search warrant?

23 A Yes. I had called them when I got the signature on
24 it and advised them that I had a signed warrant in hand,
25 and they began searching at that point in time.

1 Q Do you know whether or not -- well, you don't -- you
2 wouldn't know if you weren't there whether or not they
3 were searching before?

4 A I would not know.

5 MR. WILLIAMS: That's all the questions I have.

6 BY MR. WILLIAMS:

7 Q Oh, you didn't have a conversation with anyone
8 complaining about them searching before you had the search
9 warrant there?

10 A I did not.

11 Q Who had that conversation?

12 A I -- from what I hear -- from what I hear, it was on
13 the audio tape as being Agent Setree.

14 MR. WILLIAMS: That's all the questions I have,
15 Your Honor.

16 THE COURT: Redirect.

17 MR. SCOTT: Nothing further from the State, Your
18 Honor.

19 THE COURT: All right. You may step down.
20 Gentlemen, we've got a jury coming back at 2.

21 MR. HUBBARD: Yes, sir.

22 THE COURT: Does anybody have any suggestions on
23 how we would like to proceed?

24 MR. HUBBARD: Your Honor, what we could do, just
25 a suggestion, why don't we -- we could either strike the

1 charged with offenses would be a racially neutral cause,
2 and, of course, now it moves to you to show that that
3 would be -- and also that apparently the other two,
4 although not racially, but they have the same cause.

5 MR. WILLIAMS: Your Honor, I'm not going to
6 argument with that logic.

7 THE COURT: Okay. Very good. So I do find
8 they're not subject to -- or that there was a racially
9 neutral reason for strikes by the State.

10 MR. HUBBARD: Thank you, Your Honor.

11 THE COURT: So now it brings us back to -- and
12 we do have three alternates.

13 Now we have -- are you ready to proceed with the
14 motions to dismiss and to suppress? And I have been
15 treating those as joint motions in the sense -- or at
16 least joint grounds for the defense case. And the State
17 was presenting its response to the motion.

18 MR. HUBBARD: Yes, sir. The State calls Nick
19 Carver.

20 NICHOLAS CARVER, after being duly sworn,
21 testified as follows:

22 THE COURT: All right. Your name for the
23 record, please.

24 THE WITNESS: Nicholas Carver, C-A-R-V-E-R.

25 THE COURT: Very well.

IN CAMERA DIRECT EXAMINATION

BY MR. HUBBARD:

Q Agent Carver, would you please let the Court know where you work?

A I work at the Batesburg-Leesville Police Department, a task force officer assigned to the Narcotics Enforcement Team, Lexington County.

Q June 5th of 2011, were you still working as a narcotics officer at that time?

A Yes, sir.

Q Are you aware of the charges we have against Benjamin Newman, Benji Newman?

A Yes, sir.

Q Were you involved in the investigation or arrest of Mr. Newman?

A Yes, sir.

Q On June 5th, what was your role -- June 5th of 2011, what, if any, role did you have in the investigation on Benji Newman?

A I was the undercover officer that was brought into the tail end of the investigation to do a reversal buy -- buy-bust on Benjamin Newman.

Q Had you ever worked in an undercover capacity before where you actually played like you were just Joe Blow Citizen out to make a drug deal?

1 A No, sir. I had ridden to one of the deals with
2 Benjamin Newman, the first deal, but I never met
3 face-to-face with him. He would not meet me the first
4 time.

5 Q Okay. Where did the deal take place on June 5th,
6 2011?

7 A 423 Longview.

8 Q Is that where Benji was staying?

9 A That's where he was at that day.

10 Q Okay. Now, we talked about a deal and buy-bust.

11 What was the arrangement when you went to that
12 address?

13 A The arrangement was 50 pounds of marijuana for
14 27 ounces of cocaine.

15 Q Was it originally for 25 ounces and then it became 27
16 ounces?

17 A Yes, sir.

18 Q Okay. We'll talk about that in just a minute.

19 When you went to make that deal, was anybody
20 with you?

21 A The informant was with me.

22 Q We heard a lot about a wire where Agent Brandon Slice
23 could hear what's going on. Who wore that wire?

24 A The informant did.

25 Q And that's not recorded, is it?

1 A No, sir.

2 Q The recording device, not the watch, who wore that?

3 A I did, sir.

4 Q And is that just a small device that you wear
5 somewhere on your person?

6 A Yes, sir. It's a digital recorder. I had it in my
7 pocket.

8 Q And then the watch, you just wore it like a regular
9 wristwatch?

10 A Yes, sir.

11 Q You mentioned a buy-bust.

12 Was the plan to do a buy-bust where once the
13 sale goes down, you-all make the arrest?

14 A Yes, sir.

15 Q How was that supposed to take place?

16 A Once the deal was completed, Agent Slice was
17 monitoring the wire that was on the informant as well as
18 having contact with me via cell phone, he'd call just to
19 check on me. And once I told Agent Slice over the wire
20 that everything was good, that we would be on the way,
21 that was the sign for them to come in and do the buy-bust.

22 Q Okay. And we heard a little bit about how this was
23 kind of a last minute change in location.

24 Where was this deal originally supposed to take
25 place?

1 A I believe it was supposed to be at the Long Spires
2 address.

3 Q Is that another location associated with Benji
4 Newman?

5 A Yes, sir.

6 Q Now, when this deal was to take place, who was
7 supposed to be doing the transaction, you and Benji Newman
8 or the CI and Benji Newman?

9 A Myself and Benjamin Newman.

10 Q What was the purpose of this CI?

11 A To -- the introduction. He was to introduce.

12 Q When you were in that house and this transaction's
13 going on and you're wearing that watch, to your mind, was
14 that watch on?

15 A Yes, sir. I'm not -- I wasn't familiar with the
16 equipment, but we thought it was on. I thought it was on.

17 Q When did you learn that there was absolutely no
18 video?

19 A The following day when there was nothing on the
20 watch. Agent Slice took it to Agent Tracy, and in that
21 room when they -- when they plugged everything in, nothing
22 came up.

23 Q Let me ask you this: That night when your recorder
24 is working after this bust, do you remember you-all
25 talking about that watch and the video?

1 A Yes.

2 Q At that point, did you-all think that watch had been
3 running?

4 A Yes, at the time.

5 Q But you learned the next day it was never running at
6 all?

7 A That's right, sir.

8 Q Now, the 50 pounds, is it, of marijuana?

9 A Yes.

10 Q And how did you-all transport that?

11 A It was transported in a duffle bag as well as one
12 additional bale in a book bag that we got from our area
13 where we work at. It was our bags that we provided.

14 Q Okay. The duffle bag and the book bag belong to
15 you-all?

16 A Yes, sir.

17 Q The marijuana was -- was it the typical marijuana
18 assigned for destruction, but you-all use it for your
19 purposes?

20 A Yes, sir.

21 Q Okay. When you get to Longview, where do you meet
22 Mr. Newman, inside or outside?

23 A Outside.

24 Q Outside?

25 A Yes.

1 Q Before you're allowed to go into that house, what, if
2 anything, did Mr. Newman require of you?

3 A He wanted to see the marijuana that I had brought.

4 Q Did you show him?

5 A I did.

6 Q What, if anything, else did he say about what he
7 wanted the next time?

8 A Once he saw that I had brought 50 pounds of marijuana
9 that time, he right off the bat asked me, you know, for
10 the next transaction, he wanted a thousand pounds.

11 Q And this is the first time you're dealing with him?

12 A This is the first time I've ever met him
13 face-to-face.

14 Q When you go inside his house -- and he invites you in
15 that house?

16 A Yes, sir.

17 Q What do you do with the marijuana?

18 A I placed the one book bag at the counter on the
19 island into the kitchen, and the duffle bag is also set
20 down as well. And that's where it was set until
21 Mr. Newman pulled out the bale from the black backpack and
22 placed it on the counter.

23 Q Okay. So at that point, are all the drugs on the
24 counter?

25 A The one bale from the book bag, he removed that.

1 That was on the counter. The duffle bag was on the floor
2 between -- in between Mr. Newman and the counter.

3 Q Let me ask you this: How many bales did you-all have
4 to make up 50 pounds?

5 A I believe it was three to four bales.

6 Q Would it be five?

7 A Five bales, yes, sir. It was a lot, I know that. I
8 know that.

9 MR. WILLIAMS: Should I object to leading here,
10 Your Honor?

11 THE COURT: It's a little late.

12 MR. HUBBARD: It's more entertaining when I
13 talk.

14 BY MR. HUBBARD:

15 Q So one bale was in your backpack, the rest were in
16 the --

17 A In the duffle bag.

18 Q -- duffle bag?

19 A Yes, sir.

20 Q All right. The one in the backpack, I want to show
21 you a photograph. All these have been provided to
22 Mr. Williams.

23 Do you see that bale exposed and on the counter?

24 A Yes, sir.

25 MR. HUBBARD: Your Honor, I'd like to make a

1 Court's exhibit so Your Honor can see this.

2 THE COURT: All right. Very well. Give it to
3 the court reporter. Let's go off the record so she can
4 mark it.

5 (WHEREUPON, The Court's Exhibit NO. 2 was marked
6 for purposes of the record.)

7 BY MR. HUBBARD:

8 Q Agent Carver, looking a Court's Exhibit No. 2, is
9 that the same photo we're seeing that's been enlarged on
10 this board?

11 A Yes, sir.

12 Q Now, if I can, what is this item on this kitchen
13 counter that I'm pointing to in cellophane?

14 A That is a bale of marijuana.

15 Q The book bag, is it down at the foot?

16 A Yes, sir.

17 Q Of this island?

18 A Yes, sir.

19 Q The duffle bag, is it down by this island?

20 A It's around the island right there, yes, sir.

21 Q Okay. Now, you talked -- you said something about
22 Mr. Newman getting cocaine.

23 A Yes, sir.

24 Q Where did he get it from?

25 A From the plastic box over there near the stove, yes,

1 sir.

2 Q This box right here?

3 A Yes, sir.

4 Q All of that was on the counter?

5 A Yes, sir.

6 Q He takes that out. Now, originally, your deal was
7 50 pounds of marijuana for 25 ounces of cocaine?

8 A Yes, sir.

9 Q Did you-all end up getting more cocaine?

10 A Yes, sir, we did.

11 Q What was the purpose of that? How did that happen?

12 A Once he brought out the bigger bag of cocaine that
13 was the initial deal, he threw in an extra sandwich bag
14 filled with cocaine just to add some more to it, to keep
15 the interest there and to possibly have future deals with
16 myself.

17 Q Basically, it's a good-will thing?

18 A Pretty much, yes, sir.

19 Q Good will, good business?

20 A Yes, sir.

21 Q All right. Now, once that's done, and we hear some
22 noise on this tape, let me ask you about a couple of the
23 sounds that the Judge is going to hear. One of them
24 sounds like some kind of animal in that house.

25 Was there an animal in the house?

1 A There was a parrot in the house, a bird.

2 Q Was, in fact, that parrot somewhere right off the
3 kitchen?

4 A Yes, sir. It's over toward the kitchen area near the
5 wall. There was a hallway that goes down past that way.

6 Q And we also hear a phone ringing. Whose -- whose
7 phone is ringing?

8 A That's my -- a cell phone that I was provided, that I
9 had that. That was my contact with Agent Slice. He was
10 calling me.

11 Q Brandon Slice you testified earlier?

12 A Yes, sir.

13 Q Why was he calling?

14 A The wire itself, the way it transmits, the frequency
15 could have been low, and that was the only way he was
16 hearing myself or the informant when we'd say anything,
17 and he might not have heard clearly, so he was checking on
18 me, you know, several times in the video -- in the
19 recording about, you know, seeing if I'm okay. And I
20 would -- I would play it off to try to, you know, not to
21 try to alarm Mr. Newman in any way, just being, like,
22 everything's good, we'll be on the way soon, you know.

23 Q Once you-all made this deal, does he, in fact,
24 relinquish the cocaine to you?

25 A Yes, sir.

1 Q And you're giving him the marijuana?

2 A Yes, sir.

3 Q Now, Officer Carver, you've got arrest powers,
4 correct?

5 A Yes, sir.

6 Q You had authority to arrest him right there if you
7 wanted, could you not?

8 A Yes, sir, I could have.

9 Q You could have arrested him for the cocaine; is that
10 correct?

11 A Yes, sir, I could have.

12 Q And the marijuana, correct?

13 A Yes, sir.

14 Q All of this was in your presence?

15 A Yes, sir.

16 Q You were in his house by his consent?

17 A Yes, sir.

18 Q Did you-all have a conversation about that cocaine
19 after this transaction?

20 A Yes, sir, we did.

21 Q What does he say about that cocaine?

22 A Mr. Newman goes on to tell me that, you know, I could
23 cook this cocaine if I wanted to, but once I unpackaged
24 it, it would break down into a powder, but if I wanted to
25 keep it in a tight package, to spray it with ether, put in

1 a microwave, to be careful because it could mess it up,
2 but pretty much, you know, telling me in detail how to
3 keep it in a packaged block form.

4 Q At some point during your conversation with him after
5 this deal was done and all the drugs are laid out, is that
6 when the arrest goes down?

7 A Yes, sir.

8 Q Now, we hear a lot of noise on the tape.

9 How did this arrest go down? Who all is
10 involved?

11 A Lexington County SWAT. They were to enter the
12 residence along with other narcotics officers were coming
13 in.

14 Q Do they use something called a -- was it a bang
15 grenade or a --

16 A Flash bang.

17 Q Flash bang?

18 A Yes, sir.

19 Q Okay. All right. So it just adds to the noise and
20 confusion?

21 A Yes, sir.

22 Q Now, how did they treat you when you came in?

23 A As if I was, you know, if I was a bad guy doing a
24 drug deal. That was -- that was my role, and that's how
25 they treated me, you know.

1 Q How did they treat the informant, the CI?

2 A The same way. The same way.

3 Q When this takes place, what, if anything, does Benji
4 Newman do? When the cops are coming in the house, what
5 does he do?

6 A He takes off running out the back door.

7 Q The officers go after him?

8 A Yes, sir.

9 Q Do you go after him?

10 A No, sir.

11 Q Why not?

12 A Because I'm getting on the ground because I got guns
13 coming at me and, you know, they're putting cuffs on me.

14 Q In fact, Agent Carver, are there some members on SWAT
15 who didn't even know who you were?

16 A Yes, sir, had no clue who I was, and, you know, they
17 didn't -- they didn't know me, didn't know my face or
18 anything.

19 Q So they legitimately treated you like you were a drug
20 dealer?

21 A Yes, sir.

22 Q Benji Newman, does he get away?

23 A No, sir. He gets in the backyard and the SWAT
24 officers apprehend him from there.

25 Q Did they bring him back in the house?

1 A No, sir, they take him around the backyard to the
2 front yard.

3 Q Who removes the CI from the house?

4 A Agent Slice.

5 Q Now, does an officer come and initially pull you out
6 of the house?

7 A Yes, sir.

8 Q When that is going on, are there people in the house
9 searching the house at that point?

10 A No, sir, not searching the house.

11 Q Are they clearing the house out?

12 A They're clearing the house, that's all they're doing.
13 They're walking in and walking out.

14 Q Okay. Making sure nobody else is there?

15 A Yes, sir.

16 Q And getting the three main players out?

17 A Yes, sir.

18 Q Now, we hear something on this audio about a search
19 going on. Was that Brian Setree's voice we hear?

20 A Yes, that's Agent Setree.

21 Q At some point after the arrest, after everything is
22 played out, is he telling you about the things to do, what
23 you should do better?

24 A Yes, sir. That's exactly -- that's what he's doing
25 because I was -- I was new to the unit. I had only been

1 back there a month. And Agent Setree along with
2 Agent Slice and Agent Laney, they were involved in pretty
3 much, like, you could say my FTO program. They were --
4 they were teaching me, you know, that day, you know, in
5 everything. So --

6 Q When there's a discussion about a search prior to the
7 search warrant getting there, what is that about?

8 A There is no search going on. Brian's just making
9 sure that, you know, saying, hey, we don't do that, that's
10 not what we do, and then you hear Agent Morens, she's --

11 Q But did they look in the backyard?

12 A They did look in the backyard.

13 Q Let me get this. I kind of jumped ahead, and I
14 apologize.

15 When everybody came in and looked for that -- to
16 make the arrest, this marijuana, was it readily visible?

17 A Yes.

18 Q And you still had a duffle bag there?

19 A Yes.

20 Q Now, the cocaine, did you-all see where that was
21 right after law enforcement came in?

22 A No, sir.

23 Q Is that what everybody was worried about, where did
24 the cocaine go?

25 A Yes, sir.

1 Q Who went out that back door?

2 A Benjamin Newman.

3 Q Was there a concern that he might have grabbed it and
4 ran?

5 A Yes, sir.

6 Q And officers pursued him?

7 A Yes, sir.

8 Q Did officers, were they looking around the backyard?

9 A Yes, sir.

10 Q For what?

11 A For Mr. Newman and the cocaine.

12 Q They found Mr. Newman. Did they ever find any
13 cocaine in that backyard?

14 A No, sir.

15 Q Nick, where was the cocaine?

16 A In the book bag.

17 Q The book bag you brought?

18 A Yes, sir.

19 Q Let me show you a photo, two photos.

20 This black book bag, where is that located?

21 A Right at the base of the island, right there.

22 Q So on this big picture showing the kitchen, the book
23 bag's on the floor right at the base of that island?

24 A Yes, sir.

25 Q And is that the black book bag you took in?

1 A Yes, sir.

2 Q Is that a closeup of what's in that book bag?

3 A Yes, sir.

4 MR. HUBBARD: Your Honor, I'd offer these as
5 Court exhibits.

6 THE COURT: Very well. Have them marked.

7 (WHEREUPON, The Court's Exhibits Nos. 3 AND 4
8 were marked for purposes of the record.)

9 THE COURT: Now you know they're Court's
10 exhibits, so they're not admitted into evidence.

11 MR. HUBBARD: Yes, sir.

12 THE COURT: If you're going to admit them into
13 evidence, you have to do so properly.

14 MR. HUBBARD: Your Honor, I'll probably make new
15 copies. That way they won't be confused.

16 THE COURT: That's good.

17 BY MR. HUBBARD:

18 Q You have seen these, Nick?

19 A Yes, sir.

20 MR. HUBBARD: I would pass those up.

21 BY MR. HUBBARD:

22 Q And I apologize for calling you Nick, but --

23 A That's okay.

24 Q -- it's a hearing, we know each other.

25 All right. Is that the only cocaine that is

1 recovered? Is that the cocaine from the deal?

2 A Yes, sir, that is the cocaine from the deal.

3 Q Does that show the large bag of cocaine and then a
4 small bag?

5 A Yes, sir.

6 Q The small bag, was that the good-business deal?

7 A That was the, you know, icing on the cake, you know,
8 pretty much.

9 Q Do you know how that cocaine got in the book bag?

10 A No, sir, I don't, unless at the time when we hit the
11 ground, it could have been knocked in the bag. The bag
12 was open. When the officers came in the door, it was "get
13 on the ground" and that's what we did.

14 Q One of the comments that we hear on this tape that we
15 haven't played yet is when they're asking you how did it
16 get in there, do you remember saying, it could have been
17 the CI that put it in there?

18 A Yes, sir.

19 Q Bottom line is, you don't remember?

20 A No, sir.

21 Q Okay. Safe to say there's a lot of confusion?

22 A Yes, sir, a lot.

23 Q A lot of commotion?

24 A Yes, sir.

25 Q A lot of noise?

1 A Yes, sir.

2 Q But, now, Agent Carver, that cocaine was in your bag?

3 A Yes, sir.

4 Q The deal was already completed, correct?

5 A Yes, sir.

6 Q And officers searching around in that backyard, they
7 weren't going to find anything, were they?

8 A No, sir.

9 Q The drugs never left the kitchen, did they?

10 A No, sir.

11 Q When you-all did --

12 Let me ask you this: When you were waiting on
13 the search warrant and you're sitting in there, did
14 you-all see some other drugs that you-all didn't bring
15 that were also on that counter?

16 A Yes, sir.

17 Q I'll show you two more pictures.

18 A Yes, sir. That was the bag of marijuana that was
19 located near a stereo, or whatever it is over there, yes,
20 sir, right over in this area.

21 Q We'll point it out in just a minute, but you
22 recognize this is a far shot where it was located?

23 A Yes, sir.

24 Q A closeup showing what was actually recovered?

25 A Yes, sir.

1 MR. HUBBARD: Your Honor, I ask to make Court's
2 exhibits of these.

3 THE COURT: Let's go off the record while she's
4 marking them.

5 (A discussion was held off the record.)

6 (WHEREUPON, The Court's Exhibits Nos. 5 AND 6
7 were marked for purposes of the record.)

8 BY MR. HUBBARD:

9 Q All right. Agent Carver, Court's Exhibit No. 5 shows
10 where the drugs were found on a countertop?

11 A Yes, sir.

12 Q Court's Exhibit No. 6 shows basically a closeup
13 showing the packaging as it was found?

14 A Yes, sir.

15 Q Agent Carver, I want you to point out for the Judge
16 using -- now, the photo you have in front of you is
17 State's (sic) Exhibit what number?

18 A 2.

19 Q 2. And the board I'm holding up, it's just an
20 enlarged version of Court's Exhibit 2?

21 A Yes, sir.

22 Q Were those drugs, the marijuana, found right here on
23 the counter?

24 A Yes, sir, right to the left of the coffee pot.

25 Q Right out there in plain view?

1 A Yes, sir.

2 Q Okay. So we have drugs right there on the counter,
3 you have the marijuana, you brought some of it on the
4 counter?

5 A Yes, sir.

6 Q The rest of it's down on the floor in a duffle bag
7 you're swapping?

8 A Yes, sir.

9 Q The cocaine never left anywhere, it's in your bag --

10 A Yes, sir.

11 Q -- on the floor?

12 And, again, did it take you-all awhile to
13 realize where the cocaine was?

14 A Yes, sir.

15 Q To your memory, though, was anybody ripping through
16 that house looking for cocaine?

17 A No, sir.

18 Q There's also talk at some point or there's
19 realization at some point after everything is over about
20 that watch in your hand, something about, is that still
21 on?

22 A Yes, sir.

23 Q Do you remember saying something to the effect of, if
24 it is, it's off now?

25 A Yes, sir. I believe so. It was -- I had mashed it,

1 I had taken it off and -- but it had never recorded. I
2 thought it was on the whole time. Or I did -- you know,
3 Agent Slice handed it to me, told me to put it on before
4 we went to the location, and in my mind, it was on, but I
5 guess it wasn't.

6 Q Why would you turn off that device after a bust?
7 What is the purpose of turning that off, and when should
8 you turn that off?

9 A Usually right after a bust when, you know, once the
10 search warrant is there, once we know the search warrant's
11 signed, we start searching. So anything that's -- this
12 video, you're going to turn it off so when it comes to
13 this point, we don't give up how we search. You don't
14 want, you know, future bad guys or people to know how we
15 do things.

16 Q Where you-all look, where they hide stuff?

17 A Where they hide stuff. You know, we have a set way
18 where we look and how we look.

19 Q You also mentioned potentially a CI's name?

20 A Yes.

21 Q Did you-all have two other search warrants you-all
22 were supposed to serve that night?

23 A Yes.

24 Q On other locations affiliated with Benji Newman?

25 A Yes, sir.

1 Q So, operationally, that is what you're supposed to
2 do?

3 A Yes, sir.

4 Q You were new. If you were a veteran, would you have
5 known, all right, if this thing's on, I've got to turn it
6 off right after the bust?

7 A Yes.

8 Q Bottom line, did you-all ever generate, to your
9 knowledge, any video whatsoever?

10 A No, sir.

11 Q So whatever you did, it didn't help or hurt because
12 nothing was happening?

13 A Nothing.

14 Q Your recording device that you're wearing, did you
15 forget about that, too?

16 A I did, sir.

17 Q Doesn't the same rule apply that that device,
18 wherever you have it on the body, that's supposed to be
19 turned off --

20 MR. WILLIAMS: Your Honor, I don't know if you
21 can object on a motion. This is an awful lot of testimony
22 from the Solicitor.

23 MR. HUBBARD: It's important, though, and I'll
24 tell you why.

25 THE COURT: Well, why don't you ask him the

1 question, why is it important?

2 MR. HUBBARD: I will ask him that.

3 BY MR. HUBBARD:

4 Q Why is it important to turn that device off, too?

5 A Because that's recording audio. When we talk, it
6 picks up everything, and, you know, same thing. If we
7 mention informants' names or, you know, things like that
8 that we don't want to get out, it's going to be caught on
9 the recording.

10 Q And you failed to turn that one off?

11 A I did, sir.

12 Q But all of that was collected?

13 A Yes, sir.

14 Q Your agency turned that over to my office, correct?

15 A Yes, sir.

16 Q And that is now in Mr. Williams' hands?

17 A Yes, sir.

18 Q So but for you-all turning that over, they would have
19 never known you were wearing a watch?

20 A Yes, sir.

21 Q Unless you-all put that in your report, too, correct?

22 A Yes, sir.

23 Q But for turning that over, he would never have known
24 about this lecture that was given about when to conduct a
25 search; is that correct?

1 A Yes, sir.

2 MR. HUBBARD: That's all I have at this time.

3 THE COURT: Cross-examination.

4 MR. WILLIAMS: May it please the Court.

5 IN CAMERA CROSS-EXAMINATION

6 BY MR. WILLIAMS:

7 Q And, obviously, if it had been turned over and had
8 been recording, then we would see exactly what you found,
9 when you found it, and whether or not it occurred after or
10 before a search warrant was issued, wouldn't it? If it
11 had recorded it.

12 A If it had recorded.

13 Q But since we don't have that, then we don't have the
14 answer to that?

15 A It didn't work.

16 Q Now, are you an agent or are you -- you're not an
17 agent, are you? Don't you work with the Batesburg Police
18 Department?

19 A I'm an agent.

20 Q You're an agent with the Batesburg Police Department?

21 A I'm an agent with the Narcotics Enforcement Team.
22 I'm a sergeant with Batesburg-Leesville.

23 Q All right. So you're a sergeant with the
24 Batesburg-Leesville Police Department?

25 A Yes, sir.

1 Q And are you loaned out to the Lexington County
2 Sheriff's Department or are you double employed?

3 A I'm not double employed. I'm a task force officer.
4 I'm just loaned out to them. It's a multi-jurisdictional
5 team. We have other officers from other municipalities
6 within Lexington County that go to that team.

7 Q And there are different agreements, I guess, with the
8 Town of Batesburg with the sheriff's department that
9 allows you-all to function together; is that right?

10 A Yes.

11 Q You have described being thrown down. I assume you
12 were thrown down?

13 A I was getting down. I was assisted down.

14 Q Just like the confidential informant was getting
15 down?

16 A Yes.

17 Q And then he was escorted out, and you also were
18 escorted out.

19 Were you escorted out the front door or the back
20 door?

21 A Front door, sir.

22 Q And did that occur immediately after the flash bang
23 came in, then you were secured and taken out?

24 A Yes, sir. Once I was secured, I was removed from the
25 house.

1 Q So then where did you go from that location?

2 A Once I was secured?

3 Q Right.

4 A To the front yard of 423.

5 Q And then you stayed in the front yard?

6 A Yes, sir, with Agent Barnes, she took control of me.

7 Q So, really, you were not in the house to observe any
8 of these things which you and the Solicitor have testified
9 to earlier?

10 A No. I -- shortly after that, I came back into the
11 house.

12 Q All right. How long was it before you came back in
13 the house?

14 A I would say probably five minutes at max because once
15 Mr. Newman was outside, they put me back inside.

16 Q And during that time span, who else was involved in
17 the house, who else was in the house?

18 A Nobody at that time. There were agents -- everybody
19 was in the backyard and bringing Mr. Newman to the front
20 yard.

21 Q So nobody was searching?

22 A No, sir, not to my knowledge.

23 Q And when did you see a copy of the search warrant get
24 delivered?

25 A Time frame, I'm not really sure. I was sitting

1 inside. It would have been at a maximum, maybe 30 minutes
2 after everything had cleared, Mr. Newman taken off and --

3 Q So Newman wasn't there when the search warrant comes?

4 A No, sir.

5 Q And you were sitting inside?

6 A Yes, sir.

7 Q And were you sitting down on the sofa or were you
8 walking around kind of looking out the side of your eye of
9 what might be here, what might be there?

10 A No, sir. I was kind of sitting at the -- I guess it
11 was the end of a couch or something, me -- myself and
12 Agent Barnes.

13 Q So it's your testimony under oath that everybody was
14 sitting around inside waiting on somebody to bring the
15 search warrant for 30 minutes?

16 A Not everybody. Just myself and Agent Barnes and
17 Agent Setree were inside.

18 Q So who was searching, then, if you-all were sitting
19 down?

20 A Nobody was searching.

21 Q So it's your testimony that nobody was searching
22 inside that residence?

23 A Nobody was searching, sir.

24 Q All right. Now, do you recall that if there was a
25 tape-recording in which there is a reference to correcting

1 people for searching before the search warrant is there?

2 A That was Officer Lance, he's a SWAT team member. He
3 came into the back door. And Officer Lance is a pretty
4 big individual, and he looked over something, and
5 Agent Setree saw him, and real quick told him, Don't do
6 that, just you-all come on in here to -- you know, because
7 the SWAT team guys, they don't do our procedure like, you
8 know, they -- we kind of had to hold them back. So
9 Agent Setree was correcting him and pulling him out.

10 Q So on the recording, that is what we'll hear is him
11 correcting him, not him referring to any of the narcotics
12 people there?

13 A Well, he's correcting him and teaching me at the same
14 time, letting me know this is how things are done. You
15 know, I was a greenhorn back there. I was brand new.

16 Q Tell me about the watch. Who did you give the watch
17 to and when?

18 A The watch was given to Agent Setree, and it was taken
19 outside and put in Agent Lovin's car with the ATF.

20 Q So the watch was given to Agent Lovin?

21 A No, it was just put in his vehicle.

22 Q Do you know how the watch got to -- did Agent Lovin
23 give it back to somebody else?

24 A Agent Slice recovered it.

25 Q So Agent Slice went inside Agent Lovin's vehicle and

1 got it back that night?

2 A Got it back once he came back to the location. He
3 recovered it there.

4 Q Once who came back?

5 A Agent Slice came back to the house after dealing with
6 the informant.

7 Q And to your knowledge, do you know of any efforts
8 that had been performed on this watch to see if there's a
9 videotape?

10 A Yes, it was given to Agent Tracy the following
11 morning.

12 Q Because you were present when that was done?

13 A I was in our headquarters. I was there. And
14 Agent Slice was in there with Agent Tracy.

15 Q So you didn't see it happen?

16 A No, sir, I didn't see it. I just knew they were in
17 the tech room. I didn't see it.

18 Q So you don't know what happened about the watch?

19 A I know it didn't work.

20 Q You don't know that, someone told you that, didn't
21 they?

22 A Well, when Agent Tracy tells me it didn't work, you
23 know, he's pretty truthful.

24 Q But you weren't in the room when it was tested?

25 A No, sir.

1 Q Where is that watch now?

2 A I'm not sure, sir.

3 Q Who was assigned that watch?

4 A At the time of this, Agent Slice was.

5 Q How did the cocaine get inside your book bag?

6 A To be honest with you, sir, when we hit the ground, I
7 don't know. It was at the edge of the counter here, right
8 there. And when the flash bang went off, it rattled me,
9 and I got down as well as the informant.

10 Q Did I understand you to answer when the Solicitor was
11 asking you that it bounced up off the counter and dropped
12 inside your book bag?

13 A I mean, the informant could have put it in there or
14 knocked it in there. It didn't bounce off the counter to
15 go into the book bag.

16 Q You didn't see anybody put cocaine in the book bag,
17 which is your book bag?

18 A Yes.

19 MR. WILLIAMS: That's all I have, Your Honor.

20 THE COURT: Redirect?

21 MR. HUBBARD: None from the State.

22 THE COURT: You may step down.

23 THE WITNESS: Thank you, sir.

24 MR. HUBBARD: The State calls Brian Setree.

25 BRIAN SETREE, after being duly sworn, testified

1 as follows:

2 IN CAMERA DIRECT EXAMINATION

3 BY MR. HUBBARD:

4 Q Mr. Setree, I see you're in some pain today?

5 A Yes, sir.

6 Q Did you work with law enforcement sometime back?

7 A Yes, sir. I retired on August the 20th of this
8 year.

9 Q Do you have some medical issues?

10 A Yes, sir.

11 Q Relating to working with law enforcement?

12 A Yes, sir.

13 Q And today, whatever's going on, you're in pain today?

14 A A little bit, yes, sir.

15 Q Okay. I appreciate you being here.

16 A Yes, sir.

17 Q Back June 5th, 2011, what were you doing?

18 A I was pretty much the coordinator of the take-down
19 team, while Agent Slice was running the informant and
20 Agent Carver in the deal. My job was to coordinate with
21 the SWAT team on when to hit the residence.

22 Q Okay. Now, I didn't ask you this, but how many years
23 did you work in narcotics?

24 A A long time. Probably on and off 15, 16 years.

25 Q Were you one of the senior people out there?

1 A I was the senior person that day.

2 Q We talked about making arrangements with SWAT. Did
3 those arrangements have to change rather suddenly?

4 A Yes, sir, that whole thing got turned around on a
5 dime.

6 Q Location change where the deal was going to be?

7 A Yes, sir. Location, time, proximity, being able to
8 get the raid team into the area to be able to hit it
9 without being spotted by any other people in the area
10 because it was Mr. Newman's neighborhood or around his
11 neighborhood, so we had to scramble and try to find a
12 hiding spot close enough for, obviously, the most
13 important thing was Officer Carver's well-being and his
14 being okay and along with the informant. Drugs are
15 secondary. There's a lot of stuff going on.

16 Q Could you hear the transaction going on?

17 A Mr. Hubbard, I believe so. I had a KEL that wasn't
18 being recorded, but I did have a KEL unit in the van to
19 where I could hear. But, again, it was an area of county
20 that one second you got coverage -- it's just like your
21 cell phone. I mean, one minute you got a signal and the
22 next minute you don't. So, yes, sir, I did hear some of
23 the conversation that was going on between Agent Carver
24 and Mr. Newman and the informant.

25 Q When the time came for the bust to actually go down,

1 did you go into that house as well?

2 A Yes, sir. I wasn't a part of the initial approach,
3 but after the SWAT team went in and secured the residence,
4 I went into the residence, yes, sir.

5 Q Okay. Who did Brandon Slice go in and retrieve?

6 A The informant.

7 Q Who did SWAT retrieve?

8 A They apprehended Mr. Newman in the backyard of the
9 residence.

10 Q Who did you go in for?

11 A I went in along with Agent Barnes to take care of
12 Agent Carver, make sure he was all right. He was a little
13 shaken up. They didn't know the application of the flash
14 bang. Some things changed in midstream due to the
15 dynamics of the raid. We had originally planned to do the
16 raid, I believe, two days later in the week, and we also
17 had probable cause search warrants for two different
18 locations that the raid was prepared.

19 We were prepared to go down and Mr. Newman
20 changed it at the last second, so we decided to flash bang
21 it and -- because we had gotten information that -- on
22 some weapons that were supposed to be in that residence
23 throughout our investigation.

24 Q Once Mr. Newman is apprehended, is anybody in the
25 house searching?

1 A No, sir.

2 Q Okay. You come into that house; is that correct?

3 A Yes, sir.

4 Q Although Mr. Carver is taken out of the house?

5 A Yes, sir.

6 Q Is he brought back in the house?

7 A Yes, sir. He was only out of the house for a short
8 period of time. It was three to five minutes. And
9 basically what happened was Agent Barnes took him outside,
10 made sure he was okay. And we didn't want to leave him in
11 view of Mr. Newman. He was undercover. At the time, we
12 didn't know what capacity we were going to use him in on
13 the larger scale.

14 Q Meaning Mr. Carver?

15 A Right. So, obviously, we wanted to keep him
16 separated, you know, didn't want him to be able to seen
17 too much. I know he was seen initially, but we got him
18 back into the residence.

19 And, basically, what was chaotic about this
20 whole search thing, if you will, was initially this
21 cocaine was on the counter and then it wasn't. So you got
22 the SWAT guys walking around the backyard because he fled
23 out the back door, looking for -- you know, looking up in
24 the trees, looking behind the curtilage of the residence
25 and everything else for this bag of cocaine that was one

1 second on the counter and the next second, it wasn't.

2 Q Was the thought that Mr. Newman had taken it with him
3 when he ran out the back?

4 A That was the entire thought of everybody. And then I
5 finally -- what I did was because we had two other
6 warrants to hit that coincided with this investigation,
7 time was of the essence, other people were going to start
8 finding out there was the possibility because the Long
9 Spires address was a good bit away from where -- and it
10 was also known as a trap house. So there were other
11 dealers that would deal out of that residence because we
12 bought from them out of that residence. So the
13 possibility of the word getting out that we had hit 423,
14 you know, was a strong possibility. So I had to calm the
15 SWAT guys down, tell them not to worry about this cocaine,
16 we're going to have a search warrant coming anyway. We'll
17 spend the night if we have to, we'll find it. So,
18 basically, that's what I'm talking about when I'm talking
19 to them.

20 Later on when I'm talking with Agent Carver, I'm
21 just critiquing what we do, how we do it, why we do it a
22 certain way, and that's the conversation you're hearing on
23 the tape in reference to that.

24 Q Do you-all typically kind of have an after-action
25 report where you sit around and see, what did we do, what

1 could we do better, where did we mess up?

2 A Oh, absolutely. We do it multiple times. Sometimes
3 do it on the scene, sometimes we do it one on one.

4 And in this particular case, I would talk to
5 Officer Carver one on one because, number one, he did a
6 great job, he did a phenomenal job.

7 That takes nerves of steel to be able to meet a
8 person for the first time and buy that quantity of drugs
9 or trade that quantity of drugs. I mean, you don't
10 normally start out that way.

11 But he fit the profile, if you will, of the
12 typical undercover officer we needed. And after a couple
13 of days of briefing, we felt that he was the best man for
14 the job. So that's basically how he became the UC in this
15 particular operation.

16 We needed a young white male that could
17 articulate. Mr. Newman is not a dummy. I mean, he
18 needed -- you know, we had to have somebody that could
19 articulate and get this deal completed.

20 Q Once this arrest is done and you're having that
21 after-report where you're talking to Agent Carver about
22 what's happened, do you recall bringing up something
23 about, well, there was a problem first that people started
24 searching before there was a warrant?

25 A Well, what I was talking about, again, was getting

1 people back on task, to getting them to go hit those other
2 two residences. "Don't worry about looking for this
3 cocaine. We'll find this cocaine."

4 There was nobody going through any cabinets,
5 looking under any furniture. Essentially, the cocaine had
6 already been seized. Okay? The marijuana and the cocaine
7 transaction had already went down.

8 The search warrant was more or less for other
9 evidence to be recovered in conjunction with the evidence
10 of the case that we've already built. It was exigent
11 circumstances. There was two felonies being conducted in
12 the presence of a police officer. The arrest was made.
13 If we didn't want to show further ties to Mr. Newman in
14 this residence, then really and truly the search warrant's
15 irrelevant to what else we were looking for, meaning,
16 documents tying him to the residence and those type
17 things.

18 Q Well, let me ask you this, Mr. Setree: When that
19 search warrant got there, did you-all find documents tying
20 Mr. Newman to that residence?

21 A Yes, sir, we sure did.

22 Q Did you find other attempts like a firearm and
23 bullets --

24 A Yes.

25 Q -- and things like that?

1 A Yes, sir.

2 Q All of that was the product of the search warrant?

3 A Yes, sir.

4 Q The drugs, you already had them?

5 A Yes, sir.

6 Q Before that search warrant got there?

7 A Yes, sir.

8 Q When you were talking about the search, you mentioned
9 people were searching in that backyard?

10 A Yes, sir.

11 Q What, if anything, was recovered in that backyard?

12 A Not a thing, other than Mr. Newman.

13 Q Going back to the conversation when you got your SWAT
14 guys reorganized and told them to leave it alone --

15 A Right.

16 Q -- and get back on task, you had two other search
17 warrants to serve?

18 A Exactly. And they had to hit both of them because we
19 were -- it was a Sunday, our supervisors were out of town,
20 they were on vacation. The deal was supposed to go down
21 two days later. And, I mean, we got a call, I think,
22 around 9 or 10 on a Saturday night, and I made the call to
23 make this thing happen on Sunday. I mean, we could have
24 said, no. But due to, I mean, you know, the informant
25 information that Mr. Newman was practically begging for.

1 it, and if we couldn't comply with his wishes, we could
2 just move on down the road, so I felt confident enough in
3 the team that we had.

4 And we activated a SWAT team, which is not
5 something we always do. We're perfectly capable of doing
6 our own raids, we do them all the time. We do a thousand
7 more than the SWAT team does; however, for personnel, we
8 needed the SWAT team because we had so many different
9 things going on that day. And, again, in the narcotics
10 world, something can be this way one minute, and then ten
11 minutes later it's changed from Bush River Road to
12 somewhere in Gaston. It happens all the time, you know,
13 this hypothetical.

14 Q Let me ask you this: After everything is done,
15 SWAT's on their way doing those other raids, other
16 searches at those other residences, and you're talking to
17 Agent Carver, who's there with you?

18 A I know Agent Barnes is there by then. I believe
19 Agent Tracy's back with the signed search warrant. But
20 for the most part, it's just us, and then later,
21 Agent Slice comes back to the scene.

22 Q So initially it's you, Agent Carver, and Agent Barnes
23 who is seated over here?

24 A Exactly, yes, sir.

25 Q Then Agent Tracy comes over with the search warrant?

1 A Right.

2 Q And then Agent Slice?

3 A Yes.

4 Q Do you remember talking about the watch?

5 A Yeah. I asked the question, was the watch still on.

6 Q Was it your understanding and everybody's
7 understanding that the watch had been activated, it was
8 recording?

9 A Yes, absolutely. I wish we had it. I wish we had
10 that video.

11 Q What did you tell them -- what did you tell
12 Agent Carver about having a watch, that video still
13 running, at least that's what you-all thought?

14 A Well, in my practices, and I've been taught by some
15 of the people I feel are the best in the business, when
16 you have a buy-bust situation or a high-risk arrest
17 warrant or search warrant, once you secure a residence,
18 get everybody in custody and all, we turn off the
19 recording devices. And the main reason why is to protect
20 the integrity of the informants because it's nothing for
21 so-and-so to come up and start talking about an informant
22 because they think all the recording devices are off, and,
23 you know, we have two other warrants to hit. The
24 informant was involved in that situation.

25 So, it's basically, you know, kind of -- it's

1 work -- becomes work product for us because we're, you
2 know, now doing our thing, and we don't want people seeing
3 how we search residences, and we don't want -- and that's
4 why we take the suspects out in the first place. I mean,
5 we have a methodical way that we go about doing things and
6 it's --

7 You know, drug dealers are getting smarter and
8 smarter every day. Every time we arrest one, we educate
9 them. And I'm from the old school and I'm a stickler on
10 how we do things, and I was teaching a young, new
11 narcotics officer my point of view on why we do and do not
12 do certain things.

13 Q Did you also bring up that it can be embarrassing,
14 too?

15 A Oh, absolutely because we say stupid things
16 sometimes. We're human.

17 Q Do you-all sometimes use barracks language?

18 A Yes, sir. Yes, sir.

19 Q Swearing?

20 A Yeah, a little bit of that, or talk about something
21 dumb an officer did, like tripping on the way to the door
22 or, you know, we just say things that just wouldn't sound
23 good in court.

24 Q And you brought that out with Mr. Carver as well?

25 A Yes, sir, all in training.

1 MR. HUBBARD: Mr. Setree, if you'd answer any
2 question Mr. Williams has.

3 THE COURT: Cross-examination.

4 THE WITNESS: Thank you.

5 IN CAMERA CROSS-EXAMINATION

6 BY MR. WILLIAMS:

7 Q Brian, when -- by the way, the injury you have, is
8 that from the gym yesterday?

9 A Well, I think part of it, yes, sir.

10 Q So that's not really law enforcement oriented?

11 A Well, it all starts from the law enforcement thing.

12 Q I hear you.

13 A I'm just an old man.

14 Q When you went out there and gave your instruction,
15 your task was, what, just to be there because you're the
16 person in charge of the investigation or --

17 A Well, Agent Slice was ultimately in charge of the
18 investigation. I was in charge of the operations, if you
19 will, if that makes sense to you. I mean, the
20 investigation was his. I was in charge of getting the
21 SWAT team where they needed to be and, like I said, we had
22 two other things, you know, you got everybody -- the
23 non-narcotics officers was worried about where this
24 cocaine went. Okay? They don't do that every day. Most
25 of them never seen that much cocaine, and I think more

1 than anything, they just wanted to see it. Okay?

2 So they're out there looking around the yard
3 because Mr. Newman had fled out the back door, and I'm
4 trying to get them back on task, and it's a hundred and
5 something degrees on a June day, on a Sunday. And, you
6 know, I'm getting a little aggravated because I'm ready
7 for them to get back in the van and get back on task.

8 So when I'm talking to Agent Carver on down the
9 line, I'm explaining to him, okay, you did a good job.
10 This is some of the things we do, some things we don't do,
11 and this is why we do them this way and this is why not.

12 Q But there was no question but that there was
13 searching going on before the search warrant was
14 delivered?

15 A There were people trying to secure the scene,
16 meaning -- okay, Mr. Williams, you just had a deal go down
17 with 50 pounds of pot, turns out to be 27 ounces of
18 cocaine. This cocaine for a split second or for a split
19 few minutes in our officers' eyes was missing.

20 This individual ran out the back door. So we
21 had officers outside looking for this cocaine, okay,
22 because it wasn't on the counter where Agent Carver last
23 saw it. So, therefore, the scene is not secured because
24 there's evidence missing, evidence that we had already
25 seized. Okay? So you got these guys -- I got to get them

1 back on task.

2 As far as searching the residence, no, sir,
3 there was no searching of the residence being done
4 whatsoever.

5 Q When you use the phrase "securing the scene" --

6 A Yes, sir.

7 Q -- and you use the phrase "searching for the
8 cocaine," in essence, by searching for the cocaine, you
9 are looking around and where it might be located run
10 across other items also?

11 A Well, you also -- if you'll listen to the tape,
12 you'll hear me say if something's not in plain view, don't
13 worry about it. So, in other words, if you don't see
14 something in plain view, you know, we're not lifting,
15 manipulating, picking up anything, opening countertops,
16 anything of that nature.

17 Q And you say that while the search is being conducted?

18 A No, sir, there was no search being conducted. I'm
19 trying to tell you that I had people worrying about where
20 that cocaine was and they wanted to look for it.

21 Q Who found the cocaine?

22 A I think Agent Barnes eventually saw it. The bag was
23 open, and she said, well, here's the cocaine right here.

24 Q So the cocaine was always in the agent's bag?

25 A Well, it was originally on that countertop. How it

1 got in the bag, I don't know if -- you know, I don't have
2 an answer for you. I don't know if Mr. Newman knocked it
3 off the counter on his way out the back door or if the
4 informant put it in there. I know Agent Carver says he
5 didn't put it in there. And we're talking a proximity of
6 two feet, so there's no telling how it got in that bag.
7 But it was our bag and we had already seized that cocaine.

8 Q The bag had not been at the residence, you-all
9 brought the bag?

10 A We brought the bag with the pot in it, yes, sir.

11 Q And was the pot still in the bag?

12 A No, sir. Mr. -- really, I don't know if there was
13 any pot left in there or not. I can't answer that. I
14 know the cocaine was in the bag.

15 Q Did you do anything to or did you issue any orders or
16 did you perform any investigation on the missing
17 videotape?

18 A No, sir. Just disappointed that we didn't have it.

19 Q You clearly make statements on the audio tape that
20 says something about the light being on?

21 A I don't remember that. I'd have to hear the tape and
22 try to clarify it for you.

23 Q If you make a statement about the light being on,
24 would that be an indication that there actually was
25 recording on the videotape?

1 A No, sir, because the light turned -- that's the whole
2 thing about that camera. I mean, an agent purchased it
3 for, I don't know, it was less than a hundred dollars. It
4 got sent from China with Chinese instructions.
5 Agent Tracy was smart enough to learn how to figure it
6 out.

7 Q By speaking Chinese?

8 A Well, I don't know. He's a pretty smart guy. I
9 can't answer if he can speak Chinese or not, but he's very
10 intelligent. But with that being said, the watch, no
11 matter what, the light does not stay on.

12 It will give you indicators, and I'm going to be
13 honest with you, I'm in the -- I own a private
14 investigation company now. I have something similar to
15 it, and I just botched up a recording on that last week.
16 So they're real tricky, they're real sensitive. And
17 Agent Slice has got some pretty big hands. So, you know,
18 my greatest guess on that is that he turned it on and
19 turned it right back off. So we got a running joke that
20 he don't get to touch tech equipment.

21 Q If the light is on, it means that someone has
22 activated it, doesn't it?

23 A Yes, sir, but it don't mean necessarily that it was
24 recording.

25 MR. WILLIAMS: That's all the questions I have,

1 Your Honor.

2 THE COURT: Re-examine.

3 MR. HUBBARD: Your Honor, one thing I do have
4 is, I guess Mr. Williams would like this played, and I
5 would just ask Mr. Setree stay put if we can.

6 THE COURT: All right. How long are we playing?
7 It's saying it's about an hour and a half.

8 MR. HUBBARD: What I can do is listen to it and
9 move it on down, and I'll try to find it right now, Your
10 Honor.

11 MR. WILLIAMS: It's only a short blurb at 1:17,
12 is it?

13 (WHEREUPON, the CD was played but not
14 transcribed.)

15 (WHEREUPON, the recording was paused.)

16 IN CAMERA REDIRECT EXAMINATION

17 BY MR. HUBBARD:

18 Q Did you hear that part, Agency Setree, about let's
19 wait on the search warrant?

20 A Yes, sir.

21 Q Everything in plain view?

22 A I said if it ain't in plain view, don't worry about
23 it.

24 Q Okay. That was your voice?

25 A Yes, sir.

1 (WHEREUPON, the CD recording was played but not
2 transcribed.)

3 (WHEREUPON, the CD recording was paused.)

4 BY MR. HUBBARD:

5 Q That's your voice.

6 A Yes, sir.

7 Q The problem is before -- once the deal went down, the
8 bust went down, you-all were searching for the cocaine?

9 A Yes, sir.

10 Q Was that in the house or out?

11 A That was outside in the backyard.

12 Q And, again, you-all didn't find anything out there?

13 A No, sir.

14 (WHEREUPON, the CD was played but not
15 transcribed.)

16 (WHEREUPON, the recording was paused.)

17 BY MR. HUBBARD:

18 Q Again, Agent Setree, who were you talking to at that
19 time?

20 A Agent Carver. Sounds like I was on the phone with
21 Agent Slice for a minute there and then --

22 Q At the very end?

23 A Yes, sir.

24 Q Because he's going to give you another search or he's
25 going to --

1 A Yes. So he's --

2 Q Did you hear that?

3 A Yes, sir. He's dealing with the CI and dealing with
4 the two other search warrants. Like I said, there was a
5 lot going on that day.

6 MR. HUBBARD: Your Honor, I'll make a Court's
7 exhibit of this, too.

8 (WHEREUPON, The Court's Exhibit NO. 7 was marked
9 for purposes of the record.)

10 MR. HUBBARD: Agent Setree, I believe that's all
11 I have.

12 MR. WILLIAMS: I have no questions as a result
13 of that.

14 THE COURT: All right. You may step down.

15 THE WITNESS: Thank you, your Honor.

16 MR. HUBBARD: Your Honor, I think that's all
17 we're going to put up.

18 THE COURT: All right. Mr. Williams.

19 MR. WILLIAMS: Your Honor, I have nothing to
20 offer, other than argument. I guess you just have to make
21 the call.

22 THE COURT: Well, let's hear the argument.

23 MR. WILLIAMS: Your Honor, I guess you're going
24 to have to make a decision whether or not you believe,
25 based on what you've heard on the tape, whether or not

1 there was actually a search being conducted. And I think
2 it's been admitted, at least by the last officer, there
3 was a search being conducted. At least he admits that
4 there were people looking for the cocaine.

5 And then he doesn't say before the search
6 warrant gets there. He says -- what I heard on the tape
7 was, before the search warrant was signed.

8 Now, if my ears are getting old, then they're
9 getting old. But what I heard on the tape was, before the
10 search warrant was signed.

11 So, obviously, Your Honor, and there's an
12 argument that I'm sure the Solicitor can make in reference
13 to the two items that are used in the elements of the
14 offense itself, which is, he can always argue that the
15 marijuana and the cocaine should have been seized incident
16 to the arrest.

17 But what further concerns me, is that they're
18 walking through the house -- and he's got a lot of other
19 stuff which he's going to introduce as part of this case,
20 which obviously should be suppressed if they were picked
21 up -- which he's going to introduce in this trial, which
22 he discovered while he was searching for this cocaine he
23 says he was looking for.

24 THE COURT: But wouldn't that have to be as a
25 result of the search or later search?

1 MR. HUBBARD: Yes, sir. And I'll make it easy
2 for Mr. Williams. I won't -- we're only looking at the
3 drugs here. I'm not introducing -- I might introduce
4 letters with his name on it, and stuff like that. But not
5 the -- not the guns, the bullets, and all that stuff, if
6 that's what you're concerned about.

7 MR. WILLIAMS: Well, I'm concerned, obviously,
8 with the cocaine, but the basis -- but he's got an
9 argument for that, and I understand that argument is
10 that -- but if the question is, if the cocaine was in the
11 house and if they were searching, whether or not it was
12 seized incident to the arrest or whether or not there was
13 a search being conducted, which I don't know which way it
14 falls.

15 THE COURT: Well, it seems like, as I understand
16 the testimony, the officers were -- or the officer and the
17 informant were invited into the house. I mean, that's the
18 testimony. They didn't bust down the door.

19 MR. WILLIAMS: No, they didn't.

20 THE COURT: They were invited into the house and
21 everything that I've seen -- and I'm talking about the
22 pictures and all of that -- are contraband in clear view.

23 MR. WILLIAMS: Well, the cocaine in the bag may
24 not have been. Well -- and we don't know --

25 THE COURT: Well, it must have been because it

1 was brought in in a different container, or at least it
2 was in a different container, it was in a plastic
3 container on the other side of the kitchen and the single
4 bag or single -- what is it -- thing of marijuana was
5 brought in the book bag.

6 MR. WILLIAMS: Your Honor, but there are other
7 exhibits which they're intending to introduce aside from
8 that.

9 THE COURT: Well, that's what we'll -- he says
10 not. I don't know. Other than, what is it, the
11 envelopes?

12 MR. HUBBARD: Yes, sir. One of the things we
13 were going to end up putting in were things with
14 Mr. Newman's name on it, like envelopes with a lawn care
15 thing, an automotive service, things just to show
16 Mr. Newman --

17 THE COURT: Have you ever listened to "Alice's
18 Restaurant"?

19 MR. HUBBARD: Yes, sir.

20 THE COURT: And that's how he got busted.

21 MR. HUBBARD: Right.

22 THE COURT: He climbed down the hill with the
23 envelope.

24 MR. WILLIAMS: That's right.

25 THE COURT: I don't know that -- that's not

1 contraband. That's just identification.

2 MR. HUBBARD: Right.

3 MR. WILLIAMS: The other thing, Your Honor, and,
4 again, you're going to, I guess, make a decision whether
5 or not you think that there was actually a tape rolling or
6 not a tape rolling. I don't know how to -- it's like your
7 client proving himself innocent beyond a reasonable doubt.
8 We have no way we can refute that particular situation,
9 that is to say, that there was not anything recorded. But
10 clearly, if you listen to the tape that was made
11 immediately after it, the police officers thought that
12 there was a tape which was being made. So I guess it's
13 the Court's call on whether or not it was made or not
14 made.

15 THE COURT: Well, I can assure you that my
16 crystal ball is not with me today, so I don't know what is
17 either in the past or in the future. But the testimony so
18 far, and that's in the evidence so far, is that it was not
19 recording and that there is no video.

20 MR. WILLIAMS: And, obviously, that --

21 THE COURT: And I might use as an analogy of the
22 one place that video is important, just for the mere fact
23 that the statute provides for it, is in DUIs. And if you
24 don't have the video, you do have to establish why you do
25 not have the video. Now, even if you don't have a

1 machine, you have to establish why you don't have a
2 machine there.

3 Here, I don't know of any requirement that you
4 do make a video or not. I don't find it. And when the
5 testimony is that there is no video, a malfunction or
6 whatnot, then I can't create a duty to provide a video
7 that doesn't exist.

8 MR. WILLIAMS: I understand, Your Honor.

9 THE COURT: All right. Anything else?

10 MR. WILLIAMS: That's all, Your Honor.

11 THE COURT: All right. Anything from the State?

12 MR. HUBBARD: Your Honor, one thing I would
13 point out just for record, and I brought it out a little
14 bit in testimony. The fact that law enforcement did come
15 forward with this audio recording tells a lot that there
16 is not bad faith. If they were so concerned about, say, a
17 bad search or about hiding a video that they didn't like,
18 we probably wouldn't have that audio, either. That is
19 just a factual element.

20 THE COURT: I don't know if we need to go that
21 far because that's -- as in all matters in General
22 Sessions, you're not to prove your innocence as much as to
23 mete any question about guilt.

24 MR. HUBBARD: Your Honor, just quickly, I would
25 just say that I believe that reasonably there is no bad

1 faith, there's no evidence they did anything to destroy a
2 video.

3 And, Your Honor, their actions, I think, as far
4 as discovering this cocaine, locating it, were all very
5 reasonable, within the bounds of the Fourth Amendment.

6 Their actions on running out in the backyard and
7 securing that scene, looking around back there are covered
8 by law and exigent circumstances would allow them to do
9 that. But as it turned out, the cocaine never left.
10 Everything was secured from the get-go.

11 That's our argument, Your Honor.

12 THE COURT: Anything else?

13 MR. WILLIAMS: Your Honor, I assumed there would
14 be one additional loose end, but it came up a little bit,
15 and that had to do with the validity of the search
16 warrant, whether or not it had been changed or not
17 changed. I understand what the testimony is, but I assume
18 that Your Honor would make a ruling on that, also, as to
19 whether or not the search warrant was valid or not valid,
20 based on the fact that there's some change on the --

21 THE COURT: Well, as I understand, again, the
22 testimony, other than the exhibit itself, but the
23 testimony explains that the -- and that is what I have to
24 go on that whatever modification was made in the typing to
25 the -- what appears on its face now, it was done prior to

1 the --

2 MR. WILLIAMS: Before the magistrate signed it.

3 THE COURT: Right. Prior to the magistrate --
4 it being submitted to the magistrate.

5 So, again, as far as its admissibility, I find
6 that -- well, first of all, what I have seen today -- now,
7 I don't know if you try to -- if there's something else
8 that you're going to try to present or proffer, please
9 alert not only Mr. Williams but the Court as well so it
10 can be ruled on outside the presence of the jury.

11 MR. HUBBARD: Yes, sir.

12 THE COURT: But what I've seen today, the
13 cocaine and the marijuana, the two packages of both, one's
14 the few ounces and the 25 ounces and the four bales and
15 the one bale would be admissible, would be admitted.

16 As far as -- but that does not prevent the
17 defendant from questioning the credibility of the
18 witnesses.

19 MR. HUBBARD: Yes, sir.

20 THE COURT: I'm not in any way trying to say the
21 witnesses' testimony today -- but as far as admissibility
22 based on the testimony, I would have to deny your motion
23 to suppress. And, of course, I think it follows that I
24 would deny your motion to dismiss either or both of those.

25 MR. HUBBARD: Your Honor, one thing to apprise

1 Your Honor, one thing we had done, and I've talked to
2 Mr. Williams about it, we had redacted down that audio
3 tape because it was so long, and much of it with
4 Mr. Williams' consent. For instance, the travel time
5 there, you'll be listening to it for a while, while they
6 drive. Another thing, there's a comment by his client
7 about a prior transaction that he was involved in. We
8 were going to redact that.

9 THE COURT: In other words, limited to this one
10 incident?

11 MR. HUBBARD: Yes, sir. But at the tail end --
12 we were ending ours at the end when there's this bust.
13 Now, Mr. Williams, I know, wanted to get in with the jury
14 about the watch and showing how sloppy they were. I don't
15 have a problem with that so much, but --

16 THE COURT: Well, I think the watch is going to
17 come in. It's just that ---

18 MR. HUBBARD: Right.

19 THE COURT: I mean, there's no question about
20 that.

21 MR. WILLIAMS: Your Honor, I think we're in
22 agreement on that, but, I guess, the Solicitor's only
23 asking is whether or not the Court's going to require -- I
24 would agree to the redaction provided it includes the last
25 part where there is a commentation or there's some

1 statements about how it went down.

2 MR. HUBBARD: That was my concern. The talk
3 about a search warrant is strictly a legal issue for Your
4 Honor. I don't want that in front of the jury.

5 THE COURT: Wait a minute. What do you mean,
6 the talk about the search warrant?

7 MR. HUBBARD: The stuff we just played on this
8 audio tape I don't think would be properly before a jury
9 when they talk about a search warrant because the jury is
10 going to be wondering, all right, do we need to decide if
11 this is a good search warrant. That is your job
12 100 percent, not theirs.

13 I would -- what I would move to do --

14 THE COURT: Well, I'm not sure about that. I
15 mean, it might be a redundancy to have a search warrant,
16 but the fact is that you did obtain a search warrant.

17 MR. HUBBARD: We did. The only thing, I want to
18 save the jury from the confusion of thinking that's their
19 issue.

20 THE COURT: I'm not sure if that's confusing as
21 much as it would be leaving something out. And we get our
22 cases as we find them. And I'm not sure if I can exclude
23 evidence and evidence of anything that -- we've already
24 heard the good-faith argument. In other words, yes, we
25 know that if there was a felony committed in the presence

1 of a law enforcement officer, he doesn't have to have a
2 search warrant. He doesn't have to have an arrest
3 warrant; however -- as far as the evidence is concerned.
4 But the fact that he does get one, then that might be what
5 is of some significance.

6 Of course, now if you challenge it, that might
7 be one of the charges you want to be sure that they
8 understand that if they did anything, they probably did
9 more than was necessary.

10 MR. HUBBARD: Yes, sir. I was going to ask in
11 lieu of -- based on your ruling, if we could address that
12 with jury charges just so that the jury knows very much
13 that you --

14 THE COURT: And, again, you know, the thing is,
15 lawyers need something to do other than having the judge,
16 you know, clean up the record for them. And one of the
17 things that lawyers do is to explain to the jury why
18 things are done and not done, and that every case is not
19 perfect, and we don't have, you know, things done in a
20 perfect fashion.

21 MR. HUBBARD: Yes, sir.

22 THE COURT: And sometimes redundant things are
23 done, and sometimes foolish things are done.

24 MR. HUBBARD: Yes, sir.

25 THE COURT: But it's definitely appropriate for

1 a charge.

2 MR. HUBBARD: Okay. Thank you, Your Honor.

3 THE COURT: And then you both could argue it.
4 You can argue that you did it out of an abundance of
5 caution, and you can argue that that was they knew they
6 had a bad search.

7 I'm not telling you how to try your cases. It's
8 been a long time since I tried a case, and it's
9 interesting.

10 MR. HUBBARD: What I will do is I will get with
11 Mr. Williams. To the extent we can redact that and agree
12 on it, we'll do that just for time wise if that's okay
13 with Your Honor.

14 THE COURT: Time wise, it's definitely okay with
15 me.

16 MR. HUBBARD: Okay.

17 THE COURT: When I say a redundancy, I'm not
18 talking about a superfluous redundancy.

19 MR. WILLIAMS: Yes, sir. I was just thinking
20 about superfluous redundancy.

21 THE COURT: That's when there's too much time
22 and it's unnecessary.

23 All right. Anything else?

24 MR. HUBBARD: No, sir, Your Honor.

25 MR. WILLIAMS: No, Your Honor.

1 the house. The marijuana that is brought to the house is
2 brought there by law enforcement. My client is arrested
3 at the scene, but he's not in the house, he's actually in
4 the backyard.

5 So what I basically want you to do is listen to
6 the testimony because I think you'll find that there's
7 something strange about this case and how this case went
8 down, and remembering that the burden of proof in this
9 case is on the State to prove that my client was the one
10 who was attempting to sell cocaine, not anybody else, and
11 that the cocaine that is allegedly found is actually some
12 cocaine that my client had.

13 So I would ask that you simply focus on these
14 events that occur, and I think you will find that there's
15 question in your minds as to where all this comes from.

16 Thank you.

17 THE COURT: Solicitor.

18 MR. SCOTT: Thank you, Your Honor.

19 The State calls Brandon Slice.

20 BRANDON SLICE, after being duly sworn, testified
21 as follows:

22 THE CLERK: Please be seated. State your full
23 name.

24 THE WITNESS: My name is Brandon Slice. My last
25 name is spelled S-L-I-C-E.

1 MR. SCOTT: Thank you.

2 DIRECT EXAMINATION

3 BY MR. SCOTT:

4 Q Mr. Slice, where are you employed?

5 A I'm employed by the Lexington County Sheriff's
6 Department.

7 Q And how long have you been with that agency?

8 A Thirteen years.

9 Q And, specifically, what division or unit do you work
10 under at the sheriff's department?

11 A I work for the Lexington County Multi-Agency
12 Narcotics Enforcement Team.

13 Q Could you describe -- sometimes it's called the NET
14 team. Is that an acronym?

15 A (Witness shaking head.)

16 Q Would you describe what the NET team is and some of
17 the duties that you-all undertake?

18 A The reason they call it the NET team is because it's
19 a mouthful to say the whole thing, but it's Narcotics
20 Enforcement Team.

21 Our job is to basically apprehend, seize drugs,
22 seize and arrest criminals and bring them to justice that
23 are dealing in the illegal narcotics drug trade.

24 Q So how many controlled buys have you been involved
25 with in your time with the NET team?

1 A I'm not sure. It's quite a few. I would say more
2 than -- I don't know. I couldn't tell you. It's a bunch.

3 Q What is a controlled buy, anyway?

4 A A controlled buy is when you have an informant or an
5 undercover officer, they wear a recording device, and they
6 also wear what we refer to as a wire, which is a
7 transmitter so that we can monitor the transaction while
8 it goes on. And then they go in, they make a drug
9 purchase, and once they make the drug purchase, they come
10 back to us and everything is controlled. We control how
11 it -- for safety matters, for evidentiary purposes and
12 things like that. That's a controlled purchase.

13 Q What is the difference between a wire and just a
14 regular recording device?

15 A A wire just transmits sound. It's just something for
16 the cover team to be able to listen to the deal as it's
17 going because, as you know, you hear a lot of times about
18 drug deals going bad and people getting shot and things
19 like that, so it's a safety factor. It's also to make
20 sure that whoever -- if it's a confidential informant,
21 that nothing illegal is being done on their part as well.
22 And, basically, that's in a nutshell, if we need to come
23 in and save them or if something goes bad.

24 Q Is it fair to say the wires, the monitoring, its
25 purpose is for you to monitor the transaction from

1 outside, it doesn't actually record?

2 A That's correct. The monitoring device does not
3 record whatsoever. All it does is it transmits to us, and
4 we have what we call a KEL in that we can hear what is
5 going on a mile or so away while we're conducting
6 surveillance.

7 Q Is it common for you to utilize a wire as well as a
8 recording device in a controlled buy?

9 A That's correct. We always try to put both of those
10 devices on an individual when we -- whenever we do that
11 because if we don't have a recording, we don't have any
12 evidence of what happened except for we would have the
13 drugs.

14 Q And you're with the NET team June 5th -- or June of
15 last year?

16 A Yes, I was.

17 Q At some point, did you develop some information
18 regarding Benji Newman?

19 A That's correct.

20 Q And what did you do as a result of that information?

21 A Well, the information that I received, we received
22 numerous complaints that Mr. Newman was involved in the
23 trafficking of cocaine, and he was looking to purchase a
24 large amount of marijuana.

25 MR. WILLIAMS: Objection to the hearsay, Your

1 Honor.

2 THE COURT: Sustained.

3 Mr. Foreman, ladies and gentlemen of the jury,
4 hearsay is something that's attributed to someone else.
5 The reason that we don't admit hearsay is because we don't
6 know what the source is as to the credibility of it. In
7 other words, they're not subject to cross-examination, so,
8 therefore, we don't admit hearsay. Of course, these rules
9 apply to both the State and the defendant.

10 Please restate your question, Mr. Solicitor.

11 So just disregard anything as to the last
12 response of the question, but you may restate your
13 question, Mr. Scott.

14 MR. SCOTT: Thank you, Your Honor.

15 BY MR. SCOTT:

16 Q Did you plan a controlled buy?

17 A That's correct.

18 Q And who was your suspect that you were planning the
19 controlled buy with?

20 A The defendant, Benjamin Newman.

21 Q Okay. So how was the exchange supposed to work?

22 A There was a confidential informant involved, and the
23 confidential informant was to introduce an undercover
24 agent, Agent Carver, to Benjamin Newman, who in exchange
25 was supposed to give Agent Carver 25 ounces of cocaine

1 for --

2 MR. WILLIAMS: Objection to hearsay, Your Honor.

3 THE COURT: I think he's talking about his plan,
4 not what somebody else said.

5 MR. WILLIAMS: Withdraw the objection, Your
6 Honor.

7 THE COURT: So it's overruled if he did.

8 THE WITNESS: I'm sorry. Mr. Newman was to give
9 25 ounces of cocaine to Agent Carver in exchange for
10 50 pounds of marijuana.

11 BY MR. SCOTT:

12 Q And when was this deal supposed to go down?

13 A We had it planned to go down, I believe it was
14 June 7th.

15 Q And where was the deal supposed to go down?

16 A That would have been on Long Spires Road, another
17 address, 433 Long Spires Road.

18 Q So the original plan was June 7th, 2011, at
19 433 Long Spires?

20 A That's correct.

21 Q Did the plan change at some point?

22 A Yes, the plan did change.

23 Q When did the deal actually go down?

24 A The deal actually went down around 1:30, 2 o'clock on
25 June 5th. That was a Sunday.

1 Q So it got bumped up two days?

2 A That's correct.

3 Q And why was that?

4 A Well, in the -- drug dealers always change up what
5 they do. They change their -- they change the way that
6 they do business to try to avoid law enforcement detection
7 and things like that.

8 This one incident, the reason we were told
9 was --

10 MR. WILLIAMS: Objection to hearsay, Your Honor.

11 THE COURT: Again, do not testify as to
12 something someone told you.

13 You can restate your question.

14 MR. SCOTT: Thank you, Your Honor.

15 THE COURT: So that the witness understands.

16 MR. SCOTT: Yes, sir.

17 BY MR. SCOTT:

18 Q Is your testimony, though, that the plan changed from
19 June 7th to June 5th?

20 A That's correct.

21 Q And June 5th, where was the transaction supposed to
22 take place?

23 A 433 Long Spires in the Gaston area.

24 Q Well, I think your testimony was on June 7th, it was
25 supposed to happen at Long Spires. When it got changed to

1 June --

2 MR. WILLIAMS: Objection to leading.

3 THE COURT: Again, I think he's just clarifying
4 the record. I'm going to overrule, but, again, we do want
5 to hear the witness.

6 The reason we don't permit leading questions,
7 particularly with your own witness, is a leading question
8 suggests the answer. In other words, the attorney is
9 testifying and the witness is either agreeing or -- is
10 just agreeing. But we want to hear what the witness
11 knows, not what the attorney knows. And, again, these
12 rules apply to both the State and the defendant.

13 Restate your question, Mr. Scott.

14 MR. SCOTT: Yes, sir.

15 BY MR. SCOTT:

16 Q Agent Slice, on June 5th, where did the transaction
17 take place?

18 A The transaction took place at 423 Longview Drive.

19 Q Okay. And so that location changed as well?

20 A Correct. Originally, it was supposed to take place
21 at 433 Long Spires Drive in Gaston; however, the defendant
22 changed locations at the last minute and told us to meet
23 him -- us, meaning in reference to the undercover agent
24 and the CI, to meet him at 423 Longview.

25 Q And 423 Longview, is that in Lexington County?

1 A Yes, sir, it is.

2 Q When you state that the undercover agent, you're
3 talking about Nick Carver here?

4 A That's correct.

5 Q And is that common, that you're able to utilize a law
6 enforcement agent as an undercover in order to do a drug
7 exchange?

8 A To do a drug exchange of this magnitude, rarely.
9 I've heard of it happening, but that's a rare occasion.

10 Q Why is that?

11 A Because drug dealers don't -- they keep a tight
12 circle of people, and they're not going to -- they don't
13 trust many people, they don't -- just like the changing
14 locations, they don't -- they don't like meeting new
15 people.

16 (WHEREUPON, State's Exhibit No. 1 was marked for
17 identification only.)

18 BY MR. SCOTT:

19 Q Agent Slice, I'm going to show you State's Exhibit
20 No. 1. Do you recognize this?

21 A Yes.

22 Q How are you able to do so?

23 A That is a map of the -- the area in which we were --
24 we were just discussing, Longview Street.

25 Q Are you're familiar with this area?

1 A Yes.

2 Q And does this map fairly and accurately depict
3 Longview Street in this area of Red Bank as it, I guess,
4 it appeared June of last year?

5 A Yes.

6 Q Do you see specifically where 423 Longview Street is?

7 A Yes, I do. It's somewhere in this area right here.

8 Q I've got a pen here. Would you mark where on the map
9 it is?

10 A (Witness complying.)

11 MR. SCOTT: Thank you.

12 Your Honor, permission to publish to the jury.

13 MR. WILLIAMS: Your Honor, two objections:

14 Number one, it's not placed into evidence; number two, the
15 witness has testified on direct examination that the
16 incident occurred at Longview Drive not Longview Street.
17 So my objection is to the relevance of the map.

18 THE COURT: Mr. Scott?

19 MR. SCOTT: First of all, Your Honor, we would
20 offer State's Exhibit 1 for admission into evidence.

21 MR. WILLIAMS: Same objection, Your Honor, that
22 the witness has testified that the event occurred on --

23 THE COURT: First of all, you have to clarify
24 the difference between testimony and the exhibit.

25 BY MR. SCOTT:

1 Q Does this fairly and accurately represent this area?

2 Are you familiar with this map?

3 A Yes, I am. And to clarify, it's Longview Street, not
4 Longview Drive.

5 MR. SCOTT: Thank you.

6 Your Honor, the State offers State's No. 1 for
7 admission.

8 MR. WILLIAMS: Same objection. Based on the
9 testimony, the witness has just pointed to the map and
10 said Longview Street, not Longview Drive, and he didn't
11 enunciate the fact that the arrest and the search and the
12 drug -- alleged drug transaction occurred at Longview
13 Drive as opposed to Longview Street.

14 THE COURT: Well, again, that is something that
15 is not in evidence. His testimony now is that it was
16 Longview Street.

17 MR. WILLIAMS: If that's what he said, Your
18 Honor, then we have no objection.

19 THE COURT: Mr. Scott, can you clarify it for
20 the benefit of the defendant?

21 BY MR. SCOTT:

22 Q I will show you again this map which you identified
23 earlier. How do you recognize this?

24 A It's the Red Bank area where Longview Street -- where
25 the arrest of the defendant was made, and the apprehension

1 and the seizure of the drugs from the defendant was taken
2 place.

3 Q Okay. This case we're here on today, the trafficking
4 cocaine, trafficking marijuana, where did it occur?

5 A It occurred on 423 Longview Street.

6 Q And do you recognize this as 423 Longview Street?

7 A Yes, I do.

8 MR. SCOTT: Your Honor, the State would also --

9 MR. WILLIAMS: Without objection, Your Honor.

10 THE COURT: All right. Without objection,
11 State's Exhibit -- is it 1?

12 MR. SCOTT: This is 1, Your Honor.

13 THE COURT: State's Exhibit 1 is admitted.

14 (WHEREUPON, State's Exhibit No. 1 was admitted
15 into evidence.)

16 MR. SCOTT: Thank you, Your Honor.

17 Permission to publish to the jury.

18 THE COURT: I don't know if they want to pass it
19 through the jury because the ones on the front row will be
20 blocking the ones in the back. Do you have a tripod or
21 something they could look at?

22 MR. SCOTT: I was going to just briefly show it
23 to them, Your Honor.

24 THE COURT: Well; that's fine. I mean, just if
25 you're going to publish it, just go ahead and show them.

1 MR. SCOTT: Yes, sir.

2 BY MR. SCOTT:

3 Q Okay. So the plan that day was 423 Longview Street?

4 A Correct.

5 Q And that is ultimately where you responded to; is
6 that correct?

7 A That's correct.

8 Q And tell me about the staging period before you
9 reached 423 Longview.

10 What takes place before you, the CI and Agent
11 Carver, go to 423?

12 A Prior to that, there's a lot of moving parts in
13 something of this magnitude. We have to have myself and
14 another agent meet with the confidential informant and the
15 undercover agent to prepare them for the transaction.
16 There also has to be a team to come in and make the arrest
17 of the defendant, and also we also have to have other
18 agents to conduct the -- the evidence and whatever else
19 needs to be taken care of.

20 Q What is the purpose of meeting with the CI before
21 going to a location?

22 A The purpose of meeting with the CI before the
23 location, is, number one, we want to search them. We
24 search the vehicle, and we search the CI very thoroughly
25 to make sure they're not bringing any contraband or

1 anything with them.

2 The second is to make sure that everybody is on
3 the same page and you understand that this is what is
4 going to happen, this is our plan of action, so that we
5 can detail it and we can control it. We can tell them
6 exactly what they need to do, so that nothing veers off of
7 the plan.

8 The third thing is to put recording devices and
9 the wire, the transmitter, on their person so that we can
10 monitor the deal for their safety, and we can monitor the
11 deal to make sure that there is no wrongdoing by the CI's
12 part. And then we -- that's the whole reason.

13 Q Tell me about the search. Was the CI in this case
14 searched?

15 A Yes, the CI was searched in this case.

16 Q Did he have any sort of contraband on him?

17 A He had no contraband. I believe he had a bathing
18 suit on and a T-shirt.

19 Q Whose car was used to go to 423 Longview?

20 A The informant's car was used to go to 423 Longview,
21 and it was also searched. And the only thing that was
22 placed in it was the 50 pounds of marijuana that we were
23 taking to conduct the controlled purchase.

24 Q Who wore the wire?

25 A The wire was placed on the confidential informant,

1 and the recording device, a digital recorder, and a video
2 recorder was placed on the undercover officer, in which
3 the video recorder, I didn't turn it on and it messed up.

4 Q Okay. So the CI, his name is Josh Ainsworth, as
5 Mr. Williams stated earlier; is that correct?

6 A That's correct.

7 Q And what was his connection with -- was he an
8 acquaintance of Mr. Newman's?

9 A Yes.

10 MR. WILLIAMS: Objection, leading.

11 THE COURT: Overruled.

12 THE WITNESS: Yes. Mr. Ainsworth was, in fact,
13 a close friend of Mr. Newman. Through surveillance prior
14 to, we had established he was a direct friend,
15 acquaintance of his.

16 BY MR. SCOTT:

17 Q How did the undercover agent, Nick Carver, get to
18 423 Longview?

19 A In the confidential informant's car.

20 Q He rode with the confidential informant?

21 A Right. They rode together in the informant's car.

22 Q And you described some recording devices that the
23 uncover agent, Nick Carver, wore. Would you restate that?

24 A One was a digital recorder basically just like this.
25 The other was a video that was pretty complicated to work.

1 It was only, like, the second time that I'd tried to use
2 it, and it was a watch. And it had video and audio on it;
3 however, I neglected to turn it on. I thought it was
4 turned on, but it wasn't. I wish I could get that back.

5 Q Okay. So you gave the watch that, I guess, is sort
6 of like a spy -- I don't know -- maybe it's a camera
7 within the watch; is that what you're stating?

8 A Correct. It looks like any old natural watch, except
9 for it records video and it records audio. It's a
10 back-up.

11 Doing a deal of this magnitude, you want to
12 place as many things as possible on somebody so that you
13 can get as much evidence as you can that the crime is
14 going to be committed.

15 Q You state that you gave it to Nick Carver?

16 A That's correct. I gave the watch to Nick. I turned
17 it on, or I thought I turned it on, but I actually hadn't,
18 and I placed it -- I gave it to Nick Carver, he placed it
19 on his wrist.

20 Q Had you used that watch before?

21 A Yes, I had used that watch before. And the way you
22 had to turn it on, it was like a sequence of buttons you
23 had to push to make sure because there's no -- a light
24 will blink and then everything shuts off on the watch. So
25 there is no lights or anything on the watch to make

1 somebody look and see what it is. It just looks like a
2 regular watch. So you don't really know whether it's
3 recording or not when you -- when it's actually recording
4 until afterwards when you have it downloaded.

5 Q Who gave Nick Carver the audio recording device?

6 A I also gave Nick Carver the audio recorder.

7 Q And where did he have the audio recording device?

8 A I believe he stuck it in his pocket; which one, I'm
9 not sure.

10 Q Okay. June 5th of last year, how long had you known
11 Nick Carver?

12 A I had known Nick Carver a couple of years.

13 Q Okay. Was he on the NET team?

14 A No, he was not on the NET team at that time, but
15 during the --

16 Q During the time that he worked as an undercover
17 agent?

18 A Right. During the time as the uncover agent, he was
19 on the NET team.

20 Q And how long had he been on the NET team at that
21 point?

22 A Approximately a month.

23 Q Okay. So could you continue on. You stated that the
24 CI is wearing a wire and that is for you to monitor from
25 the outside?

1 A That's correct.

2 Q And you stated that Nick Carver had the watch that
3 was supposed to record video and the audio recording
4 device?

5 A Correct.

6 Q What happened next?

7 A Well, next, there was a telephone call made from the
8 confidential informant to the defendant, Mr. Benji Newman,
9 and he told him he had it. What he was referring to was
10 the marijuana. And he said -- the defendant said, come
11 on, I'm ready. So at that point in time, we prepped the
12 tape. What's prepping the tape is the date and what's
13 about to happen, and then they load up. And we monitor
14 it, we follow behind doing surveillance to monitor the
15 transaction.

16 Q What do you mean, you mentioned a date? What were
17 you talking about, now?

18 A When we start the recording, you will hear my voice.
19 My voice states, today's date is June 5th. Myself, along
20 with, I believe it says Agent Laney -- I don't know the
21 sequence -- along with confidential informant and the
22 undercover, Agent Carver.

23 Q And what's the purpose of that?

24 A The purpose of that is so that when you listen to the
25 tape, you know exactly what is going on.

1 Q Okay. So where were you in relation to Nick Carver
2 and the CI as they drove to 423 Longview?

3 A As they drove to 423 Longview, I was -- we were
4 driving behind them, you know, we -- just covert
5 surveillance, listening to what was happening all the way
6 there until they got there. We found a place to park the
7 car where it would look as inconspicuous as possible.

8 Q Were you able to maintain a visual on them the entire
9 time?

10 A From the -- from our meeting location to the house,
11 yes, we were able to maintain. We may have had a couple
12 of cars get in between us, but other than that, at least
13 by here, we were able to maintain a visual the whole time.

14 Q Okay. But once they got to 423 Longview, were you
15 able to maintain visual or did you have to drive somewhere
16 else?

17 A No. On the map that was showed, Longview has kind of
18 like an uphill where 423 is located. We had to park down
19 the street some, which is a little bit lower, to hide our
20 vehicle.

21 Q I'll show you State's Exhibit 1 again, which you're
22 referring to. Could you indicate --

23 A We were parked about approximately right here on the
24 other side of Founders Road.

25 Q Okay. Now, the marijuana that was supposed to be

1 exchanged, how was it transported to 423 Longview?

2 A The marijuana was -- four bales of it was in a big
3 black duffle bag, and one bale of it completely filled up
4 a book bag, book bag.

5 Q Who had the duffle bag and the book bag?

6 A Agent Carver.

7 Q And who did the duffle bag and the book bag belong
8 to?

9 A The Lexington County Narcotics Division.

10 Q Where did you obtain the marijuana? Where did that
11 marijuana come from?

12 A The marijuana was seized marijuana that was marked
13 for destruction. It was going to be destroyed, and I
14 believe it came in off of a parcel delivery.

15 Q So was it evidence from another case, an unrelated
16 case to this?

17 A Correct. It was not evidence. It was going to be
18 destroyed. There was no suspect.

19 Q And so where did you keep that marijuana, is it in an
20 evidence room?

21 A That's correct. The marijuana is kept in an evidence
22 room until enough -- I don't know what their procedure is,
23 but it will be destroyed.

24 (WHEREUPON, The State's Exhibit No. 2 was marked
25 for purposes of the record.)

1 BY MR. SCOTT:

2 Q I'm going to show you what's been marked as State's
3 Exhibit No. 2. Do you recognize this?

4 A Yes.

5 Q And how are you able to do so?

6 A This is an aerial photograph of Longview Street.

7 Q Okay. Is this how it appeared June 5th of last year?

8 A Yes.

9 Q And why is Longview Street significant?

10 A Because I see where the target location was that the
11 undercover met with the defendant.

12 Q Okay. Would you mark -- just put an X on the
13 location that you're describing.

14 A (Witness complying.)

15 MR. SCOTT: Your Honor, the State would offer
16 State's Exhibit No. 2 for admission into evidence.

17 MR. WILLIAMS: Without objection.

18 THE COURT: All right. Without objection,
19 State's Exhibit 2 is admitted.

20 (WHEREUPON, STATE'S Exhibit No. 2 was admitted
21 into evidence.)

22 MR. SCOTT: And permission to publish to the
23 jury once more, Your Honor.

24 THE COURT: Very well.

25 BY MR. SCOTT:

1 Q Would you show this jury where 423 Longview is on
2 this map?

3 A 423 Longview is right here.

4 Q Okay. And that was the X you just drew on there?

5 A That's correct.

6 Q Now, would you describe where you had to park to
7 monitor this transaction?

8 A You really can't tell by this map because it looks
9 flat, but it's actually not. It's actually kind of going
10 downhill. I was parked past this road down here some.

11 Q Further down?

12 A Further down.

13 Q And why is it important to you, I guess, to park so
14 far away from the scene?

15 A Because drug dealers, they do countersurveillance,
16 and they'll look to see if there's anybody following
17 somebody right before a drug deal. They'll look for any
18 type of suspicious vehicles or anything like that. So you
19 want to park as far away as you can so that you don't --
20 they don't see you.

21 Q You just mentioned that where you had to park was
22 downhill. Why is that significant?

23 A Well, I believe that was significant because the
24 transaction -- I couldn't quite hear very good.

25 Q On the wire?

1 A On the wire. I wasn't getting good reception.

2 Q So what did you do as a result of that?

3 A As result of that, the undercover agent had a cell
4 phone, and I called him on the cell phone.

5 Q How many times?

6 A I may have called him two or three times.

7 Q Why did you keep calling him on his cell phone?

8 A First and foremost, I was calling for his safety, to
9 make sure everything was going good, making sure he was
10 okay and the confidential information was okay.

11 The second reason was, once the deal was
12 complete, we were to arrest the defendant and seize the
13 evidence.

14 Q Would you say the safety of Nick Carver was a primary
15 concern of yours?

16 A That's correct.

17 Q What was the signal -- or once the deal went down,
18 was there a signal that was supposed to be given; is that
19 what you're saying?

20 A There was a signal. I believe it was "that's
21 supposed to look good;" however, that changed in the
22 middle of the deal because while the deal was taking
23 place, they actually walked inside the residence, and it
24 was like a hundred degrees that day. There was pine
25 trees, I was downhill. A lot of things going -- make

1 things complicated if his electronic was going to break or
2 not work sometimes. But there was a lot of interference.
3 I was unable to hear exactly what was taking place, so I
4 had to call.

5 Q Okay. But at some point, did you get the signal to
6 take down the house?

7 A Right. I called him and I said, "Is everything okay,
8 do you see the drugs?" He said, "Yes," and the plan went
9 into action.

10 Q What do you mean "the plan went into action"?

11 A At that point, the SWAT team was to -- at that point,
12 the SWAT team was to take Mr. Newman into custody along
13 with the undercover agent and the confidential informant
14 and make sure -- for the safety of them.

15 Q Did you respond to 423 Longview?

16 A I did.

17 Q And what did you observe?

18 A When I got there, of course, I observed the SWAT team
19 had -- they had already taken over the house. I was
20 called into the residence once they had secured the
21 residence, and I took -- well, first I observed because
22 they -- I heard over the radio they had stated that --

23 MR. WILLIAMS: Objection to hearsay, Your Honor,
24 about what he heard over the radio.

25 THE COURT: Mr. Scott?

1 BY MR. SCOTT:

2 Q Specifically what did you observe?

3 THE COURT: All right. So disregard anything
4 about what you heard.

5 You may proceed.

6 BY MR. SCOTT:

7 Q Without saying what anybody else said, what did you
8 observe? Where was Benji Newman?

9 A I observed the defendant, Benji Newman, he was laying
10 in the backyard, laying down in the grass, the grass was
11 grown up pretty tall. And when I went inside the house, I
12 observed Agent Carver and the CI handcuffed, laying on the
13 floor as well. And I observed the marijuana laying on the
14 floor.

15 Q Who -- well, how was Nick Carver -- how was the
16 undercover, Nick Carver, and the CI, Josh Ainsworth,
17 treated?

18 A They were treated like we were treating any
19 defendant. They were -- he was working in an undercover
20 capacity. We didn't know how far the case was going to go
21 in the future, so in order to keep his identity an
22 undercover identity, he was, in fact, taken into arrest
23 just like as if he was actually there.

24 Q Who did you take under arrest?

25 A I grabbed the confidential information, took him

1 outside because we don't -- we never let any informant
2 know the operational plan of what we're doing. So I took
3 him outside and separated him from everybody and explained
4 to him what was going on.

5 (WHEREUPON, The State's Exhibit No. 3 was marked
6 for purposes of the record.)

7 BY MR. SCOTT:

8 Q I'll show you what's been marked State's No. 3. Do
9 you recognize this?

10 A Yes.

11 Q How are you able to do so?

12 A That is 423 Longview Street.

13 Q Why is that address significant?

14 A Because that is where the transaction took place.

15 Q Does this fairly and accurately depict what this
16 address looked like last year?

17 A Pretty much.

18 Q Okay. Did you actually observe Mr. Benji Newman
19 being arrested in the backyard?

20 A I observed him on the ground, I did.

21 Q Did you observe where the CI's vehicle was parked?

22 A The CI's vehicle was somewhere in this location. I
23 can't tell you exactly where. And Mr. -- the defendant,
24 Mr. Newman, was laying in the backyard in that location,
25 though.

1 Q You did see where he was in the backyard?

2 A Yes. I didn't see him get handcuffed, but I saw him
3 laying on the ground after he was handcuffed.

4 MR. SCOTT: Your Honor, the State offers
5 Exhibit 3 for admission into evidence.

6 MR. WILLIAMS: Without objection, Your Honor.

7 THE COURT: All right. Without objection,
8 State's Exhibit No. 3 is admitted.

9 (WHEREUPON, STATE'S Exhibit No. 3 was admitted
10 into evidence.)

11 BY MR. SCOTT:

12 Q Could you point to 423 Longview in this picture?

13 A This is 423 Longview.

14 Q And would you show the general area where you saw
15 Mr. Benji Newman lying in the backyard?

16 A He was laying somewhere in this general area.

17 Q I think when you left off, you had taken the CI into
18 custody. What happened next?

19 A Well, after I took the CI into custody, explained to
20 him what was going on, I had to -- the house was secured,
21 so everybody was waiting to get a search warrant and the
22 SWAT team had another search warrant they had to go serve
23 as well.

24 Q Okay. What was your involvement in the search of the
25 house?

1 A My involvement of the search of the home was
2 basically just to, as the case agent, make sure that there
3 was a search warrant that we obtained for the residence
4 and keep the CI away from there and -- there were other
5 agents, we work as a team. So there was other team
6 members there as well.

7 Q Did you participate in the search of the home?

8 A I was there for a few minutes. After I came back and
9 the search warrant was there, I did look around some,
10 but -- and I took possession of all of the contraband that
11 was taken from the residence.

12 Q So did you observe anything that was found at that
13 location?

14 A Yes, I did.

15 Q What did you observe?

16 A I observed, it was two small --

17 MR. WILLIAMS: Your Honor, I have a matter of
18 law.

19 THE COURT: Certainly.

20 Mr. Foreman, ladies and gentlemen, I'm going to
21 ask you to retire to the jury room just for a moment. I
22 need to take up a matter with the attorneys.

23 Again, do not undertake any discussion of the
24 case amongst yourselves in your absence.

25 (The jury left open court at approximately

1 10:16 a.m.)

2 THE COURT: All right. Mr. Williams.

3 MR. WILLIAMS: Your Honor, my objection has to
4 do with what this witness will testify to as to what he
5 found in the residence. There's been no foundation that a
6 search warrant was actually obtained and -- at this point
7 in the testimony of the trial because he's indicated that
8 he's just walking around the house, searching the house.
9 So, Your Honor, obviously, some of the matters -- and he's
10 not testifying about the cocaine and the marijuana. So my
11 concern is, he shouldn't be able to testify in regards to
12 anything that he found unless he had a search warrant and
13 there was a basis for him discovering these items.

14 THE COURT: Solicitor?

15 MR. SCOTT: And, Your Honor, we were just
16 discussing -- I guess that's a legal issue and it's not
17 required of us to prove that there was a search warrant to
18 this jury. He's testifying to what he is observing at
19 423 Longview.

20 MR. WILLIAMS: Then we would move to suppress
21 his testimony unless the Solicitor can --

22 MR. HUBBARD: May I --

23 THE COURT: You can consult, but only one
24 attorney at a time on those issues.

25 MR. SCOTT: Judge, I'm, I guess, in a little bit

1 of a quandary. This was ruled on yesterday that, in fact,
2 that evidence does come in. The search warrant was valid.

3 THE COURT: He's not saying he did anything in
4 connection with the search warrant. In fact, I think his
5 testimony was, they were waiting for a search warrant.

6 MR. SCOTT: And then I asked if he observed
7 anything in the residence.

8 THE COURT: Well, that's true, but he's
9 objecting to anything he observed unless you have a basis
10 for it.

11 Consult with your co-counsel.

12 (Pause.)

13 THE COURT: By the way, too, remember anything
14 done in pretrial in limine are always subject to objection
15 and renewed during trial based on the record as it exists.

16 MR. SCOTT: Yes, sir.

17 Judge, I guess my argument is that Mr. Slice is
18 testifying to what he's personally observing, what he
19 personally seized.

20 THE COURT: Why don't we do this for the benefit
21 of the Court, proffer his testimony.

22 MR. SCOTT: Yes, sir.

23 IN CAMERA DIRECT EXAMINATION

24 BY MR. SCOTT:

25 Q Okay. So did you participate in the search of

1 423 Longview?

2 A Yes, sir, I did.

3 Q Were you present when items were located at

4 423 Longview?

5 A Yes, I was.

6 Q And did you observe items that were located at

7 423 Longview?

8 A Yes, I did.

9 Q And what did you observe?

10 A I observed the duffle bag that we brought to

11 423 Longview with the marijuana in it, the 50 pounds of

12 marijuana, one of the bales was on the counter. And after

13 Agent Carver explained where the one bag was, the book

14 bag, I observed inside that that was, in fact, where the

15 cocaine was located.

16 Q Okay. So you observed marijuana. Had you ever seen

17 that marijuana before?

18 A The 50 pounds?

19 Q Yes, sir.

20 A Yes, I had.

21 Q When did you see it before?

22 A I saw it when --

23 THE COURT: All right. Go ahead. I'm not

24 concerned about that much. I'm just concerned with what

25 you're trying to get in by this witness.

1 MR. SCOTT: Specifically that he saw that
2 cocaine in there and he saw the marijuana.

3 THE COURT: All right. So you're talking about
4 the cocaine, and you're talking about the marijuana?

5 MR. SCOTT: Yes, Sir.

6 THE COURT: All right. The record is -- it's
7 already that those items were there.

8 MR. SCOTT: That's specifically what I wanted to
9 do and then have him ID it.

10 THE COURT: All right. Mr. Williams?

11 MR. WILLIAMS: Well, actually, Your Honor, there
12 is testimony in the record since the trial began that the
13 marijuana was there. There's been no testimony that the
14 cocaine was there. And his testimony --

15 THE COURT: Well, apparently, the cocaine -- and
16 again, I trust he's going to finally ask it -- was it in
17 an obvious place where he could see it.

18 MR. WILLIAMS: Well, what he testified to --

19 THE COURT: I'm saying, I'm not talking about
20 what he's testified to, saying he's going to get it in.
21 But, I mean, I --

22 BY MR. SCOTT:

23 Q All right. You observed the marijuana on the counter
24 personally?

25 A Correct.

1 Q Did you seize that marijuana?

2 A We left it in place.

3 Q Okay.

4 A We did seize it.

5 Q Who seized it?

6 A We -- I seized it.

7 Q Okay. The cocaine, where did you see the cocaine?

8 A I saw the cocaine in the book bag.

9 Q Okay. Did --

10 A The little small book bag.

11 Q Describe the book bag.

12 A The book bag --

13 THE COURT: I've seen the pictures. I know
14 that.

15 What I'm trying to do -- go ahead. You can do
16 what you want to, but I'm just saying get to the critical
17 issue or question.

18 BY MR. SCOTT:

19 Q Describe where the cocaine was again.

20 A The cocaine was in a book bag laying right next to
21 the island in the kitchen.

22 Q Okay. Did you open the book bag or did you
23 manipulate the book bag?

24 A No, I didn't.

25 Q But you personally observed it sitting there?

1 A I did.

2 Q Had it been moved at that time?

3 A The bag?

4 Q Yes, sir.

5 THE COURT: Let's don't worry about that. You
6 can go into that -- again, I know what the situation was,
7 having heard the motions yesterday.

8 All right. So it was in open view and he had
9 access to it?

10 MR. SCOTT: Yes, sir.

11 BY MR. SCOTT:

12 Q And did you seize the cocaine?

13 A Yes, I seized that cocaine.

14 Q And where did you transport it?

15 A That evidence was transported --

16 THE COURT: That's, again, is --

17 MR. WILLIAMS: I don't have an objection to that
18 testimony.

19 THE COURT: Well, that's why I was wondering.
20 There's no use of trying to -- do you have anything else
21 you want to get in by this witness relative to -- and,
22 again, his testimony has been they were waiting for a
23 search warrant.

24 MR. SCOTT: Okay. Your Honor, specifically,
25 I'll go ahead and tell you what I intend to do is have him

1 ID the marijuana and ID the cocaine.

2 THE COURT: Well, again, the marijuana and
3 cocaine, as far as the testimony is concerned, is in.

4 MR. SCOTT: Okay.

5 THE COURT: But I'm wondering if you're trying
6 to get something in other than the contraband that was the
7 subject of this arrest.

8 MR. SCOTT: No, Your Honor. I can't even
9 imagine anything else.

10 THE COURT: Well, apparently Mr. Williams did.

11 MR. WILLIAMS: I did, Your Honor.

12 THE COURT: I just want to be sure that I don't
13 have to instruct the jury to disregard something. And if
14 that's all you're going to get in by this witness under
15 that testimony as it is now, that's fine.

16 (Pause.)

17 MR. SCOTT: Judge, I think we're good now.
18 Sorry about that.

19 THE COURT: No problem.

20 All right. Anything else from the defense?

21 MR. WILLIAMS: No, Your Honor.

22 THE COURT: Anything from the State before we
23 bring the jury back?

24 MR. SCOTT: Your Honor, I guess we could go
25 ahead and pre-mark these. We've got a number of boxes

1 here.

2 THE COURT: Well, the thing is, you can go ahead
3 and mark the exhibits for identification.

4 MR. SCOTT: Yes, sir. That's what we'd like to
5 do.

6 THE COURT: All right. Let's go off the record
7 and permit the court reporter to do that. That would
8 expedite things.

9 MR. SCOTT: Yes, sir.

10 THE COURT: And any other, photographs or
11 anything else that you might have. Because they're just
12 for identification, they're not for --

13 MR. SCOTT: Yes, sir.

14 THE COURT: And, also, you've got a nice -- it
15 looks like a tripod back there that might be of
16 assistance. You could, perhaps, since the larger things
17 are over on this side, you could put it a little bit at
18 this end where the officers are.

19 Which place do you want it?

20 MR. SCOTT: The boxes, Your Honor?

21 THE COURT: No.

22 MR. SCOTT: I'm sorry, I was distracted.

23 THE COURT: The tripod for them to be able to
24 publish -- in other words, I'd either put it at the end of
25 the jury box, this end, or close to the wall there.

1 MR. SCOTT: Probably over there. This
2 courtroom's shaped strange.

3 (WHEREUPON, STATE'S Exhibits Nos. 4-22 were
4 marked for identification only.)

5 (WHEREUPON, The Court's Exhibit No. 8 was marked
6 for purposes of the record.)

7 THE COURT: All right. Now, is there anything
8 else from the State before we bring the jury back?

9 MR. SCOTT: Nothing from the State.

10 THE COURT: From the defense?

11 MR. WILLIAMS: Nothing from the defense, Your
12 Honor.

13 THE COURT: All right. Ask the jury to join us,
14 please.

15 (The jury came into open court at approximately
16 10:37 a.m.)

17 THE COURT: All right. You may proceed.

18 CONTINUED DIRECT EXAMINATION

19 BY MR. SCOTT:

20 Q Agent Slice, did you participate in the search of
21 423 Longview Street?

22 A Yes, I did.

23 Q And describe to this jury what goes on when a house
24 is searched.

25 A When a house is searched, we -- basically, first, you

1 see the evidence, you photograph it, and then you take it
2 into evidence, and turn it in to be tested for court
3 purposes.

4 Q Who seizes the evidence?

5 A The case agent seizes the evidence.

6 Q Who was the case agent in this particular case?

7 A I was the case agent in this particular case.

8 Q So you seized the evidence in this case?

9 A That's correct.

10 Q Now, did anybody move any of the evidence before you
11 seized it, to your knowledge?

12 A No, nobody moved the evidence.

13 Q With the Judge's permission, I may ask you to step
14 down for a minute.

15 THE COURT: Certainly.

16 MR. SCOTT: Thank you.

17 BY MR. SCOTT:

18 Q I'm going to show you --

19 THE COURT: All right. Mr. Slice, if would you
20 come to this side so you're talking back towards the jury
21 as well as the court reporter so she can see what you're
22 saying.

23 BY MR. SCOTT:

24 Q All right. I'm going to show you what's been
25 premarked as State's 7, for ID purposes, State's 4,

1 State's 20. Do you recognize these items?

2 A Yes. These are the -- this is 50 pounds of marijuana
3 that was seized. It's got the case number on it.

4 Q Okay. Explain that case number.

5 A Well, every time you start a case, you get a case
6 number, and that tracks it through the case so that all
7 the paperwork and everything, you can bring it up from
8 in-house, all the evidence matches the paperwork.

9 Q Okay. Are there other identifying features on these
10 exhibits that you recognize?

11 A Two bales, box one, two, and three. And, I mean,
12 there's a bar code, and that's put on there by Evidence.

13 Q And this is consistent with what you observed
14 June 5th of last year?

15 A Right. And the chain of custody tag.

16 Q Okay. Chain of custody.

17 When you seize these items, what do you do with
18 them?

19 Well, when you seize them, first off, do you
20 have to fill out one of these tags right here?

21 A Uh-huh.

22 Q And what's the purpose of that tag?

23 A The purpose of this tag right here is so that it
24 shows that you're the one seizing it and whoever it's
25 transferred over to next, that person, they have to sign

1 for it, and it just shows who has touched it along the
2 way. That way, it's a controlled, for lack of a better
3 term, a consistent way of doing things.

4 Q And where did you take these exhibits after you
5 seized them?

6 A These went back to the evidence room at the sheriff's
7 office.

8 Q Okay. Let me show you what has been pre-marked for
9 ID purposes as State's Exhibit No. 6. Do you recognize
10 this?

11 A Yes, I do.

12 Q And how are you able to recognize that?

13 A This was some marijuana that was located on the
14 counter in plain view.

15 Q And did you personally seize that?

16 A Yes.

17 Q And how are you able to recognize that?

18 A Because -- well, for one, it's the case number. For
19 two, it has the same chain of custody tag on it with my
20 name and signature on it right here. And that it's
21 sealed. That way, nobody has tampered with it, and it's
22 definitely what was taken.

23 Q Okay. So did anybody touch any of these items
24 between you seizing them and then dropping them off in the
25 evidence room?

1 A No.

2 Q Did you turn them over to anybody or did you --

3 A It was placed into evidence.

4 Q Okay. Who did you place them into evidence with?

5 A Candy Kyzer, who would have been the next person that
6 would have got it out of the room.

7 Q Okay. I'll show you what has been marked for ID
8 purposes as State's Exhibit No. 5.

9 A Right. This is -- this was found in the -- well, it
10 was in plain view in the -- we had a big duffle bag full
11 of -- it had four ten-pound bales of marijuana, and then
12 we had one backpack that had one bale of marijuana. That
13 bale was taken out, and this was placed in the -- this is
14 the bag of cocaine, 27 ounces, that was in the bag in
15 plain view in the kitchen area.

16 Q And --

17 A And it's, again, the chain of custody tag. There's
18 also -- it gets sealed into what we call a Best kit. That
19 way, you can't add no weight to it, you can't -- you can't
20 manipulate it in any way until the chemist gets a hold to
21 it because it has a tamper-resistant seal on it. So when
22 you seal it, this bag, that's it, game's over, you
23 can't -- if you unseal it, you've got to do another one.

24 Q Did you personally seal that bag?

25 A Yes.

1 Q And did you personally seize that bag?

2 A Yes. You can see my signature right here.

3 Q Did you personally transport that bag?

4 A Yes.

5 Q And where did you take that bag?

6 A The bag went to the evidence room.

7 Q Okay. And who did you sign that over to?

8 A Candy Kyzer took it, so she would have gotten it the
9 next morning. There's lockers and things that you can
10 lock evidence up in.

11 THE COURT: What's the exhibit number?

12 THE WITNESS: This is 5.

13 THE COURT: 5 for identification.

14 BY MR. SCOTT:

15 Q Thank you. You may take the witness stand.

16 As a result of all this, was Mr. Newman charged
17 with anything?

18 A Yes.

19 Q What was he charged with?

20 A The defendant was charged with trafficking cocaine
21 over 400 grams and trafficking in marijuana from 10 to
22 100 pounds.

23 MR. SCOTT: Thank you.

24 Agent Slice, please answer any questions

25 Mr. Williams may have for you.

1 MR. WILLIAMS: Beg the Court's indulgence one
2 minute.

3 THE COURT: Certainly.

4 (Pause.)

5 CROSS-EXAMINATION

6 BY MR. WILLIAMS:

7 Q Agent Slice, the last question that was asked of you
8 was whether or not Mr. Newman was charged with anything,
9 and you said that he was charged with trafficking in
10 cocaine and trafficking in marijuana. And on the basis of
11 that, you said you got an arrest warrant and secured his
12 arrest and placed him in jail; is that correct?

13 A That's correct.

14 Q Let me ask you if you would -- do you recall what you
15 told the magistrate on the arrest warrant as to where all
16 this occurred?

17 A I remember telling the magistrate that this occurred
18 on Longview Street; however, it appears to be a scribner's
19 error where it says Longview Drive on the arrest warrant.

20 Q So the magistrate got it wrong and typed up Longview
21 Drive, and you didn't tell the magistrate that it occurred
22 on Longview Drive; is that correct?

23 A No. Usually, the clerk types up the warrants.

24 Q Do you have your case file with you?

25 A I have this case file right here.

1 Q Would you check your case file and see what address
2 you provide in your case file as being the location that
3 these events occurred at?

4 A One of the incidents says 423 Longview.

5 Q So that doesn't even have a street or drive; is that
6 right?

7 A However, the one written right here says 423 Longview
8 Street.

9 Q Let me just ask you, Agent Slice, why is it important
10 to know the difference between Longview Street or Road and
11 Longview Drive? Why is that important?

12 A Apparently, there's a Longview Drive in Lexington
13 County.

14 Q And it's some distance from this location that you're
15 describing, isn't it?

16 A I'm not aware of where Longview Drive is.

17 Q But you know there's a Longview Drive in Lexington
18 County?

19 A Correct.

20 Q Now, let me take you back to the events of the day
21 that you said that you-all got together, and you-all were
22 going to make some sort of buy-bust on Benji Newman.

23 It's my understanding you met some distance from
24 Longview Street; is that correct?

25 A That's correct.

1 Q And you met with the confidential informant by the
2 name of Josh Ainsworth, right?

3 A That's correct.

4 Q I mean, that is his name?

5 A That's correct.

6 Q And you met with Nick Carver, who works for the NET
7 team, and is also an employee with the Batesburg Police
8 Department; is that correct?

9 A That's correct.

10 Q And who else was with you when you met together
11 before you installed these wires and videotaping equipment
12 and stuff?

13 A Agent Billy Laney was with me.

14 Q Billy Lane?

15 A Billy Laney.

16 Q How do you spell his last name?

17 A L-A-N-E-Y.

18 Q And who else?

19 A And myself.

20 Q Now, I think you've already testified that you
21 searched the confidential information and you didn't find
22 anything. You said you searched the car of -- which car
23 did you search?

24 A The confidential informant's car was searched, and
25 there was no contraband or anything found in the

1 confidential informant's car.

2 Q Did you search the car?

3 A I was present when the car was searched; Agent Laney
4 searched the car.

5 Q So you didn't search the car, correct?

6 A No, I didn't search the car myself.

7 Q Describe, if you will, what kind of car the
8 confidential informant had.

9 A It's a red little -- little box car.

10 Q Box car?

11 A Well, I -- a little car. I think it was like a CRV.

12 Q And who brought the marijuana to the deal here?

13 A I brought the marijuana and gave it to Agent Carver.

14 Q So you took all this marijuana, which is --
15 obviously, we're assuming it's marijuana in these boxes,
16 we can't see through these boxes, but, supposedly, there's
17 five bales of marijuana in these boxes, right?

18 A That's correct, there's five bales of marijuana in
19 those boxes.

20 Q You put these five bales of marijuana where in this
21 little red box car?

22 A I believe Agent Carver stuck it in the car.

23 Q So you didn't place it in the car?

24 A Agent Carver stuck it in the car.

25 Q Where did you get it from?

1 A It came from the evidence room.

2 Q So you went by the sheriff's department before you
3 came out that day; is that right?

4 A That's correct, we went by.

5 Q Okay. Where were you when you went -- were you on
6 duty that day?

7 A It was not a scheduled day for me to be on duty, but,
8 yes.

9 Q So you went by the sheriff's department and you got
10 this 50 pounds of marijuana; is that correct?

11 A Actually, a custodian had to come out and give us the
12 marijuana, and it was given to Agent Tracy to start off
13 with.

14 Q So you didn't get the marijuana from the sheriff's
15 department, somebody else supposedly got the marijuana
16 from the sheriff's department?

17 A It came from the sheriff's department.

18 Q Well, you didn't get it from the sheriff's
19 department?

20 A No, I did not physically go by and pick the marijuana
21 up from the sheriff's department.

22 Q So we have another agent who is Agent Tracy; is that
23 correct?

24 A Yes, that's correct.

25 Q So Agent Tracy, at some point in time, meets up with

1 you that day and gives you the 50 pounds of marijuana?

2 A Correct. At our office.

3 Q At your office at the sheriff's department or at some
4 other location?

5 A We have a covert office.

6 Q A covert office.

7 So Agent Tracy gets the 50 pounds. Do you know
8 if it's the same 50 pounds of marijuana?

9 A Yes, that's the same 50 pounds of marijuana.

10 Q Well, now, how do you know it's the same 50 pounds of
11 marijuana that he got?

12 A How do I know that's the same 50 pounds? Because it
13 was given to Agent Carver. Agent Tracy give it to me, I
14 gave that to Agent Carver. We actually packaged it,
15 placed it in the duffle bag, it was given to Agent Carver
16 to go complete the undercover deal, and then once the --
17 once the SWAT team took everybody into custody, I walked
18 in, I could plainly see the bales wrapped as we had
19 wrapped them, and --

20 Q Was there anything special about how you wrapped the
21 bales of marijuana?

22 A Just wrap them in cellophane.

23 Q So you didn't put any type of markings on the bales
24 so that you would know it was the same bales of marijuana;
25 it was some marijuana that you wrapped?

1 A Correct.

2 Q Now, how much marijuana do you-all normally keep at
3 the sheriff's department?

4 A Sometimes, according to what our interdiction guys
5 get, there could be -- there could be a couple hundred
6 pounds at one time.

7 Q You-all keep cocaine at the sheriff's department?

8 A Right. We keep cocaine in evidence, but not in that
9 large of quantities.

10 Q Right. How big are the quantities of cocaine you
11 keep at the sheriff's department?

12 A We'll keep any quantity, but since I've been here,
13 that's the largest quantity of cocaine I've ever -- I've
14 seen.

15 Q Well, now, when you take the marijuana and the
16 cocaine into the sheriff's department, do you do any
17 testing that makes sure that the cocaine and the marijuana
18 that you have on one particular case is the same -- that
19 it doesn't get reused or the evidence is used for another
20 case?

21 Like in this deal, you said you got this
22 marijuana off of, what, an interdiction deal? You said
23 you didn't have a suspect on that marijuana, right?

24 A I believe that marijuana was confiscated through the
25 mail, if I'm not mistaken. It was to be destroyed.

1 Q All right. Did you have other groups of marijuana
2 that you could have chosen from to use the marijuana?

3 A I didn't choose the marijuana. We just needed
4 50 pounds of marijuana, and that was not being used in a
5 case where there was going to be a prosecution.

6 Q Are there different types of marijuanas that you
7 would store at the sheriff's department?

8 A There's different grades of marijuana that people
9 have.

10 Q Because normally if someone is purchasing marijuana,
11 there would be a particular type of marijuana they may ask
12 for; is that right?

13 A Correct.

14 Q All right. Do you know what type of marijuana this
15 is?

16 A It appears to be what you would call, I guess,
17 schwag, like a lower-grade marijuana.

18 Q So it's not good marijuana?

19 A I don't smoke marijuana so I can't tell you if it's
20 good or bad.

21 Q Well, you called it "schwag." I just want to know
22 how you got your name for it as being schwag?

23 A Because I looked at it, and they say if it's got
24 stems in it, that's what it is. I don't -- I don't
25 physically test marijuana.

1 Q So this marijuana's got a lot of stems in it?

2 A That's what it appeared to have.

3 Q So anybody who is purchasing marijuana who would be
4 in the drug business would know that that was not good
5 marijuana?

6 A I wouldn't -- I would guess.

7 Q Now, let me ask you about once you made the -- you
8 put the marijuana in the little red box car, and who was
9 driving the car?

10 A Well, I believe Agent Carver placed the marijuana in
11 there. I believe I handed it to him, and he actually
12 placed it in there.

13 Q Why do you use the word "I believe"? Do you know or
14 not know?

15 A It would have been either me, Agent Laney or
16 Agent Carver.

17 Q All right. You have recording devices, right?

18 A That's correct.

19 Q What's the purpose of having recording devices?

20 A The purpose of having recording devices is to have
21 evidence of the crime that takes place, any statements or
22 anything that is made during that -- during the time that
23 we're conducting a controlled buy.

24 Q Well, you had a recording device, which you placed on
25 the undercover officer, and you also had a video recording

1 device which -- so that you could preserve evidence and
2 that you could show this jury exactly what happened on
3 this alleged event where this drug deal went down, right?

4 A That's correct.

5 Q And it would show who was handing who what, wouldn't
6 it?

7 A That's correct. I wish I had it.

8 Q Well, you said earlier that you had used this
9 equipment before and it did not work; is that right?

10 A I had used the equipment, and I hit the sequence
11 buttons. It's a going joke around the sheriff's
12 department that I can't use the watch anymore because I
13 mess it up.

14 Q Well, now, you weren't using the watch, though,
15 right?

16 A But I was turning it on and off -- the person turning
17 it on.

18 Q Did you instruct Agent Carver how to use the watch?

19 A No. Agent Carver was just told to place the watch on
20 his wrist, that it was a video camera, and that's it.

21 Q So you put a video recorder on an agent which you
22 expected to videotape what was happening and you didn't
23 tell him how to turn it on and turn it off?

24 A No.

25 Q And is it your testimony that you've never been able

1 to use the watch before?

2 A It was a new piece of equipment that we had just got.
3 One of the agents had purchased it. It came from China.

4 Q Did you purchase it?

5 A No, I did not purchase the watch.

6 Q Where is the watch now?

7 A The watch is probably at our office.

8 Q Have you used it since?

9 A No, I have not.

10 Q All right. So you put the watch on Carver, you don't
11 instruct him how to use it, and he rides down to the
12 drug -- alleged drug deal, and you and -- is somebody else
13 sitting in your vehicle with you?

14 A Yes. Agent Laney is sitting in the vehicle with me.

15 Q All right. And the key for you to come busting in is
16 what?

17 A Initially, if we would have heard the audio -- not
18 the audio, but the transmission coming from Agent Carver
19 and the confidential informant, he was going to say, "It
20 looks good," and then that was going to be the signal that
21 the transaction had been made, and he had the cocaine in
22 his possession; however, I had to make a telephone call
23 and speak to him because there was interference once they
24 stepped inside the house, like, it was breaking up. The
25 transmission wasn't getting over the air properly.

1 Q So what does Agent Carver tell you before you come in
2 there?

3 A I called him on the phone, and I said, "Is everything
4 good?" He said yes. And do you have it, the -- or do you
5 have -- I don't believe I actually said cocaine, but I
6 said, Do you have the -- is it good, and he said yes. So
7 that was my cue that everything was okay, it's time to
8 make the arrest.

9 Q So the okay was when he said everything was good,
10 right?

11 A That's correct.

12 Q All right. And, then, where is the SWAT team
13 located?

14 A They were down the street.

15 Q Where down the street were they?

16 A I wasn't in charge of that part in the operation. I
17 couldn't tell you.

18 Q All right. Did the SWAT team pass you going up to
19 the location where it was?

20 A They actually did at one point, and then they turned
21 around and went back to the right location.

22 Q So the SWAT team was further away from the residence
23 than you were when this was going on?

24 A That's correct. It was a caravan of people. And,
25 obviously, in dealing with a drug dealer, you don't want

1 to have a bunch of police cars, you know, lined up to go
2 in and put them in jail because they're --

3 Q How many people did you have with the SWAT team?

4 A I don't know exactly how many people were on the SWAT
5 team that day. I know that the total operation took well
6 over 20 people, probably.

7 Q Well, aren't you in charge of this, I guess, this
8 buy-bust? I mean, you're the agent in charge of this,
9 right?

10 A My primary objective was to make sure that the
11 evidence was properly taken and properly, you know, placed
12 into the evidence room and for prosecution.

13 There's many moving parts in this, that's why we
14 work as a team, and that's where Agent Setree came into
15 play. He was actually coordinating with them. One person
16 can't coordinate all those moving parts at one time.

17 Q So who was the head of the operation? Who was the
18 person that everybody responded to?

19 A I would -- for evidentiary purposes, it would have
20 been me. For the logistics of how the -- the actual
21 take-down and search warrants were being executed would
22 have been Agent Setree.

23 Q So you didn't know where the SWAT team was?

24 A No. I knew they were close by and they were sitting
25 on go.

1 Q You don't know how many members were in the SWAT
2 team?

3 A I don't know how many entered the house. I mean,
4 I'm --

5 Q Do you know all the names of the people who were
6 there?

7 A On the SWAT team? I can't recall all their names,
8 no, but I do know everybody on the SWAT team.

9 Q But there is no question but that the SWAT team went
10 through the house before you got there, right?

11 A That's correct.

12 Q So you have all these people that you don't know who
13 they are, how many, they are going through the house, and
14 then you come in and then you find marijuana, which you
15 say is in plain view, and a book bag which has a white
16 substance which you believe to be cocaine; is that right?

17 A That's correct.

18 Q Okay. Now, the book bag was clearly owned by the
19 sheriff's department, right?

20 A That's correct.

21 Q So you come in, you find the marijuana, which was
22 taken to the location, because you know that because you
23 helped pack it in the car, and you find the cocaine, which
24 is in a book bag, which you know was brought to the house
25 by your confidential informant, right?

1 A Restate that again.

2 Q Who brought the book bag to the house?

3 A The book bag was brought to us with a bale of
4 marijuana. It was brought to the house by the undercover
5 agent with a bale of marijuana in it.

6 Q So the undercover agent is the person that brought
7 the book bag inside the house?

8 A That's correct.

9 Q Now, you know that because you were there and you
10 could see how it went down, right?

11 A I know that because that's what he told me.

12 Q Right. So you don't really know that; you know
13 somebody told you that, right?

14 A That's correct.

15 Q The confidential informant could have brought the
16 book bag inside the house, couldn't he?

17 A The confidential information may have -- would have
18 brought the book bag.

19 Q And if the confidential informant brought the book
20 bag inside the house with the cocaine in it, that would
21 mean the confidential informant was bringing the cocaine
22 inside the house, wouldn't it?

23 A That would be impossible for the confidential
24 informant to have brought the cocaine inside the house.

25 Q Now, after you went -- I think you came in after the

1 SWAT team had gone through, and you walked -- do you walk
2 through the house?

3 A Yes, I walked through the house.

4 Q And, then, how is it that you -- you go out to the
5 backyard, right?

6 A That's correct.

7 Q And in the backyard you see my client, Benji Newman,
8 laying on the ground?

9 A That's correct.

10 Q And who has custody of Benji Newman?

11 A I believe it was Agent Lovin.

12 Q Agent Lovin? Is that Brian Lovin?

13 A That's correct.

14 Q Did you search Benji Newman?

15 A No, I did not.

16 Q So the person who would have searched Benji Newman
17 would have been Agent Lovin?

18 A That's -- I would imagine so.

19 Q You don't know if anybody searched Benji Newman or
20 not?

21 A Benji Newman was searched.

22 Q How do you know that?

23 A Because that's common practice in law enforcement.

24 Q So we assume that he was searched, right?

25 A That's correct.

1 Q Okay. Now, when you pulled this bag of alleged
2 cocaine out of the book bag, which you-all brought to the
3 house, did you test for fingerprints on the bag to see
4 whether or not the bag contained the same fingerprints as
5 my client?

6 A No, we did not.

7 Q When you secured the marijuana, which was in the
8 duffle bag which you had brought to the house, did you do
9 any fingerprints analysis to see whether or not my client
10 had touched the marijuana?

11 A No, we did not.

12 Q Did you compare the marijuana which was on the -- you
13 said you saw some on the counter?

14 A That's correct.

15 Q Did you have that tested to compare it to the
16 marijuana which you-all brought inside the house?

17 A No, we did not.

18 Q Now, at the conclusion of -- at the conclusion of
19 the, I guess this event, there was a conversation by
20 Agent Setree with the undercover officer, and, basically,
21 he went over some things about what happened that was
22 wrong in this bust?

23 MR. SCOTT: Objection to hearsay, Your Honor.

24 MR. WILLIAMS: I didn't ask what he said, Your
25 Honor.

1 THE COURT: Overruled.

2 You may proceed.

3 BY MR. WILLIAMS:

4 Q There was a recap, was there not, by Agent Setree
5 about what went wrong in the search of this residence,
6 wasn't there?

7 A There was a debrief on how we -- how we do things
8 when we do undercover.

9 Q Well, it wasn't a happy debriefing, was it?

10 A Sir?

11 Q There was an indication that it wasn't done
12 correctly, wasn't there?

13 A Right. Things that we had done wrong. We always
14 critique each other at the end of any operation we do,
15 whether it be just a simple buy, we always try to think of
16 ways we can do things better.

17 Q Now, you said that when you came in, your job was to
18 get the confidential informant, Josh Ainsworth, out of the
19 house so that he wouldn't know what the plan was or what
20 the procedure was. Why did you say that?

21 A Actually what I said was, the confidential informant
22 did not know that there was going to be a take-down, there
23 was not going to be an arrest, so I took him out of the
24 house to explain to him what was going on because we don't
25 let anybody know the inner workings of our unit.

1 Q So you took him out because he didn't know that he
2 was going there and was selling drugs and he was going to
3 be arrested?

4 A Correct. He did not know that he was going to be
5 placed in handcuffs. He did know that he was going to
6 make a controlled buy.

7 Q And when you had this conversation with him, did you
8 subsequently, what, just release him that day?

9 A That's correct. Later on he was released.

10 Q Describe what Josh Ainsworth looks like.

11 A He's -- Josh Ainsworth has black hair. I guess he
12 had a mustache -- might have had a mustache at that time.
13 He's a little heavysset. Probably five seven, five eight,
14 maybe a little taller. It's been awhile since I've seen
15 him.

16 Q So you haven't seen him for awhile?

17 A No.

18 Q You haven't seen him this week?

19 A I did pass him, but it was, like, I saw him far off.

20 MR. WILLIAMS: That's all I have, Your Honor.

21 THE COURT: Re-examination?

22 MR. SCOTT: Nothing further from the State, Your
23 Honor.

24 THE COURT: All right. You may step down.

25 MR. HUBBARD: The State calls Nick Carver.

1 NICHOLAS CARVER, after being duly sworn,
2 testified as follows:

3 THE CLERK: Please be seated and state your full
4 name.

5 THE WITNESS: My name is Nicholas Carver,
6 C-A-R-V-E-R.

7 DIRECT EXAMINATION

8 BY MR. HUBBARD:

9 Q Mr. Carver, where do you work?

10 A I work at the Batesburg-Leesville Police Department,
11 and I'm a task force officer assigned to the Lexington
12 Narcotics Enforcement Team.

13 Q The NET team?

14 A The NET team.

15 Q This NET team -- since you're from Batesburg -- are
16 there officers from other municipalities also on this NET
17 team?

18 A Yes.

19 Q All from Lexington County?

20 A Yes.

21 Q So you-all work together doing drug interdictions
22 throughout the county?

23 A Yes.

24 Q And do you have another job, too, outside of law
25 enforcement?

1 A I'm in the National Guard.

2 Q Okay. So you're doing both of those; one's part
3 time, one's full time?

4 A Yes.

5 Q Now, how long have you been in law enforcement?

6 A Seven years.

7 Q And how long have you been on the NET team?

8 A A little over a year and a half now.

9 Q Did you have much in the way of drug narcotics
10 training or experience before you got on the NET team?

11 A Yes, I was a canine handler, and I worked drug
12 interdiction in the town of Batesburg-Leesville.

13 Q Now, this operation we have been talking about, do
14 you remember what day this occurred?

15 A It was June 5th.

16 Q Of last year?

17 A Yes.

18 Q In your capacity in this operation, were you involved
19 in this operation involving Mr. Newman?

20 A Yes. I was brought in right at -- when I first came
21 to the unit, I was brought in. Prior to that, I was not
22 on the team. I was briefed as soon as arriving to the
23 team. I was with Agent Setree and Agent Slice. They were
24 my TOs.

25 Q How long had you been on this NET team before you got

1 involved in this operation?

2 A About a month.

3 Q Pretty new to see all the guys, meet the guys?

4 A Yes.

5 Q And how they operate?

6 A Yes.

7 Q What was your role in this drug transaction on
8 June 5th, 2011?

9 A I was the undercover agent. I was to meet, to be
10 introduced to the defendant, Benjamin Newman, by the
11 confidential informant, and a deal was -- a drug
12 transaction was supposed to proceed between me and the
13 defendant, Mr. Newman.

14 Q Was this informant's role, was he going to
15 participate in this drug transaction?

16 A No, strictly an introduction of me to Mr. Newman.

17 Q Had you ever met Mr. Newman before?

18 A No.

19 Q And as a narcotics officer, when you're confronting
20 or going to do a deal as an undercover, do you usually
21 have a go-between?

22 A Yes. You usually are introduced -- if you've never
23 met that person before, you are introduced.

24 Q And that's where this Josh Ainsworth fellow came into
25 play?

1 A Yes.

2 Q Did he have any say about how this deal went down?

3 A No.

4 Q Did he have any control over the drugs or what type
5 of drugs were going to be used or transacted?

6 A No, he did not.

7 Q Now, we have heard a lot about where the incident
8 occurred.

9 What was the name of the street or the road or
10 the drive or the court or whatever, do you know?

11 A Longview.

12 Q Do you remember the number?

13 A 423 Longview.

14 Q I just want to clear that up real quick if we can.

15 Looking at State's No. 1, are you familiar with
16 this map?

17 A Yes.

18 Q This road right here above the red X that Mr. Slice
19 put, what's the name of that road?

20 A Longview Street.

21 Q Longview Street. Now, do you know of any other
22 Longviews?

23 A No.

24 Q There may be other Longviews?

25 A Yes.

1 Q Is this the one you went to?

2 A Yes.

3 Q Regardless of whether it's street, drive, road?

4 A Yes, that's the one I went to.

5 Q And this is Lexington County?

6 A Yes.

7 Q And on this map you see -- what is this road right
8 here?

9 A Platt Springs Road.

10 Q Over here, what is this road on the far side of
11 State's 1?

12 A South Lake Drive or known as Highway 6.

13 Q And do you see another road down in the right-hand
14 corner?

15 A Yes, that is 302.

16 Q The Longview you went to, is it pretty much in the
17 center of all those?

18 A Yes, it is.

19 Q State's Exhibit 3, do you see the house you went
20 into?

21 A Yes, I do. It's right there.

22 Q This house?

23 A Yes, sir.

24 Q And in State's Exhibit 2, you still see that same
25 house?

1 A Yes, I do.

2 Q So regardless of whether it's street, road, drive,
3 this is the house you went into?

4 A Yes, sir.

5 Q All right. And just if you turn this map, this
6 aerial this way, do you see the same roads right here that
7 are depicted on State 1 -- State 2 and State 1, do the
8 roads line up?

9 A Yes, sir.

10 Q Okay. I just wanted to clear up where we're talking
11 about.

12 Now, this drug transaction, what time of day did
13 this take place?

14 A Early afternoon, 1:30-ish in the afternoon of
15 June 5th.

16 Q So this is summertime?

17 A Yes.

18 Q And in the south part of our county, what was the
19 weather like that day?

20 A Pretty hot.

21 Q And we heard something about wires and then radio
22 transmitters.

23 The wire that Agent Slice was listening to
24 through his ears to understand what was going on, who wore
25 that wire?

1 A The confidential informant wore the wire.

2 Q He wore that wire?

3 A Yes.

4 Q Who put that wire on him?

5 A Agent Slice.

6 Q What did you have on you?

7 A I had the digital recorder that Agent Slice said
8 looks a lot like this in my front pocket as well as the
9 audio and -- on the watch.

10 Q So you had a watch and basically a tape recorder?

11 A Yes.

12 Q Your understanding at the time, did you understand
13 that both of these devices were on or both of them were
14 off?

15 A I understood that both of them were on. Agent Slice
16 informed me that they both were on, and I put them on as
17 was told, as was instructed.

18 Q Now, this watch that we've heard about, while this
19 transaction's going on, is there, like, a TV monitor
20 somebody can see what's going on via that watch?

21 A No, there's not.

22 Q When do you get to determine -- or when did you find
23 out whether that watch is on or not after a drug
24 transaction?

25 A Once the watch is turned in after everything is done,

1 we go back to our office, our narcotics office, and the
2 watch is turned in to our tech guy, Agent Tracy, and then
3 from there he will plug it into an import cord that only
4 he has and see if it's actually working, if it's able to
5 download, which we found out later that it was never on.

6 Q Now, the recording device, the tape recorder -- not
7 the tape recorder -- I'm old -- but the digital recorder
8 like you have in front of you, was that on?

9 A Yes, it was, the entire time.

10 Q Now, let me ask you this about the deal itself: What
11 were you supposed to bring to the table in this deal?

12 A Fifty pounds of marijuana was what I was supposed to
13 bring.

14 Q And what was Mr. Newman supposed to bring to the
15 table?

16 A Twenty-five ounces of cocaine.

17 Q In this deal, was it arranged as a face-to-face deal?

18 A Yes.

19 Q And, again, who was responsible for dealing directly
20 with Mr. Newman?

21 A I was.

22 Q Now, we have heard the term "buy-bust," and we have
23 heard the term "controlled buy."

24 Let me ask you about a controlled buy. Are
25 undercover officers always involved in controlled buys?

1 A Undercover officers and controlled buys, no, not all
2 the time. Hardly any.

3 Q Do you often use an informant?

4 A Yes.

5 Q A buy-bust, what happens in a buy-bust?

6 A Once the transaction is done, if it's, you know, it's
7 me the undercover, and I give the go ahead to the other
8 agents listening, letting them know it's done, it's taken
9 down immediately, via either by SWAT team or narcotics
10 entry team, it's taken right then. You're taken down and
11 placed under arrest.

12 Q As the undercover officer, were you aware this was
13 going to be a buy-bust?

14 A Yes, I was aware that it was going to go down that
15 way.

16 Q The informant, this Josh Ainsworth fellow, did
17 you-all sit down and prep him on all the details of this
18 case, how it was going to go down?

19 A No, we did not.

20 Q Why did you not do that?

21 A Just for the security purpose, the integrity of our
22 team, you know, not letting everybody know how we work,
23 you know, giving up all the intricacies of our job.

24 Q How did you get from, I guess, the sheriff's
25 department or wherever you started, to this Longview

1 location?

2 A We drove from the location where we were wired and
3 given all the equipment and the CI was searched along with
4 his vehicle. I was in the CI's vehicle. And myself and
5 the confidential informant drove from the location where
6 we were wired and all that was done to 423 Longview
7 Street.

8 Q What did you-all take with you?

9 A The 50 pounds of marijuana.

10 Q How did you transport it?

11 A Four bales of the marijuana within a duffle bag, and
12 one bale in a black book bag.

13 Q Did at any time this informant, Mr. Ainsworth, have
14 control or sole custody of the marijuana?

15 A No, he did not.

16 Q Did at any time prior to this drug deal, did he go
17 into any of these bales and take a little bit for himself?

18 A No, he did not.

19 Q Prior to you even getting in the car, what did
20 you-all do to Mr. Ainsworth?

21 A He was searched.

22 Q Is that protocol?

23 A Yes, that is protocol. That is done with every
24 informant on every deal.

25 Q And prior to this deal, what did you-all do to his

1 car?

2 A It was searched.

3 Q Why would you use his car?

4 A It was a vehicle that was known by Mr. Newman.

5 You're already introducing me who's the new person, we're
6 going to use something that he had seen. You know, the
7 confidential informant was introducing me, so I was going
8 to ride with the informant.

9 Q About what time do you think you got there? You can
10 just give me an approximate.

11 A I'd say probably a little after 1:30, quarter till,
12 around that time frame, close to 2 maybe.

13 Q In the house that we were talking about that's in
14 State's 2 and 3, is that the house you went to?

15 A Yes, it is.

16 Q Where did you meet Mr. Newman?

17 A Outside of that residence.

18 Q Was he already outside?

19 A Yes, he was.

20 Q Did you-all have a conversation outside?

21 A Yes. After a brief introduction, we did talk a
22 little more.

23 Q Did the deal take place, the actual deal take place
24 inside or outside of that house?

25 A It took place inside the residence.

1 Q Before you could go inside Mr. Newman's residence,
2 what, if anything, did you have to do?

3 A I had to show him that I had brought my end, which
4 was the 50 pounds of marijuana.

5 Q Now, did he show you any cocaine outside?

6 A No, he did not.

7 Q So to get in his house, you had to show you had the
8 marijuana he was asking for?

9 A Yes.

10 Q What, if anything, did he say when you showed him
11 that marijuana outside?

12 A He was very pleased that I had brought the 50 pounds
13 of marijuana and told me that he would like 1,000 pounds
14 the next time.

15 Q So this was kind of like a sampling?

16 A Yes, yes.

17 Q When you go inside, what -- who has this marijuana at
18 this point, does Mr. Newman or who is carrying it inside?

19 A I am carrying the black backpack. Mr. Newman pretty
20 much told the informant, you grab the duffle bag and take
21 it inside. And I stayed right beside the informant the
22 entire time as we went inside the house.

23 Q So nobody went through either bag --

24 MR. WILLIAMS: Objection to leading.

25 MR. HUBBARD: Let me -- I will rephrase it.

1 THE COURT: Very good.

2 BY MR. HUBBARD:

3 Q Did anyone get through the bags -- from the point he
4 tells Mr. Ainsworth to carry the bag, did anyone go
5 through the bag you had or the duffle bag to the point you
6 were outside until you got inside the house?

7 A No.

8 Q And you were present right there with them?

9 A Yes.

10 Q Once you get inside, where do you-all put the
11 marijuana?

12 A I placed the black book bag down at the base of the
13 island in the kitchen, and the duffle bag is placed on the
14 inside of the island, which is more the kitchen part, on
15 the floor.

16 Q What, if anything, does Mr. Newman do -- once you've
17 placed some of the marijuana up on the counter in the
18 kitchen, what, if anything, does Mr. Newman do?

19 A First off, he removes a pocket knife out of his
20 pocket and cuts it open to smell the marijuana; states to
21 me that it stinks, but it's marijuana. Then, you know,
22 starts talking about the cocaine that -- and, you know,
23 when I'd get it, if they took it out the package, it would
24 crumble from its brick form, and he was telling me how to
25 keep it in brick form by spraying it with ether, putting

1 it in a microwave, bringing it back out and continue that
2 process to keep in more of a brick-style form instead of
3 powder everywhere.

4 Q Let me back you up.

5 When you put that marijuana down in the kitchen,
6 you say he took out a knife?

7 A Yes.

8 Q And he smelled it?

9 A Yes.

10 Q What did he say?

11 A It stinks, but it's marijuana.

12 Q We heard the term "schwag." Is that cheap marijuana?

13 A Yes, that's what you could say. I mean, that's what
14 we hear from people on the street that that's, you know,
15 low-grade marijuana.

16 Q That's street lingo?

17 A Yes.

18 Q Even though you had low-grade marijuana, he wanted to
19 do this transaction?

20 A Yes, he did.

21 Q And you mentioned cocaine. Where does he get the
22 cocaine?

23 A From a cardboard box that's on the counter. He
24 reaches over into the box and pulls the big bag of cocaine
25 out.

1 Q Now, does he, or anybody, state or restate what the
2 deal is supposed to be at that point in this conversation,
3 how much marijuana for how much cocaine?

4 A He does state that, you know, the 25 ounces for the
5 marijuana. But at that time, he introduces -- or he shows
6 me and gives me another smaller baggie and tells me that's
7 two more ounces. Just, pretty much, for coming there and
8 to keep future deals going, he gives me an extra two
9 ounces.

10 Q So when you're outside, he says how much marijuana
11 does he want in the future?

12 A A thousand -- 1,000 pounds of marijuana.

13 Q On the inside, even though he knows it's cheap, he's
14 okay?

15 A Yes, he is.

16 Q And he's willing to throw in two more ounces?

17 A Yes, he is.

18 Q The way you were operating with Mr. Newman that day,
19 were you operating with the impression or trying to give
20 the impression that this was just the first among many
21 deals that would be coming in the future?

22 A Yes, I was.

23 Q As far as the marijuana, what, if anything, were you
24 saying you were going to do for him in the future?

25 A That I was -- I would be his contact man. If he

1 wanted more, to come through me. And he agreed to that.

2 Q And he would have in exchange what?

3 A More cocaine. He would be my cocaine connect.

4 Q Now, you mentioned something, too, about when he
5 showed the bag of cocaine, he was talking about crumbling
6 and stuff. What was that about?

7 A He's basically telling me that the cocaine that he
8 had provided me, when I removed it from the bag, it would
9 come out of a brick form where they usually package it
10 really tight, that when I removed it, it would crumble.
11 But if I wanted to keep it in its brick form, all I would
12 have to do was take liquid ether, spray it, put it in the
13 microwave for a little bit, bring it back out and repeat
14 that process to keep it in brick-style form, keep it
15 hardened in a way.

16 Q Do you-all continue to have a conversation? Did
17 you-all talk about other things about why he needs
18 marijuana?

19 A Yes, we do. He goes on to tell me that, you know, he
20 can't get any marijuana from any of his other connections.
21 You know, he mentions some people in Elgin that were
22 getting stuff, but he wasn't getting anything. And just,
23 you know, that I had provided him that, he was going to
24 stay -- he was going to stick with me if I could keep on
25 bringing it to him, that, you know, he was good with that.

1 Q During this operation, did you have a telephone on
2 you?

3 A Yes, I had.

4 Q At some point when you're inside or outside, did the
5 phone go off?

6 A Yes, it went off two, three times.

7 Q Who was calling you?

8 A Agent Slice was calling me.

9 Q Why?

10 A To check on me. I don't think he could hear me. The
11 transmitter, just the smallest little thing can make it
12 break up to where you can't hear what's going on. So, you
13 know, to keep me as safe as they could, he would call and
14 just check on me, is everything all right. And I would
15 play it off like I was talking to one of my people from
16 where I came from and just kind of passed it off as to who
17 I was talking, not to give up my, you know, give myself
18 up.

19 Q Were there any animals inside that house that we
20 might hear?

21 A Yes, there was. There was a parrot in a cage by the
22 wall near the kitchen.

23 Q Near where the deal was going down?

24 A Yes.

25 Q How does the bust take place? How does this arrest

1 take place?

2 A At first, there was a loud boom, which I didn't know
3 it was going to happen, it was a flash bang that the SWAT
4 team used, which really kind of discombobulates you. It
5 throws you off a little bit when it goes off.

6 And then immediately, the SWAT team entered.
7 And they were giving commands to get on the ground, rifles
8 were pointed. So myself and the informant, we got down.
9 I mean, we hit the ground quick, and you know, we were
10 assisted a little bit getting to the ground by SWAT
11 officers.

12 Mr. Newman, he bolts through the kitchen and out
13 the back door. And that was the last time I had saw
14 Mr. Newman in the house until later when I was handcuffed
15 in the front yard, he was in the front yard as well.

16 Q Agent Carver, is it protocol for an undercover or an
17 informant to be arrested during a buy-bust?

18 A Yes, to keep up, you know, to keep them in play, you
19 know, to keep the integrity up, to show, you know, not
20 give them up. You know, you want to kind of keep them in
21 their identity. I didn't know how long I would be staying
22 in undercover, so --

23 Q When you said this flash bang, you weren't apprized
24 that that was going to be used?

25 A No, I was not. I didn't know that was going to be

1 used.

2 Q And they took you down?

3 A Yes.

4 Q You had been on the job about how long?

5 A About a month.

6 Q Did you know these guys on the SWAT team?

7 A No, I did not.

8 Q And I'm assuming they didn't know you if you didn't
9 know them?

10 A No, they didn't know me. I was just pretty much
11 coming back there. I stayed within the NET team unit and
12 didn't, you know, straggle out too far.

13 Q Did they treat you any differently than they would
14 have anybody else they were taking down?

15 A No, they did not.

16 Q When this goes on and you're being taken down, this
17 flash bang goes off and people start coming in, what, if
18 anything, did you observe Benji Newman do?

19 A Takes off running out the back door.

20 Q Out the back door?

21 A Yes.

22 Q Now, the marijuana, where is it when Benji Newman's
23 running out the back door?

24 A The one bale is still on the countertop of the
25 kitchen island, and the duffle bag is still in the front

1 of that island in the kitchen, on the ground.

2 Q On the inside part?

3 A Yes, on the inside. The island's right here. It's
4 on this side where this side is more of the dining room
5 area.

6 Q Cocaine, right before this flash bang and officers
7 were coming in, where did you see it?

8 A It was right on the edge of the counter on the
9 island. That's where it was placed.

10 Q Once this deal is all done and the dust settles,
11 where is the cocaine?

12 A I did not see where it was. I kept telling
13 Agent Barnes, it's inside, it's on the counter. When the
14 walk-through was conducted and the bag was open, that book
15 bag where the cocaine was inside, it was still open from
16 where we removed the bale of marijuana, and that's where
17 when they looked down, they saw that it was inside that
18 book bag.

19 Q Okay. Let me back you up. The cocaine ends up,
20 where?

21 A Inside of the black book bag that I carried in, that
22 the bale of marijuana was removed that Mr. Newman wanted
23 to smell.

24 Q And do you know how it got in there or can you only
25 speculate?

1 A I don't know how it got in there. I can speculate
2 and say --

3 MR. WILLIAMS: Your Honor, I object to
4 speculation.

5 THE COURT: Certainly.

6 MR. HUBBARD: That's what I'm asking is if
7 that's all he can do. I'm not asking for --

8 THE COURT: All right. Just answer the
9 question, which is you can't -- you don't know of your own
10 knowledge.

11 THE WITNESS: I don't know how it got in the
12 book bag.

13 BY MR. HUBBARD:

14 Q At the end of the day -- when this happens, is --
15 does anyone know where the cocaine is?

16 MR. WILLIAMS: Objection, hearsay.

17 MR. HUBBARD: What hearsay? I'm asking, does
18 anybody know? He's there.

19 THE COURT: Well, the thing is, I think you're
20 asking him to speculate again.

21 BY MR. HUBBARD:

22 Q To your knowledge, being there on the floor, was
23 there any question among you or your officers where the
24 cocaine was?

25 MR. WILLIAMS: Objection, again, Your Honor,

1 because he's asking for an opinion dealing with what other
2 officers --

3 THE COURT: All right. Well, just ask it.

4 MR. HUBBARD: It's an observation.

5 THE COURT: Well, he can only observe what he
6 observed. When you asked as to other officers, you don't
7 know what they observed.

8 BY MR. HUBBARD:

9 Q Were other officers in there?

10 A Yes.

11 Q And you observed them?

12 A Yes.

13 Q And were you in that house as well?

14 A Yes.

15 Q So you could observe what's going on?

16 A Yes, I could.

17 Q At the end of the day, you're still a police officer,
18 correct?

19 A Yes, I am.

20 Q Where was the cocaine at that time?

21 A It was in the bag, but at the time when it went down,
22 I thought it was on the counter.

23 Q Okay. Now, as an officer there, were people coming
24 to you saying, where's the cocaine?

25 A Yes, Agent Barnes was.

1 Q And were they looking for it?

2 A Yes, they were.

3 Q Where were your fellow officers looking?

4 A In the backyard of the house.

5 Q Why?

6 MR. WILLIAMS: Objection, speculation.

7 THE COURT: He can testify to where they were.

8 MR. HUBBARD: Yes.

9 THE COURT: But as far as why they're there,
10 that's for them to testify to.

11 MR. HUBBARD: Yes, sir.

12 THE COURT: I mean, you can set up the scenario
13 if you want to.

14 MR. HUBBARD: I will crawl through it, Judge, I
15 was going to do that.

16 THE COURT: Don't do that. Excuse me. She only
17 can take one of us.

18 MR. HUBBARD: Yes, sir. I apologize.

19 THE COURT: No problem. Let's see if we can --
20 go ahead, ask your question.

21 BY MR. HUBBARD:

22 Q Where is the defendant when the bust happens?

23 A He is in the kitchen and runs to the backyard.

24 Q Right after this bust, do you see the cocaine? I'm
25 asking if you see it.

1 A No, I do not.

2 Q Right after the bust when your fellow officers come
3 in there, is there cocaine visible?

4 A No, there is not.

5 Q Nothing in plain view right there on the countertop?

6 A No, there is not.

7 Q Are you participating in trying to assist anybody,
8 your fellow officers, do something at that point?

9 A No, I'm not.

10 Q But at some point, the officers come to you for
11 assistance?

12 A Yes, they do.

13 Q What assistance is being elicited from you at that
14 point?

15 A They were asking --

16 MR. WILLIAMS: Objection, hearsay.

17 THE COURT: Very simply --

18 MR. HUBBARD: I've got an exception -- I'm
19 sorry.

20 THE COURT: Very simply, ask him did they come
21 to him and did he do anything in response to what they
22 asked him.

23 MR. HUBBARD: Yes, sir, I will do that.

24 THE COURT: Thank you.

25 BY MR. HUBBARD:

1 Q Based on their questions to you, what did you do?

2 A I told them where I last saw the cocaine.

3 Q Okay. And so your impression at that point, your
4 impression, did you know where the drugs were?

5 A No, I did not.

6 Q Okay. Were you alone in that?

7 A Alone in?

8 Q Knowing where the cocaine was?

9 A No, I was not alone.

10 MR. WILLIAMS: Objection, speculation.

11 MR. HUBBARD: I've got an exception I can state.

12 THE COURT: State your exception.

13 MR. HUBBARD: It's not hearsay because it's not
14 being offered for the truth of the matter asserted, so by
15 definition, it's not showing their action.

16 THE COURT: Then you're asking for speculation
17 as to what was in the mind of somebody else.

18 MR. HUBBARD: I will move on.

19 THE COURT: Thank you.

20 BY MR. HUBBARD:

21 Q I want to show you some photographs and see if you
22 can recognize these.

23 I'm going to show you what's been premarked
24 State's 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18 and 19.

25 Do you recognize those photographs?

1 A Yes, sir. The State Exhibit 8 is the front of --

2 Q I tell you what. Let me ask you, do you recognize
3 those photographs? Just go through and then we'll talk
4 about them.

5 THE COURT: Are they in sequence, from 8 through
6 13?

7 MR. HUBBARD: 8 through, I believe, 19, Judge.

8 THE COURT: Thank you.

9 THE WITNESS: Yes, sir, I recognize all the
10 photos.

11 BY MR. HUBBARD:

12 Q As to State's 8 and 9, what do these depict?

13 A Those are front photos of 423 Longview Street.

14 Q This is the house you went into?

15 A Yes, it is.

16 MR. HUBBARD: Your Honor, I officially offer
17 these.

18 MR. WILLIAMS: Without objection, Your Honor.

19 THE COURT: All right. 8 and 9 are admitted
20 without objection.

21 (WHEREUPON, STATE'S Exhibits Nos. 8 and 9 were
22 admitted into evidence.)

23 BY MR. HUBBARD:

24 Q So this is the house that you went into June 5th,
25 2011?

1 A Yes, it is.

2 Q Do these photos show the front side or the back side?

3 A The front side.

4 Q State's 10 and 11, what do these show?

5 A That is the vehicle that was parked to the side of
6 423 Longview.

7 Q What kind of vehicle is that?

8 A Lexus SUV.

9 Q In this SUV, looking at State's 11, do you see
10 another vehicle back there?

11 A Yes, there's a RV vehicle right there as well.
12 That's also on the side of 423 Longview.

13 Q Let's point it out. On State's 3, what is this in
14 this photograph up to the side of the house?

15 A That's the RV.

16 MR. HUBBARD: I offer these into evidence at
17 this time, Judge.

18 MR. WILLIAMS: Without objection.

19 THE COURT: All right. Without objection,
20 State's Exhibits 10 and 11 are admitted.

21 (WHEREUPON, STATE'S Exhibits Nos. 10 and 11 were
22 admitted into evidence.)

23 BY MR. HUBBARD:

24 Q 10 and 11 show this Lexus.

25 Was any other vehicle present, to your memory?

1 A Just the confidential informant's vehicle that we
2 arrived in.

3 Q State's 12, 13, what do these show?

4 A Those are pictures of the kitchen inside of
5 423 Longview.

6 MR. HUBBARD: Offer these into evidence.

7 MR. WILLIAMS: Your Honor, I would object at
8 this time unless there's a better foundation.

9 THE COURT: All right. Very good.

10 BY MR. HUBBARD:

11 Q State's 12 and 13 depict what part of the house?

12 A That's the kitchen.

13 Q Okay. Is this where the transaction occurred?

14 A Yes, it was.

15 Q And what, if anything, do you see in State's 12
16 indicating part of that transaction?

17 A The bale of marijuana on the counter right there,
18 that's what was brought in the black book bag.

19 Q And the counter that you see, can you see the book
20 bag in this photo?

21 A No, you cannot. It's right at the base of this --
22 the L-side of that island.

23 Q In State's 13, we mentioned, or you mentioned, I
24 should say, there was an animal in there. Do you see an
25 animal?

1 A Yes, I do, a parrot right here.

2 Q Is this the same kitchen?

3 A Yes, it is.

4 Q This is pretty much how it looked immediately after
5 the bust?

6 MR. WILLIAMS: Now no objection, Your Honor.

7 THE COURT: Very good. Thank you.

8 Without objection, State's Exhibit 12 and 13 are
9 admitted.

10 (WHEREUPON, STATE'S Exhibits Nos. 12 and 13 were
11 admitted into evidence.)

12 BY MR. HUBBARD:

13 Q If you would, looking at State's 12, does that appear
14 to be the same photograph that has been enlarged in
15 State's 21?

16 A Yes, it is.

17 MR. HUBBARD: Your Honor, I offer this into
18 evidence.

19 MR. WILLIAMS: No objection, Your Honor.

20 THE COURT: All right. Without objection,
21 State's Exhibit No. 21 is admitted.

22 (WHEREUPON, STATE'S Exhibit No. 21 was admitted
23 into evidence.)

24 BY MR. HUBBARD:

25 Q Now, Agent Carver, is this the counter that we're

1 talking about?

2 A Yes, sir, it is.

3 Q What is this object, this looks like it's got -- it's
4 a shiny object, it's a shiny square. What is that?

5 A That's the bale of marijuana that was brought inside
6 the black book bag.

7 Q What is it wrapped in?

8 A Cellophane.

9 Q And there's how many bales?

10 A Five.

11 Q Okay. So this is just one?

12 A Yes.

13 Q And you transported that in what?

14 A That was in the black book bag.

15 Q Where is the duffle bag in relation to this photo?

16 A On that side of the counter.

17 Q Let me ask you this: There's the kitchen side of the
18 counter and then there's the outside.

19 A It's on the kitchen side of the counter.

20 Q Is it on the floor or on something else?

21 A On the floor.

22 Q Okay. The cocaine that you mentioned, you
23 mentioned -- what did Benji Newman get the cocaine out of?

24 A A cardboard box.

25 Q I want to show you what has been marked State's 14

1 and 15.

2 A Yes, sir.

3 Q What, if anything, can you tell me about what you see
4 in that photo?

5 A That's the --

6 MR. WILLIAMS: Your Honor, I'm going to object
7 to the publication of the document until placed into
8 evidence.

9 BY MR. HUBBARD:

10 Q Do you recognize that photo?

11 A Yes, I do.

12 Q When you mentioned that the cocaine was retrieved
13 somewhere, do you see anything in State's 14 or 15 showing
14 where it was retrieved?

15 A Yes, I do.

16 Q And what is that?

17 MR. WILLIAMS: Objection, Your Honor.

18 THE COURT: Again, I'm going to have to sustain
19 the objection until he establishes the photograph reflects
20 whatever he purports it to reflect.

21 BY MR. HUBBARD:

22 Q Do these items accurately depict and reflect where
23 the cocaine was retrieved?

24 A Yes, it does.

25 MR. HUBBARD: Offer it into evidence at this

1 time.

2 MR. WILLIAMS: No objection, Your Honor.

3 THE COURT: Without objection.

4 MR. HUBBARD: Okay. State's 14 and 15, Judge.

5 (WHEREUPON, STATE'S Exhibits Nos. 14 and 15 was
6 admitted into evidence.)

7 BY MR. HUBBARD:

8 Q Looking at State's 14, do you see this same box on
9 Exhibit 21, the blown-up photo of the kitchen?

10 A Yes, I do. It's right there on this countertop.

11 Q It's in this box here?

12 A Yes, that's it.

13 Q Now, once the dust settled and the SWAT team left,
14 was the cocaine located?

15 A Yes, it was.

16 Q Where was it?

17 A In the black book bag that I had brought in.

18 Q The same black book bag that you had had with the
19 bale of marijuana in it?

20 A Yes.

21 Q And where was that black book bag?

22 A At the base of the counter.

23 Q Looking at State's 21, is it on the front side?

24 A Yes, sir, it's on the front side down at the very
25 bottom of the floor.

1 Q I want to show you State's 17 and 16. Is that the
2 black book bag?

3 A Yes, it is.

4 Q Is this how it was found?

5 A Yes, it is.

6 Q Do these photos accurately depict the condition of
7 what was purported to be cocaine when it was located?

8 A Yes, it is.

9 MR. HUBBARD: I offer these into evidence.

10 MR. WILLIAMS: Without objection.

11 THE COURT: Without objection, State's Exhibits
12 16 and 17 are admitted.

13 (WHEREUPON, STATE'S Exhibits Nos. 16 and 17 were
14 admitted into evidence.)

15 BY MR. HUBBARD:

16 Q At this point, Agent Carver, the marijuana and
17 cocaine have been exchanged?

18 A Yes.

19 Q Now, Agent Carver, being a police officer, could you
20 have made an arrest right there on your own?

21 A Yes, I could.

22 Q And you didn't?

23 A No, I did not.

24 Q Can you tell us why?

25 A The operation had more in depth, and a team was

1 already ready to come in for the buy-bust portion of the
2 operation.

3 Q Okay. At any time did you observe any of the drugs
4 during this buy-bust, did you observe any of the drugs
5 leave that kitchen?

6 A No, I did not.

7 Q And did you have -- we mentioned earlier you were
8 wearing a recording device?

9 A Yes, I was.

10 Q Very similar to what we have here in the courtroom?

11 A Yes.

12 Q And that device, was it working?

13 A Yes, it was.

14 Q Were the events of that day captured and placed on a
15 CD?

16 A Yes, they were.

17 Q I'm going to see if you recognize what's been marked
18 State's 22.

19 A Yes. I recognize the defendant's name and the date
20 and as well as my initials on the bottom.

21 Q Okay. Do the events that are captured on this CD,
22 State's 22, fairly and accurately depict what occurred?

23 A Yes, it does.

24 Q Were some things like travel time compressed or
25 reduced?

1 A Yes, they were.

2 Q Other than that, does it fairly and accurately depict
3 what occurred?

4 A Yes, it does.

5 MR. HUBBARD: I offer State's 22 into evidence.

6 MR. WILLIAMS: Without objection, Your Honor.

7 THE COURT: All right. State's No. 22 is
8 admitted.

9 (WHEREUPON, STATE'S Exhibit No. 22 was admitted
10 into evidence.)

11 MR. HUBBARD: Your Honor, at this time, I'd like
12 to publish it.

13 THE COURT: Let's see. How long is the CD?

14 MR. HUBBARD: Your Honor, this might be a good
15 time to take a break. It's not very long, but at the same
16 time, it's --

17 THE COURT: Well, I thought it might be.

18 All right. Very good.

19 Mr. Foreman, ladies and gentlemen of the jury,
20 before we hear the CD, I'm going to suggest that we take a
21 short break so you'll be somewhat refreshed when you come
22 back again.

23 Do not undertake discussion of the case among
24 yourselves.

25 Everyone else remain seated while the jury

1 retires from the room.

2 (The jury left open court at approximately
3 11:51 a.m.)

4 THE COURT: All right. Anything from the State
5 before we take a break?

6 MR. HUBBARD: No, sir.

7 THE COURT: From the defense?

8 MR. WILLIAMS: No, sir.

9 THE COURT: Very good.

10 Officer, you may step down but you're under oath
11 so you cannot discuss testimony with anyone.

12 THE WITNESS: Yes, Your Honor.

13 THE COURT: All right. We'll stand at ease.

14 (A break was taken.)

15 THE COURT: All right. Anything from the State
16 before we bring the jury back?

17 MR. HUBBARD: No, sir, Your Honor, other than I
18 was planning to proceed with publishing State's
19 Exhibit 22.

20 THE COURT: Any objection?

21 MR. WILLIAMS: No, Your Honor.

22 THE COURT: Very good. Ask the jury to join us.

23 (The jury came into open court at approximately
24 12:13 p.m.)

25 THE COURT: All right. Let the record reflect

1 the jury and alternates are in the jury box.

2 Mr. Foreman, ladies and gentlemen of the jury,
3 we will now continue with the trial.

4 Solicitor?

5 MR. HUBBARD: Yes, sir.

6 Your Honor, at this time I'd like to publish
7 State's Exhibit 22, the CD.

8 THE COURT: Very well.

9 (WHEREUPON, the CD recording was played but not
10 transcribed.)

11 BY MR. HUBBARD:

12 Q Agent Carver, were you still in the kitchen or were
13 you brought back into the kitchen after this bust?

14 A After the bust, I was brought into the living room
15 area, which is right beside the kitchen.

16 Q Is that pretty much right near --

17 A Yeah.

18 Q -- where that counter is in State's 21, I believe it
19 is?

20 A Yes, yes, it is.

21 Q Whose responsibility is it at the end of a case to
22 seize all the drugs?

23 A The case agent is.

24 Q The case agent in this case was who?

25 A Agent Slice.

1 Q Now, I want to ask you to do something for me.

2 With the Court's permission, I'd like you to
3 come down and look at what we've marked for ID to see if
4 it's consistent with what you dealt with that day on
5 June 5th, 2011.

6 A Yes, sir.

7 Q All right. Now, these boxes, have you gone over
8 these boxes prior to this trial?

9 A No, I have not.

10 Q This morning, did we sit down and look at these
11 boxes?

12 A We went over --

13 MR. WILLIAMS: Objection, leading, Your Honor.

14 MR. HUBBARD: I'm trying to set the time frame,
15 but if he wants me to --

16 THE COURT: No, that's all right.

17 Go ahead. Overruled. But let's do just find
18 out what the witness knows. All right.

19 THE WITNESS: We went over the evidence tags.

20 BY MR. HUBBARD:

21 Q What does an evidence tag show?

22 A It shows the chain of custody from who would sign out
23 the evidence, who would pick the evidence back up, when it
24 would be taken back to evidence as well as the case number
25 on top of it which indicates the case in which this was a

1 part of.

2 Q Okay. When you make a case on a particular
3 individual, what do you as an officer do, or what does
4 your agency, the NET team, do?

5 A They issue a case number. We usually call dispatch,
6 let them know that we have an investigation that we're
7 opening, they assign us a case number. And from that
8 point on, anything that has to do with that case has to be
9 documented and it's put under that case number.

10 Q Does that include when an item goes to evidence?

11 A Yes.

12 Q What is the importance of a case number?

13 A It's very important because anything and everything
14 involving that case has to be documented with that case
15 number to keep everything that is involved with it
16 together instead of everything going every which way, it
17 keeps the continuity of the case.

18 Q These boxes, this one box that is marked State's 4,
19 what does that say?

20 A Bales one and two.

21 Q State's 7 for ID, what does that say?

22 A Bales three and four.

23 Q And the next number somewhere -- oh, it's on the
24 back, I'm sorry. State's 20 for ID, what does that one
25 say?

1 A Bales five.

2 Q This number that is on the white tag here, what is
3 that number?

4 A That is the case number.

5 Q Okay. Can you read that case number for the record
6 and the court reporter?

7 A 11-0022609.

8 Q Is that the same number we see on the chain tag?

9 A Yes, it is.

10 Q And is that the same number you see on State's 7 and
11 State's 4?

12 A Yes, it is.

13 Q Okay. And, again, that signifies what?

14 A That all that was involved in that particular case.

15 Q So these boxes, there's bales one through five. How
16 many bales did you-all take for this deal?

17 A Five bales of marijuana.

18 Q All right. I'll show you this if I don't make a
19 mess. State's ID 5, do you see an evidence tag?

20 A Yes, I do.

21 Q The number written on that evidence tag is what?

22 A That is the case number for this case.

23 Q Can you read it again?

24 A 11-022609.

25 Q And is that also on this paper that this bag was in?

1 A Yes, it is.

2 Q Okay. And do you see, looking at this item, State's
3 ID 5, how many bags are in this item, can you tell?

4 A Two separate bags; the sandwich bag and the larger
5 bag.

6 Q Okay. Would those be -- as protocol for law
7 enforcement, when you recover drugs, do you-all try to
8 retain the original bags?

9 A Yes, and they're placed in the Best kit, which that
10 is placed in.

11 Q The Best kit. This bag here, I want to ask you about
12 that, where you see this blue marking.

13 When you talk about a Best kit, what is a Best
14 kit?

15 A That is a Best kit. Any drug that we seize with any
16 of our cases, besides marijuana, goes within a Best kit,
17 and that gives you a control number, which Evidence goes
18 to track that particular drug that was confiscated and as
19 well as the person who is sealing the envelope and their
20 signature and the case number as well.

21 Q All right. Now, today we see it in yet in another
22 bag.

23 Now, as an officer doing narcotics, when a case
24 comes back, when does it get this last bag on it?

25 A After it's tested and, you know, before it's coming

1 to court to show the jury.

2 Q Okay. I want to show you one other item, State's
3 ID 6, which is a smaller bag with -- can you describe what
4 this looks like?

5 A Marijuana buds.

6 Q Buds?

7 A Yes.

8 Q How do buds different from -- what is a marijuana
9 bud?

10 A It's the bigger portion on the plant. That's usually
11 what people prefer when they smoke it because it's, you
12 know, a little bit more concentrated. It shows a higher
13 grade of weed.

14 Q Do you see a chain tag?

15 A Yes, I do.

16 Q Can you read that number?

17 A 11-022609.

18 Q All right. Now, let me ask you about States's
19 ID 6 -- and you can have a seat again.

20 A Yes, sir.

21 Q We have talked about five bales that you brought as
22 part of this deal. Is what's in State's 6 for ID part of
23 what you brought?

24 A No, it is not.

25 Q Where, if you know, was that found?

1 A That was on the counter next to the coffee pot.

2 Q All right. Let me show you State's 21, the kitchen,
3 the blowup of the kitchen.

4 A Yes, sir.

5 Q Will you point out for the jury where that item was
6 found?

7 A It was found right here, right by the coffee pot next
8 to, I think -- I believe it was a radio.

9 Q Coffee pot, radio, and that item 6?

10 A Yes.

11 Q Okay. All right. I'm going to show you two
12 photographs. Do you recognize State's 18 and 19?

13 A Yes, I do.

14 Q How do you recognize or what do you recognize?

15 A That is the bag of marijuana that was found between
16 the coffee pot and the radio. It's sitting right there.

17 Q Two pictures of the same thing, just one broken down?

18 A Yes, the original of how it was kind of packaged
19 together, and then an after photo where they spread it out
20 to see how much is in the bag.

21 MR. HUBBARD: I'll offer State's 18 and 19 into
22 evidence.

23 MR. WILLIAMS: Objection, foundation.

24 BY MR. HUBBARD:

25 Q Again, I think you said State's 18, is this how it

1 was found?

2 A Yes.

3 Q Is this the item you just pointed out?

4 A Yes, it is.

5 Q The same item as item 6?

6 A Yes, it is.

7 Q What is State's 19?

8 A It shows the same item, just the bag spread out a
9 little bit more so they could get a better photo and show
10 everything that was inside the bag.

11 MR. HUBBARD: I offer these into evidence.

12 MR. WILLIAMS: Without objection.

13 THE COURT: Without objection State's Exhibit 18
14 and 19 are admitted.

15 (WHEREUPON, STATE'S Exhibits Nos. 18 and 19 were
16 admitted into evidence.)

17 BY MR. HUBBARD:

18 Q Now, when we played this CD with the audio, what
19 device was used to create the actual original audio?

20 A The digital recorder, which is in my front pocket.

21 Q And, again, is that very much like the one you have
22 in front of you for demonstrative purposes?

23 A Yes, it is.

24 THE COURT: Actually, I think it belongs to the
25 reporter.

1 MR. HUBBARD: Yes. Okay. Sorry.

2 BY MR. HUBBARD:

3 Q At the tail end of this when there is a pause, we
4 talked about compressing time. Is that immediately after
5 the bust?

6 A Yes.

7 Q There is some talking going on at the very end. Who
8 is talking to who?

9 A Agent Setree is talking to me.

10 Q Agent Setree, is he in the courtroom?

11 A Yes, he is. He's sitting right there.

12 Q Is Agent Setree a part of the NET team?

13 A He was. He is retired now.

14 Q Was he senior to you or was he a junior to you?

15 A He was senior to me.

16 Q What was his role that day?

17 A He was in charge of the more logistical side of the
18 operation, getting everybody, you know, as far as the SWAT
19 team and everything else in motion, let them know where
20 they had to go.

21 Q Now, Agent Carver, at the end of a bust, including
22 this one, does there come a time when you-all sit down and
23 go over what you did?

24 A Yes, there is critiquing at the end of every
25 operation we do. Agents see something that other agents

1 might not have, and we kind of tell each other that, you
2 know, that's how we kind of try to get better at what we
3 do.

4 And that's what Agent Setree was doing. Me,
5 being brand new to the unit, he was breaking everything
6 down to me, letting me know the steps we do, you know, in
7 those operations.

8 Q One final thing. You said the case officer. Who's
9 the case officer in this case?

10 A Agent Slice.

11 Q Agent Slice. And the case officer's job in relation
12 to drugs at the end of a bust is to do what?

13 A To seize those drugs.

14 Q Did at any time the items that you saw that night,
15 June 5th, did you see anybody else walking out with them?

16 A No, I did not.

17 Q This informant, this Josh Ainsworth, at any time, did
18 you see him grab any of the marijuana?

19 A No, I did not.

20 Q Did you see him grab or take or keep any cocaine?

21 A No.

22 Q When that bag of cocaine was found in the book bag --
23 and I'm going to refer you to State's 17 and then to
24 State's 16 -- are those photos taken of the bust?

25 A Yes, they were.

1 Q And were these items in the same condition as they
2 were before the bust when you were conducting the deal
3 with Mr. Benjamin Newman?

4 A Yes, they are.

5 Q Did you see any drugs get taken out of there by
6 anybody other than law enforcement?

7 A No, I did not.

8 Q During the transaction, how many voices do we hear?

9 A Three voices.

10 Q Go ahead and tell us.

11 A My voice; defendant, Benjamin Newman; and the
12 confidential informant's voice.

13 Q The voice that is talking about the need for a
14 thousand, thousand more, whose voice is that?

15 A Benjamin Newman's.

16 Q And by "thousand," what did you take that to mean?

17 A 1,000 pounds of marijuana.

18 Q Not just 50, but 1,000?

19 A 1,000, yes, sir.

20 Q The voice that talks about cocaine and how to treat
21 it and what happens if you open the bag, whose voice was
22 that?

23 A Mr. Newman's voice.

24 Q The voice about, Well, I can be your connection now,
25 whose is that?

1 A That is mine.

2 Q The two people conducting this deal are who?

3 A Myself and Mr. Newman.

4 Q At times do you hear that third voice?

5 A Yes.

6 Q And that is who?

7 A The confidential informant, Josh Ainsworth.

8 Q Did he have any say on how this deal went down?

9 A No, he did not.

10 MR. HUBBARD: Thank you, Agent Carver.

11 Please answer any questions Mr. Williams has for
12 you.

13 THE WITNESS: Yes, sir.

14 MR. WILLIAMS: May it please the Court.

15 THE COURT: Certainly, Mr. Williams.

16 CROSS-EXAMINATION

17 BY MR. WILLIAMS:

18 Q I want you to think back about 20 seconds ago, and
19 there was a question asked of you and you were being shown
20 Exhibits No. 17 and 16. Do you remember about 20 seconds
21 ago when you were shown those two exhibits?

22 A Yes, sir.

23 Q And the question was, were these pictures the same as
24 it was before the deal was conducted?

25 A Yes, the packaging is the same.

1 Q Before the deal was conducted?

2 MR. HUBBARD: Your Honor, I object for clarity
3 because I believe I didn't refer to the packaging. I was
4 referring to the packaging in --

5 THE COURT: Well, the jury is going to be the
6 judge of the testimony.

7 MR. HUBBARD: Yes, sir.

8 THE COURT: Thank you.

9 BY MR. WILLIAMS:

10 Q Now, you were asked about these items and the number
11 or the case number that is reflected on these items?

12 A Yes.

13 Q Did you place the case number on any of these items?

14 A No, I did not.

15 Q Were you involved in the packaging of any of these
16 items?

17 A No, I was not.

18 Q Can you see through this box to see what is in this
19 box?

20 A No, I cannot.

21 Q When you were giving your testimony today, what you
22 have testified to is that the numbers -- the case numbers
23 of the case which you were involved in happens to be
24 reflected on these boxes and on this bag; is that correct?

25 A Yes.

1 Q Now, the names reflected on these -- your name is not
2 reflected on any of these cards, are they?

3 A No, it's not.

4 Q You didn't do any testing, did you?

5 A No, I did not.

6 (A phone begins ringing.)

7 THE COURT: Sir, you'll have to leave the
8 courtroom.

9 BY MR. WILLIAMS:

10 Q Let me take you back before -- I guess immediately
11 after that noise that we hear.

12 A Yes, sir.

13 Q There's a noise that we hear, and is that noise
14 inside the house or outside the house?

15 A Very close to the house. I'm not sure. There was a
16 flash bang.

17 Q What is a flash bang?

18 A A flash bang is a piece of equipment used by most
19 tactical units to distract, disorient, pretty much confuse
20 anybody within a residence that we are about to enter to
21 give us the element of surprise just in case somebody
22 could be armed or anything like that.

23 Q Now, you obviously didn't know a flash bang was
24 coming, did you?

25 A No, I did not.

1 Q Benji Newman, obviously, did not know a flash bang
2 was coming, did he?

3 A No.

4 Q Now, when it occurred, where were you standing in
5 reference to the picture which is reflected and has been
6 placed into evidence as State's Exhibit No. 21?

7 A Right in this area right here, sir, kind of a little
8 bit off from that island right here.

9 Q All right. So if you're standing there, where is the
10 confidential informant standing?

11 A He is on the living room side of this island right
12 here.

13 Q So he is closer to the jury box?

14 A Yes, sir.

15 Q On the other side of the Mountain Dew bottle?

16 A On the -- where the white side is right there.

17 Q Yes?

18 A He's on that side of the counter.

19 Q Now, where is it that you say that your bag was that
20 you brought? Where was it located when this happened?

21 A This picture right here is the base of that island.
22 It's down at the bottom.

23 MR. HUBBARD: Your Honor, can they reference the
24 number?

25 BY MR. WILLIAMS:

1 Q When you're referring to --

2 THE COURT: Just --

3 MR. WILLIAMS: I'll straighten it out, Your
4 Honor.

5 THE COURT: Well, just identify the number that
6 you're talking about.

7 BY MR. WILLIAMS:

8 Q State's Exhibit No. 17, is that the picture you're
9 referring to?

10 A Yes.

11 Q And that is the one which you say is at the bottom or
12 the base?

13 A Yes, of the counter right there, the island portion.

14 Q So in reference to this picture, the closest person
15 to this bag would be who?

16 A The confidential informant, myself, and Mr. Newman.

17 Q Where was Mr. Newman?

18 A Directly beside me on this side. He was a little bit
19 off from the counter.

20 Q So Mr. Newman was behind the island?

21 A On that side of it. I wouldn't say directly behind
22 it. It's more or less just on that side.

23 Q Let me ask you again.

24 Who was the closest person to the black bag?

25 A Me and Mr. Newman were side by side, so I guess you

1 could say we were both pretty close to the bag.

2 Q Wouldn't Josh Ainsworth have been closer to the bag
3 than you were?

4 A Not necessarily.

5 Q Why not?

6 A He was away from us on this side.

7 Q On which side? Can I get you to stand up and show me
8 again?

9 THE COURT: All right. Officer, if you would
10 stand on the other side of the photograph so you're
11 talking back --

12 THE WITNESS: Yes, Your Honor.

13 THE COURT: -- this way as well as to the jury.
14 Very good.

15 THE WITNESS: I was standing on this side right
16 here.

17 BY MR. WILLIAMS:

18 Q Okay.

19 A Mr. Newman was on this side. Me and him were fairly
20 close to one another.

21 Q Okay.

22 A Mr. Ainsworth is over in this area right here.

23 Q He's out of the picture?

24 A Well, out of this picture that's taken, but if you
25 continue to look inside the house there.

1 Q So he's on the other side of the post?

2 A He is right in this area right here. The counter is
3 right here and he's standing right here.

4 Q Well, you described earlier as him being standing
5 right here, didn't you?

6 A I said on the white side on this end, you can see him
7 standing over there.

8 Q And where is the bag?

9 A The bag is right in this area at the base right here.

10 Q And who is it closer to?

11 A Like I said, probably myself or Mr. Newman.

12 Q Well, it's obviously closer to you than Mr. Newman,
13 isn't it?

14 A We're standing side by side. I'm on his left, so,
15 yeah, you could say it's closer to me.

16 Q And it's actually closer to the confidential
17 informant, isn't it?

18 A No, not really.

19 Q If you'll have a seat.

20 When you went down, when the bang happened, what
21 did you do?

22 A I was going straight to the ground and a SWAT officer
23 was heading in my direction and the confidential
24 informant's direction and they got on top of us to
25 handcuff us.

1 Q If you're going straight to the ground, where is the
2 back door from this picture?

3 A From this -- from this picture, it would be further
4 off, and it kind of wraps around the doors on -- it's a
5 good ways away. I don't know if an aerial shot would be
6 better than this picture.

7 Q I don't think we have one.

8 A Like I said, this is more like the kitchen area. I'd
9 say the back door, five to ten foot away. It's not a
10 whole, you know, real long way.

11 Q Were you watching Benjamin Newman?

12 A I saw him when he ran past me to go to the back door.

13 Q Did you see anything in his hands?

14 A I was getting down. I just remember looking at his
15 face.

16 Q Didn't you tell the other officers that "it's got to
17 be inside because he didn't take anything out of the
18 residence"?

19 A I didn't see him grab anything.

20 Q All right. So the answer to the question is: You
21 didn't see anything in Benjamin Newman's hands, did you?

22 A No, I don't remember seeing anything in his hands. I
23 was getting down like I was told to.

24 Q Okay. So you didn't see Benjamin Newman grab
25 anything, did you?

1 A No, I did not see him grab anything, but I was
2 getting to the ground in a hurry.

3 Q Now, the confidential informant, which way did he
4 fall?

5 A It would have been closer to this side as well. We
6 both kind of went this way.

7 Q So he would have fallen straight towards where the
8 bag was; is that correct?

9 A Sir, I can't really remember.

10 Q Well, you've always said he's standing on the other
11 side where the white side is and that he's falling
12 straight forward this way, wouldn't it be --

13 A I didn't say he fell straight forward. I said he
14 fell straight down. He went down.

15 Q Did he melt into the floor like the wicked witch or
16 did he actually fall over?

17 A No. He would have just gotten down. I wasn't really
18 paying attention to how he got down.

19 Q Which way were his hands pointed?

20 A I cannot remember, sir.

21 Q Which way were his feet pointed?

22 A I don't know, sir.

23 Q Wasn't he laying right beside the bag?

24 A I don't know, sir.

25 Q When you got up, where was he?

1 A He was still on the ground. I was getting directed
2 outside.

3 Q All right. When you got up, he was still on the
4 ground. Where was he on the ground in relationship to the
5 bag?

6 A Adjacent to it.

7 Q Next to it. Is that adjacent? Adjacent is next,
8 same word for next?

9 A Yeah, but next could be farther away. I mean, I
10 don't really remember how -- exactly how far away he was.
11 I mean, I was still pretty shaken up from the flash bang
12 and muzzles being pointed at me.

13 Q Now, an officer took you outside, right?

14 A Yes, sir.

15 Q And an officer took him outside.

16 Who did they take out first?

17 A I was taken out first.

18 Q While he was still laying on the floor?

19 A Yes, he was still on the floor.

20 Q With the bag next to him. Mr. Newman's not there,
21 right?

22 A No, he ran --

23 Q Mr. Newman's outside, right?

24 A He ran out the back door.

25 Q Now, let's talk about this drug deal.

1 As I understand it, this is supposed to be a
2 face-to-face between you and Benjamin Newman, correct?

3 A Yes.

4 Q So that means that you spoke to Mr. Newman on the
5 phone?

6 A No, I did not.

7 Q So the person who actually spoke to Mr. Newman on the
8 phone was who?

9 A The confidential informant.

10 Q So he would know, the confidential informant would
11 know whether or not Mr. Newman called him first or he
12 called Mr. Newman first. He would be able to recall those
13 conversations, right?

14 A He would, and I believe Agent Slice would.

15 Q All right. Now, in regards to this 25 --

16 A Ounces.

17 Q -- ounces, 25 ounces of cocaine for 50 pounds of
18 marijuana, is that information recorded?

19 A As far as the actual transaction?

20 Q As far as -- as the confidential informant calling my
21 client, Benjamin Newman, say, look, I can get you
22 50 pounds of marijuana for 25 ounces of cocaine, is that
23 recorded somewhere?

24 A I don't believe it's recorded.

25 Q And you didn't have that conversation with Benjamin

1 Newman?

2 A No, I did not.

3 Q And you weren't present when the confidential
4 informant called up Benjamin Newman and said that?

5 A The one that is the actual part, I think it is
6 recorded where a phone call is done, I was showing up at
7 the tail end. They were bringing me in at the last
8 minute.

9 Q But there's no question but that the confidential
10 informant is the person who called up Benjamin Newman?

11 A Yes.

12 Q Now, let me take you back to the little red -- what
13 kind of car was it?

14 A I think it was a Toyota hatchback. It was a red --
15 it was a red hatchback, and I believe the model and make
16 are Toyota.

17 Q Okay. And that was Josh Ainsworth's hatchback,
18 right?

19 A Yes.

20 Q Who loaded the marijuana into the hatchback?

21 A I did.

22 Q All right. And did you search the hatchback?

23 A No. Agent Laney searched the hatchback prior to my
24 arrival.

25 Q So when you got there, supposedly someone had

1 searched the hatchback?

2 A Yes.

3 Q And who put the marijuana in there?

4 A I did.

5 Q Now, we have heard some discussion about how you keep
6 up with drugs, and that is that there is a case number
7 which is reflected on the boxes that supposedly contain
8 the drugs?

9 A Yes.

10 Q And that's how you keep it -- that's how you account
11 for it with law enforcement?

12 A Yes.

13 Q Do you know what the number was on this marijuana
14 when you-all brought it over there? Do you know where it
15 came from?

16 A It came from Evidence. That's what I was told.

17 Q Do you know what the case number was on it?

18 A As far as when it was brought --

19 Q Well, all the --

20 A -- it would have been in addition to Agent Slice's
21 case number that's already been read if it -- now, if it
22 was earlier stated that it was a seizure off of a parcel
23 delivery, it could have had a case number, I don't know.
24 Parcel, they work on their own. I don't know if a case
25 number was generated from it. It was for destruction,

1 there was no suspect. I'm not --

2 Q But you were --

3 A -- sure.

4 Q I'm sorry.

5 But you were sitting there, you heard what was
6 testified to. So there's got to be some sort of number,
7 doesn't it, in regards to where this 50 pounds of
8 marijuana is sitting at the Lexington County Sheriff's
9 Department, right?

10 A If it is, I don't know the number.

11 Q And you would have numbers for maybe any cocaine that
12 was received at the sheriff's department that didn't have
13 a suspect, wouldn't there? There would be a number for it
14 if it was a sheriff's department, wouldn't it?

15 A I don't know about it. I don't keep up with all the
16 case numbers.

17 Q All right. When you were taken out of the residence,
18 you were taken out and placed in a patrol car; is that
19 right?

20 A No, I was not placed in a patrol car.

21 Q What happened to you?

22 A I was seated on the ground by Agent Barnes who took
23 control of me, and she was in control of me the whole
24 time.

25 Q Was she the one that took you down?

1 A No, she's not the one that took me down.

2 Q Who took you down?

3 A It was a SWAT officer. I can't remember which one it
4 was. Like I said, I did not know them at the time.

5 Q And how long was it before they walked you back into
6 the residence?

7 A It was a very short time. I was only outside maybe
8 five minutes, maybe a couple of minutes longer than that.
9 It was pretty hot, so they wanted to get me out of there.
10 Plus, Mr. Newman was outside as well, and they wanted to
11 keep me out of sight of him.

12 Q Where were all the other officers?

13 A As far as exact location, I'm not sure. I was told
14 they were in the backyard with him getting him --

15 Q How many SWAT officers were there?

16 A I don't know. I don't know.

17 Q Do you have a list of all these officers who were
18 running through the residence?

19 A I do not.

20 Q Now, let's talk about that recording device.

21 Clearly, at the end of this, there was a
22 discussion about the fact that all this stuff was recorded
23 on your wristwatch, wasn't there?

24 A There was talk of it.

25 Q As a matter of fact, there was criticism that it

1 would show that you were actually searching the house
2 before you had a search warrant, correct?

3 A No, we were not searching the house prior to the
4 search warrant.

5 Q What did it say on the tape?

6 A That officers were searching around for cocaine prior
7 to the search warrant being there.

8 Q So officers were searching before the search warrant
9 arrived; is that correct?

10 A To look for an item that could not be found that was
11 already -- a transaction had already been made in place in
12 front of an officer.

13 Q Did I say something wrong about what was the
14 question? I mean, isn't that what was said on the tape?

15 A Yes.

16 Q Okay. Now, also, there's a complaint about that this
17 video recorder is going to show and record comments that
18 are made by the police officers; is that right?

19 A Yes, foul language, stuff that, you know, that
20 happens that we're not proud of, but in the heat of the
21 moment, things slip.

22 Q When is the first time that you found out that you
23 did not have a video recording of the events of the day?

24 A The following day.

25 Q And how were you informed about that?

1 A Agent Slice told me.

2 Q So you didn't know until the next day?

3 A I did not know.

4 Q And did you test it to see if indeed there was
5 nothing on the video?

6 A No, I did not test those items. I'm not in the
7 technical support area. That's not what I do.

8 Q So you still don't know? You didn't test it, right?

9 A I did not test it. I did not.

10 Q When you got through, when you were being critiqued,
11 did you push a button to turn it off when you were being
12 told not to have the video going?

13 A No, I did not.

14 Q Even though that the officer was saying that you
15 shouldn't have the video going after the tape -- I mean,
16 after the bust, right?

17 A I didn't touch anything on it. I was brand new and
18 didn't know anything about that equipment.

19 Q So you just gave the watch to the agent in charge and
20 left it up to him to deal with it, right?

21 A He was taking part of the -- he was taking the
22 equipment, so, yes.

23 Q And you didn't push a button or anything on it?

24 A No, I did not.

25 Q You thought it was working?

1 A Yes, I did.

2 Q He told you it was working?

3 A Yes, I thought it was working.

4 Q And have you taken that watch anywhere to see if
5 anybody else can pull any videos off of it?

6 A No, I have not.

7 MR. WILLIAMS: That's all the questions I have,
8 Your Honor.

9 THE COURT: Re-examine.

10 MR. HUBBARD: No questions from this witness.

11 THE COURT: All right. You may step down.

12 THE WITNESS: Thank you, Your Honor.

13 THE COURT: May I see counsel, please?

14 (A bench conference was held with the judge and
15 attorneys in the presence of the jury but out of the
16 hearing of the jury.)

17 THE COURT: All right. Mr. Foreman, ladies and
18 gentlemen of the jury, I was just trying to get an idea as
19 to how we'll be proceeding for the balance of today.

20 Obviously, this is the time for a lunch break.
21 I would suggest that we come back anywhere from 2, 2:15 to
22 2:30.

23 What time would you think would do? Just
24 consult with the jury like you did yesterday; 2, 2:15,
25 2:30. It's about 1 now.

1 Of course, if you don't make it back at 2, we
2 can't start without you.

3 THE FOREMAN: We're going to try for 2, Your
4 Honor.

5 THE COURT: Try for 2, and we'll be here with
6 you.

7 All right. Very good.

8 Again, do not undertake discussion of the case
9 amongst yourselves in any way.

10 Have a good lunch, and I'll see you at
11 2 o'clock.

12 (The jury left open court at approximately
13 1:02 p.m.)

14 THE COURT: All right. Anything from the State?

15 MR. HUBBARD: No, sir, Your Honor.

16 THE COURT: From the defense?

17 MR. WILLIAMS: Nothing from defense, Your Honor.

18 THE COURT: You're renewing your motion on the
19 bond?

20 MR. HUBBARD: Yes, sir, at this time I would.

21 THE COURT: Mr. Williams?

22 MR. WILLIAMS: Your Honor, he's not going
23 anywhere. He's got a daughter and he's got his wife here,
24 he's got his momma here, and he's known about all this
25 evidence to begin with. He was here yesterday.

1 THE COURT: Out of an abundance of caution, I'm
2 going to revoke the bond.

3 (A lunch break was taken.)

4 THE COURT: All right. Anything from the State
5 before we bring the jury back?

6 MR. HUBBARD: No, sir, Your Honor.

7 THE COURT: Anything from the defense?

8 MR. WILLIAMS: Nothing from the defense, Your
9 Honor.

10 THE COURT: Very good. Ask the jury to join us,
11 please.

12 (The jury came into open court at approximately
13 2:10 p.m.)

14 THE COURT: All right. Let the record reflect
15 the jury and alternates are in the jury box.

16 Mr. Foreman, ladies and gentlemen of the jury,
17 we'll now continue with the State's case.

18 Solicitor?

19 MR. HUBBARD: Thank you, Your Honor.

20 The State calls Brian Setree.

21 BRIAN SETREE, after being duly sworn, testified
22 as follows:

23 THE CLERK: Please be seated and state your full
24 name.

25 THE WITNESS: My name is Paul Brian Setree

1 S-E-T-R-E-E.

2 DIRECT EXAMINATION

3 BY MR. HUBBARD:

4 Q Mr. Setree, where do you work now?

5 A I'm co-owner of Bradley's Investigations.

6 Q Where did you used to work?

7 A I retired from Lexington County Sheriff's Department
8 on August the 20th of this year.

9 Q How long were you in law enforcement?

10 A Twenty-plus years.

11 Q During that time, were you ever working narcotics?

12 A Yes, sir, most of my career, in and out.

13 Q You're retired now. I see you're in pain today.

14 Does that have anything to do with your retirement?

15 A I believe I hurt myself in the gym over the weekend.
16 I've got some back issues and that's why I retired, but my
17 leg's bothering me today.

18 Q Back last year, June 5th of last year, what was your
19 duties?

20 A I was in charge of, if you will, of the logistics of
21 the operation that we were conducting on Mr. Newman that
22 date.

23 Q So you were part of the NET team at that time?

24 A Yes, sir.

25 Q Based on the number of people on the team and that

1 task force, were you -- where were you? Were you one of
2 the more junior people, one of the more senior people, or
3 were you an in-betweener?

4 A Well, experience level, I was probably, you know,
5 maybe one or two people on the team had more time on the
6 team than myself, but experience-wise, I'm probably right
7 there close to the top.

8 Q With this operation, who was the senior person?

9 A Me.

10 Q Now, we have heard that Brandon Slice was the case
11 agent?

12 A Yes, sir.

13 Q Are you saying that the senior person isn't always
14 the case agent on the case?

15 A Exactly.

16 Q What was your actual role in this particular case?
17 You talked about logistics, but what exactly do you mean
18 by that?

19 A Well, it was a multi-level operation. We had to
20 activate the SWAT team due to manpower issues. And
21 Agent Slice was in charge of controlling the buy and --
22 with the UC Officer Carver and the informant, and I was in
23 charge of the raid part of it as far as getting the SWAT
24 team where they needed to be at the proper time to effect
25 the arrest when the --

1 Q Okay. Mr. Setree, was this transaction originally
2 planned for June 5th?

3 A No, sir.

4 Q When was it planned for, if you can remember?

5 A Best of my knowledge, June the 7th.

6 Q And were you a part of the changing of the plans or
7 part of why it was changed or were you just left holding
8 the bag and had to rearrange everything?

9 A Well, again, Mr. Newman dictated the date, and
10 Agent Slice and I on the night before -- would have been a
11 Saturday night -- planned, you know, because he wanted to
12 do it on that Sunday. So Agent Slice and I were in
13 constant contact that Saturday night.

14 Our supervisors were out of town at the time, so
15 I activated the SWAT team, being the senior agent at the
16 time, got the SWAT team activated. We had a briefing time
17 the next day at our covert location and basically that was
18 my function.

19 Q Were you there when the actual raid took place?

20 A Yes, sir, I was.

21 Q Did you actually go into that house?

22 A Yes, sir, I did.

23 Q Now, Nick Carver, who is kind of behind me, I don't
24 know if you see him, he was the undercover?

25 A Yes, sir.

1 Q There was a CI?

2 A Yes, sir.

3 Q And, of course, the defendant, Mr. Newman?

4 A Yes.

5 Q Protocol, when you-all do a buy-bust or a raid on a
6 house, do you-all keep people in the premises or what do
7 you-all do?

8 A We secure it as fast as we can, and then remove
9 individuals from the premises as fast as we can. We got a
10 lot of other work to do afterwards.

11 Q When you-all went in, was Benji Newman in the house?

12 A No, sir, he had fled out the back door of the
13 residence during the time of the actual raid.

14 Q Now, Mr. Setree, we listened to a tape that was made
15 during that time. Protocol, when you're doing a buy-bust
16 or a controlled buy, do you have a wire?

17 A Yes, sir.

18 Q Now, I know we've probably been through it, but
19 what's a wire versus a recording? What's the difference?

20 A Well, a wire is a transmitter where -- it's not a
21 two-way, it's a one-way transmitter where if you have the
22 proper equipment, you can receive the one-way transmission
23 of the individual that's wearing the wire.

24 Q Okay. So the audio portion that we hear, the
25 recording --

1 A Yes, sir.

2 Q -- is that -- that is separate and apart from the
3 wire?

4 A Yes, sir.

5 Q In this case, who was wearing it?

6 A Agent Carver was wearing the audio digital recorder.

7 Q When we listen to this audio, we hear tape -- or talk
8 about a video?

9 A Yes, sir.

10 Q Is your voice on this tape at the very tail end?

11 A Absolutely, yes, sir.

12 Q Who are you talking to?

13 A Agent Carver.

14 Q Is he the junior man on the team at that time?

15 A He was the brand new person on that team.

16 Q When we hear talk about a video, at that point in
17 time, what was your belief as to whether there was a video
18 or not?

19 A That it was optional and running.

20 Q And that was the watch?

21 A Yes, sir, that's correct.

22 Q I want to ask you about something I heard about, that
23 should have been turned off. What's that all about?

24 A Well, for a multiple -- a multitude of reasons. One,
25 is because we start talking about the case. A lot of

1 times the informant's name may come up. One of the agents
2 may not realize and walk up and say, you know, so and so
3 informant, and that we try to protect their identity to
4 the last -- to the very last minute. I mean, everybody
5 has a right to face their accuser, but until we get to
6 that point in court in discovery, we protect their
7 identity. And if we didn't do that, we obviously wouldn't
8 be able to get people to --

9 I mean, informants are a necessary part of the
10 drug operation. You know, without informants, we wouldn't
11 be able to do our job. In a perfect world, we would have
12 all undercover police officers and we would know they're
13 trustworthy and we wouldn't have to worry about some of
14 the things we do, but that's just not how it works.

15 And, also, too, we cut devices like that off
16 because we, you know, we don't want to show how we search
17 houses, we don't want to show places that we look for
18 things because it educates the defendant for the future if
19 something were to happen on down the line. If we got a
20 video of how we're conducting our business, then they see
21 it, they obviously know to do something different the next
22 time. So those are the reasons.

23 Q When you talk about stuff being educational for the
24 defendant, this stuff eventually is turned over to the
25 prosecutors?

1 A Yes, sir.

2 Q And then over to whoever you charge, the defense
3 attorneys and their clients, right?

4 A Exactly, yes, sir.

5 Q So there was concern as to what, if anything, might
6 be on that video?

7 A Yes, sir.

8 Q And, again, you had no knowledge that there was no
9 video or whether there was a video?

10 A I thought the video was working at the time.

11 Q The audio on the recorder obviously caught all of
12 this conversation. Now -- so that obviously worked?

13 A Right.

14 Q You talked about after a bust, you're supposed to
15 turn that video off. What about a recorder?

16 A We would typically turn that off as well.

17 Q Is that pretty much the same reasons?

18 A Yes, sir, the exact same reasons.

19 Q Is it fair to say you-all focused on turning off one
20 device and let the other one just keep running?

21 A Yes, sir.

22 Q That wouldn't be standard protocol?

23 A No, sir.

24 Q And when you were talking to Agent Carver, is it
25 standard to kind of do an after-bust critique?

1 A Yes, sir.

2 Q It is educational for your guys?

3 A Right. I mean, it's all about safety and doing the
4 job the right way, and, you know, fixing any problems that
5 may arise.

6 Q There was talk about a search and searching without a
7 search warrant. Can you tell us what you were talking
8 about?

9 A Yes, sir. The SWAT team -- well, first things first.
10 Agent Carver had relayed to Agent Barnes -- in
11 my presence so I heard it myself -- that the cocaine was
12 on the counter, okay? So when we're securing the
13 residence, the cocaine was not on the counter. So
14 Mr. Newman had fled out the back door, so there was
15 obviously a concern that evidence had gotten tampered with
16 or destroyed or got missing.

17 Q Can I ask you, did you think it was missing inside or
18 outside?

19 A Outside. So the -- I had the SWAT officers, you
20 know, in a panic because they don't do what we do and
21 basically had to get them back on task, say, Look, don't
22 worry about the cocaine. We're going to get a search
23 warrant for the residence anyway. We'll find the cocaine
24 if we got to spend the night. So basically that's what
25 I'm talking about. You know, they're looking around on

1 the outside of this residence for this cocaine, and I tell
2 them, and I tell whoever, if it's not in plain view on the
3 inside of the residence, don't worry about it. We'll find
4 it once we obtain the search warrant. So that's what I'm
5 referring to on the tape.

6 Q And protocol for narcotics agents would be to just
7 wait --

8 A Yes, sir.

9 Q -- after a scene is secured?

10 A Yes, sir, you have to secure the scene. And if the
11 cocaine was missing and it was evidence of a transaction
12 that had just occurred, then, obviously, the scene wasn't
13 completely secure because there's evidence that, you know,
14 wasn't readily seen by the officers which, you know, kind
15 of put some of them in a panic mode. And I had to get
16 them back on task because there was -- like I said, it was
17 a multi-level operation, and there was other things that
18 had to be done that day involving the SWAT members. And
19 so we kept a small group of people behind at this
20 residence, myself being one of them.

21 Agent Tracy went and got a search warrant.

22 Agent Carver stayed behind, Agent Barnes stayed behind,
23 Agent Slice was in and out. And, you know, once we
24 obtained the search warrant and did a search of the
25 residence, Agent Slice was present and came back and

1 seized such evidence that was seized at the residence.

2 Q Was anything found outside when the SWAT members were
3 looking around for --

4 A No, sir.

5 Q -- drugs they thought had gone missing?

6 A No, sir.

7 Q Do you have knowledge of where those drugs were
8 found, the cocaine?

9 A Yes, sir.

10 Q How do you have knowledge of that?

11 A Because I was present when I believe Agent Barnes
12 found or saw the cocaine in the black bag, book bag, in
13 plain view because the bag was open and it was still in
14 that location.

15 Q Is this a matter of walking up to the counter, seeing
16 the book bag and then there it is?

17 A Right.

18 Q Okay. And just for the record, that's what's
19 reflected in State's 17?

20 A Yes, sir.

21 MR. HUBBARD: Okay. Mr. Setree, I believe
22 that's all I have.

23 Please answer any questions Mr. Williams has.

24 THE WITNESS: Thank you, sir.

25 THE COURT: Cross-examination.

1 MR. WILLIAMS: If it please the Court.

2 CROSS-EXAMINATION

3 BY MR. WILLIAMS:

4 Q Who is Agent Barnes?

5 A (Witness pointing.)

6 Q This young lady right here?

7 A Yes, sir.

8 Q And you're saying that she and this officer and this
9 officer and what other officers were inside the residence?

10 A At the particular time of the search, it was Dennis
11 Tracy that came back with the search warrant.

12 Q And the officer in the back, on the second row --

13 A Right.

14 Q -- came in with the search warrant?

15 A Yes, sir.

16 Q So the SWAT team didn't find the cocaine?

17 A No, sir.

18 Q How many members of the -- you were over the SWAT
19 team, weren't you?

20 A Yes, sir.

21 Q How many members of the SWAT team do you have?

22 A There's 22 members. There's two different teams;
23 there's Alpha and Bravo. The Bravo team was on call that
24 day. The Bravo team is the team that responded to the
25 call-out.

1 On a weekend like that, it's potential that
2 maybe some of the Alpha team members came as well, but
3 that is up to their supervisors and their staffing.

4 Typically what happens on a raid of that
5 magnitude, there will be seven to eight officers that
6 would enter the residence and secure the residence and
7 effect an arrest. And, then, the rest of the SWAT members
8 that would be present would be on the perimeter team, on
9 the outside perimeter team.

10 Q Who were the officers that went inside the residence?

11 A Well, I don't know them all by names because I don't
12 have the operations plan in front of me. But, again, it
13 was Bravo team, Officer Scott Ellis would have been in
14 charge of the Bravo team, or that squadron. And it would
15 have been his team members.

16 I remember seeing a few people like Russell
17 Bouknight, Scott Ellis -- I don't know. Like I said, it
18 was one -- like I said, 22 members on the SWAT team and we
19 had at least half the SWAT team there.

20 Q All right. So you had at least 11 people who were
21 there?

22 A Yes, sir.

23 Q But none of them found the cocaine?

24 A No, sir.

25 Q The officer that found the cocaine was this officer

1 back here?

2 A Yes, sir.

3 Q And it was in the bag that belonged to Narcotics,
4 right?

5 A That's right.

6 Q Who was the officer that actually arrested my client,
7 Benjamin Newman?

8 A I believe it was Officer Jessie Lance that was the
9 one that put the handcuffs on Mr. Newman.

10 Q Now, is he a SWAT member?

11 A Yes, sir.

12 Q So Jessie Lance would have been the individual who
13 would have cuffed him and would have searched him?

14 A Yes, sir, he would have at least done a pat-down
15 search on him. And then he would have been searched again
16 whenever the road officer came and transported him because
17 all of our road officers are trained to, you know,
18 search -- no matter how many times somebody says they've
19 been searched, the road officer is responsible once he
20 gets someone in that patrol car.

21 Q The confidential informant in this case, you were not
22 involved in searching his vehicle at all, were you?

23 A No, sir, I wasn't present for any of that.

24 Q You don't know who searched his car?

25 A Absolutely don't know.

1 Q And you weren't there when the black book bag was
2 taken into the residence, were you?

3 A No, sir.

4 Q In terms of the phone call from the confidential
5 informant to -- that supposedly he made to my client, did
6 you participate in that phone call?

7 A No, sir.

8 Q So, essentially, the confidential informant is the
9 one driving this train, and he's the one who has all the
10 contact, if you will, with my client, right?

11 A Well, he wasn't driving the train, but he was the one
12 that -- he was the middleman brokering between the agent
13 and Mr. Newman until our agent met with Mr. Newman and
14 took over. So, no, we control our CIs very well.

15 Q And that CI, have you seen him recently?

16 A I saw him yesterday in the hallway.

17 Q Now, in terms of, I guess, your involvement with this
18 case, because your involvement really was somewhat limited
19 except that you were over -- if I'm correct -- you were
20 over the SWAT team coming in, right?

21 A I was over the logistics part of the raid. Wherever
22 the raid was going to go down, it was my responsibility to
23 get the SWAT team where they needed to be.

24 Q You weren't in charge of securing any of the drugs
25 that were allegedly going to be used against --

1 A No, sir, that is the case agent's job in every case.

2 Q And you weren't in charge of securing the marijuana
3 from whatever location that came from?

4 A No, sir.

5 Q And you weren't involved in the arrest of my client?

6 A I was in the backyard when he was placed into
7 custody.

8 Q You say "placed into custody." Did he already have
9 his cuffs on him at the time?

10 A Yes. When I went in the backyard, he was in
11 handcuffs already.

12 Q So, actually, when you got there, he was already in
13 the backyard cuffed and laying down on the ground?

14 A Yes, sir.

15 Q And all you did was to take the confidential
16 informant out or did you take your undercover officer out?

17 A Agent Barnes originally took him out, and then she
18 brought him back in to me, into the residence, and he was
19 obviously uncuffed.

20 Q The confidential informant?

21 A No, sir.

22 Q The undercover officer?

23 A The undercover officer.

24 Agent Slice took the confidential informant and
25 left the scene with him.

1 Q All right. And you were not involved in any chemical
2 analysis of any drugs?

3 A No, sir.

4 Q No comparisons, no fingerprints, no nothing?

5 A Absolutely not, no, sir.

6 Q Okay. Did you see the other agent get the 50 pounds
7 of marijuana out of the sheriff's department?

8 A No, sir. I saw it at our covert office location.

9 Q But you didn't see him take it out of the sheriff's
10 department?

11 A No, sir.

12 Q Or take any other drugs out of the sheriff's
13 department?

14 A No, sir, no.

15 MR. WILLIAMS: That's all I have, Your Honor.

16 MR. HUBBARD: No more questions of this officer.

17 THE COURT: You may step down. Thank you very
18 much.

19 THE WITNESS: Thank you, Your Honor.

20 MR. HUBBARD: The State calls Candy Kyzer.

21 CANDY KYZER, after being duly sworn, testified
22 as follows:

23 THE CLERK: Please be seated. State your full
24 name and spell your last name.

25 THE WITNESS: Candy Kyzer, K-Y-Z-E-R.

DIRECT EXAMINATION

BY MR. HUBBARD:

Q Officer Kyzer, where do you work?

A The Lexington County Sheriff's Department.

Q In what section do you work?

A In the evidence room.

Q How long have you been working in Evidence?

A For eight years.

Q Do you recall getting evidence and processing evidence in on a case involving Benjamin Newman?

A I do.

Q Now, can you tell us how that works?

A There is actually three evidence custodians at the sheriff's department. We're in a building that stores the evidence, and we have a warehouse that stores evidence, too. Both warehouses and rooms are armed with the security alarms.

When the deputies come in, they come into the lobby, and they do their paperwork and then put it into a locker that they push the button on, that they have access to, and then once we come in in the morning, we have to get a key and unlock the back part of the locker and unlock the front part so that way they can have access to it again after we take the items out.

Once we do that, we go through and make sure

1 that everything is in order as far as paperwork-wise and
2 matches up to what the paperwork states.

3 Once we verify all of that is in order, then we
4 input -- or check the items into the computer system.
5 Back then, we had one particular bar code program that we
6 entered the items and printed out a bar code, and we put
7 that bar code label on each particular item.

8 Q Okay. And I want to ask you to take a look at
9 State's 7 for ID. Do you see a tag on the top?

10 A I do.

11 Q What is this tag?

12 A It's what we call an evidence chain of custody tag.

13 Q Uh-huh.

14 A Any time that the evidence changes hands, that tag is
15 signed with the date and time that it's changing.

16 Q There is a number at the very top of this tag?

17 A Uh-huh.

18 Q I would take it off, but I don't want to -- this tag
19 here, there's a number up at the top. What is that
20 number?

21 A That is the case number.

22 MR. WILLIAMS: Your Honor, I'll object to this.
23 This has not been introduced into evidence yet.

24 MR. HUBBARD: It's ID. But, Your Honor, it is
25 the tag, it's just the tag. It's not the content. She's

1 talking about the chain. That's why --

2 THE COURT: Well, the thing is, the way we
3 identify is to have the witness identify it, not the jury.

4 MR. HUBBARD: Yes, sir, Your Honor.

5 BY MR. HUBBARD:

6 Q Does that number at the very top indicate what case?

7 A Yes, it does.

8 Q Okay. Can you look at that number, if you would, and
9 what number is that?

10 A It's 11-022609.

11 Q All right. And you mentioned bar codes. Do you see
12 another number?

13 A Yes, I do, right here.

14 Q And is that the same number you just read off?

15 A It is.

16 Q And going back to this tag, the physical tag on
17 State's ID 7, Kyzer is your last name, correct?

18 A That's correct.

19 Q So every time you touched it, you signed?

20 A Yes.

21 Q Now, there are three boxes, but there's only one tag.
22 Why is that?

23 A We -- it's mainly for particular items. So if one
24 item has to go in several different boxes, we just use one
25 evidence tag.

1 Q Because you treat it really as one?

2 A Yes.

3 Q Okay. So when I look at State's ID -- 20 for ID and
4 State's ID, it looks like 4, all those went together?

5 A They're all one item.

6 Q Okay. And that number you read off goes to all of
7 them?

8 A Yes.

9 Q Now, these items, who turned in these items to you?

10 A Brandon Slice.

11 Q Okay. And do you know what day that was that he
12 turned them in?

13 A He turned them in on June the 5th, 2011.

14 Q All right. Now, you mentioned three people working
15 evidence. Does anybody else have access to evidence on
16 the inside part where you store evidence?

17 A No, just the three evidence custodians and our
18 supervisor, which is a captain.

19 Q Okay. And when you put something in, you haven't
20 seen anybody's name on these tags?

21 A No.

22 Q Everything involved in this case has your name on it?

23 A Yes.

24 Q I want to show you State's ID 6. Again, do you see a
25 tag for that one?

1 A Yes, I do.

2 Q Do you see that same number you read off earlier?

3 A Yes, I do.

4 Q Who turned this into evidence?

5 A Brandon Slice.

6 Q And who in your facility handled this evidence?

7 A I did.

8 Q Okay. Now, we see a name. Whose name is that?

9 A That's D.I. Blackwell.

10 Q Who is he?

11 A He is the individual that works at the sheriff's
12 department that does the marijuana testing.

13 Q Okay. So when it comes in from Agent Slice to you,
14 at some point it goes out to Mr. Blackwell?

15 A Yes, it does.

16 Q And then whose name is after his name?

17 A My name.

18 Q So it comes back to you again?

19 A Yes.

20 Q So he tests it and turns it back in to you?

21 A Yes.

22 Q Looking at the bales of marijuana, do you see his
23 name on that tag, too?

24 A I do.

25 Q Again, does that indicate it went out to him for

1 whatever he had to do to it and then it comes back to you?

2 A That's correct.

3 Q I'm going to show you what's been marked as State's

4 ID 5. Do you recognize this?

5 A I do.

6 Q And, again, do you see a tag?

7 A I do.

8 Q The number that you see at the top of the tag, is

9 that the same number we've been talking about?

10 A It is.

11 Q Who did you get this item from?

12 A Brandon Slice.

13 Q All right. And I see your signatures.

14 Now, there is another name there. What name is

15 that?

16 A Emily Homer.

17 Q Who is she?

18 A She is the chemist at the sheriff's department.

19 Q So you have someone else that tests --

20 A -- the other drugs besides marijuana.

21 Q Okay. So one person to test marijuana, that would be

22 Detective Blackwell?

23 A Yes.

24 Q Then you have Emily Homer who tests other drugs --

25 A Yes.

1 Q -- including cocaine?

2 A Yes.

3 Q The last name on there is whose name?

4 A That's mine.

5 Q So once it's tested, it comes back to you?

6 A That's correct.

7 MR. HUBBARD: I believe that's all I have at
8 this time.

9 THE COURT: Cross-examination.

10 MR. WILLIAMS: May it please the Court.

11 CROSS-EXAMINATION

12 BY MR. WILLIAMS:

13 Q Ms. Kyzer, when we look at these cards, it indicates
14 that you received it on June the 6th; is that right?

15 A That's correct.

16 Q All right. Even though it was actually turned in on
17 June the 5th?

18 A Yes. He placed it in a locker, and we came in --
19 because that was on a weekend -- and we came in the next
20 morning and took custody of it.

21 Q So you weren't working Sunday when supposedly it was
22 brought into the sheriff's department?

23 A No, I was not.

24 Q And when you came in that Monday morning, you found
25 these items and you processed them?

1 A That's correct.

2 Q All types of illegal drugs, whether it be marijuana,
3 cocaine, controlled substance, whatever it is that comes
4 into the sheriff's department, are they all assigned a
5 case number?

6 A They're all assigned a case number.

7 Q And how do they lose that case number?

8 A They don't lose the case number until it's actually
9 destroyed.

10 Q So they maintain that case number until they're
11 destroyed?

12 A Yes.

13 Q Now, I know you have been in the courtroom, but I
14 don't know how long you've been in the courtroom. If this
15 marijuana here, this 50 pounds of marijuana here, had been
16 in the sheriff's department, would there have been --
17 before it was used to buy cocaine, would there have been a
18 case number with it?

19 A There would have been.

20 Q And do you know what the case number was with it?

21 A I do. I do.

22 Q And what is that case number?

23 A It's 10043405.

24 Q Can you give that to me again?

25 A 10043405.

1 Q All right. And with that case number, how much
2 marijuana was seized with that case number?

3 A Six bales.

4 Q And do you still have the one bale of marijuana at
5 the sheriff's department?

6 A I'm not really sure. We go so often to SLED to
7 incinerate drugs, and it's possible that that has been
8 burned.

9 Q But you don't know?

10 A But I don't know without going and doing an actual
11 inventory of what we have in our location where we put our
12 drugs to be destroyed at.

13 Q Who signed for these 50 pounds to be taken out?

14 A Who signed for them?

15 Q Yeah. I assume you have some document there that
16 shows the person has to sign when he takes the 50 pounds
17 of marijuana out of the sheriff's department?

18 A I believe -- well, it was actually -- disposition was
19 actually done -- or a memo was done by Lieutenant
20 Hamilton, but I believe they were given to Dennis Tracy.

21 Q What document do you have there that shows that it
22 was signed out of the Lexington County Sheriff's
23 Department and given to Detective who?

24 A Dennis Tracy.

25 Q Dennis Tracy.

1 A I don't actually have any documentation to that.

2 Q Well, now, wouldn't you normally want to have
3 documentation showing that someone took 50 pounds of
4 marijuana out of the sheriff's department and give to
5 somebody else?

6 A We do. I'm not sure what happened at that particular
7 time. I wasn't the one that actually handled this signing
8 out.

9 Q Who handled the signing out?

10 A I believe it was the sergeant.

11 Q Sergeant who?

12 A Barbara McMullen.

13 Q And you believe that because she works there?

14 A She does. And she was, I believe, working that
15 Sunday and handled that.

16 Q So you weren't there when the 50 pounds of marijuana
17 was released or 60 pounds of marijuana?

18 A No.

19 Q Do you know if it was even weighed when it went out?

20 A I don't -- I don't know.

21 Q You don't really know how the marijuana got out, do
22 you?

23 A I don't know.

24 Q And you don't even know where the other bale of
25 marijuana is. Could that be with the narcotics now?

1 A I know according to the note that she put on here
2 that the bales were given to the narcs, but I don't know.

3 Q All six bales?

4 A It doesn't state.

5 Q It doesn't say the number of bales?

6 A Unh-unh.

7 Q What about cocaine, do you-all ever release cocaine
8 to the narcotics?

9 A I don't really -- I don't remember us doing that.
10 I'm not really sure. I've never done it.

11 Q Well, you didn't do this?

12 A No.

13 Q So somebody else might have done that?

14 A Somebody -- they may have, I'm not sure.

15 MR. WILLIAMS: That's all the questions I have,
16 Your Honor.

17 MR. HUBBARD: Just a couple follow-up.

18 THE COURT: Redirect.

19 REDIRECT-EXAMINATION

20 BY MR. HUBBARD:

21 Q That one bale you're talking about was eventually
22 marked for destruction?

23 A Yes, sir.

24 Q Was that true for the five bales, too?

25 A All of those were marked for destruction.

1 Q So unlike the marijuana as it is today, it wasn't
2 really related to a particular case or defendant waiting
3 for a trial?

4 A No, it was not.

5 Q Okay. And this marijuana, there is no question, by
6 your records, it came out of evidence where you are?

7 A Yes.

8 Q And it was secured there?

9 A Yes.

10 Q Until it was turned over to narcotics?

11 A That's correct.

12 Q For purposes of this case?

13 A Yes.

14 Q Okay. Thank you.

15 And, again, you don't know how many bales were
16 signed out, do you?

17 A No.

18 MR. WILLIAMS: That's all I have, Your Honor.

19 MR. HUBBARD: No further questions.

20 THE COURT: You may step down. Thank you,
21 ma'am.

22 MR. SCOTT: The State calls D.I. Blackwell, Your
23 Honor.

24 D.I. BLACKWELL, after being duly sworn,
25 testified as follows:

1 THE CLERK: Please be seated, state your full
2 name and spell your last name.

3 THE WITNESS: D.I. Blackwell, B-L-A-C-K-W-E-L-L.

4 DIRECT EXAMINATION

5 BY MR. SCOTT:

6 Q Mr. Blackwell, what is your occupation?

7 A I'm a deputy sheriff for the Lexington County
8 Sheriff's Department.

9 Q How long have you been employed with Lexington
10 County?

11 A Eight years.

12 Q What other law enforcement agencies have you been
13 employed with in the past?

14 A I'm a criminal investigator for the Army, Richland
15 County Sheriff's Department, Columbia Police Department,
16 and Cayce Public Safety.

17 Q How many years of law enforcement experience in total
18 do you have?

19 A I have 53.

20 Q What is your current position with Lexington County?

21 A I do the analysis on marijuana, also assist the AFIS
22 operator for fingerprints and stuff like that.

23 Q How long have you had those duties as far as -- how
24 long have you had the duty of testing marijuana?

25 A Since 1980.

1 Q What type of training must you undergo to qualify for
2 your position?

3 A I am trained by SLED. Then every three years, I'm
4 recertified. I have to take a test and do analysis.

5 Q How many times do you think you've tested marijuana
6 since 1980?

7 A I have no idea.

8 MR. WILLIAMS: Your Honor, I'll stipulate that
9 he's qualified to testify.

10 THE COURT: All right. With that stipulation,
11 he's qualified as an expert on testing marijuana.

12 Mr. Foreman, ladies and gentlemen of the jury,
13 as you found, we are very careful about what a witness can
14 testify to. Usually, it has to be something they know of
15 their own knowledge by exercise of their own senses; in
16 other words, touch, feel, hearing, or seeing, or tasting,
17 something of that nature. However, if a witness is
18 qualified as an expert in a particular area, then they are
19 permitted to give their opinion as to something relative
20 to that particular expertise. And this witness has been
21 qualified as an expert in testing marijuana.

22 You may proceed.

23 MR. SCOTT: Thank you, Your Honor.

24 BY MR. SCOTT:

25 Q June of last year, did you have occasion to receive

1 some evidence for testing related to a case against
2 Benjamin Newman?

3 A Yes, I did.

4 Q And when did you receive that evidence?

5 A It was the -- one moment, please.

6 MR. WILLIAMS: Your Honor, may we approach the
7 bench one second?

8 THE COURT: Certainly.

9 (A bench conference was held with the judge and
10 attorneys in the presence of the jury but out of the
11 hearing of the jury.)

12 THE COURT: All right. You may proceed.

13 BY MR. SCOTT:

14 Q When did you receive that evidence, Mr. Blackwell?

15 A June 23rd, 2011.

16 Q Let me show you something that's been marked for ID
17 purposes, State's Exhibit No. 6. Are you able to identify
18 that item?

19 A Yes, sir. This is the bags I received from Evidence.

20 Q Okay. And how are you able to identify -- what marks
21 do you see on there that are identifiable to you?

22 A On the evidence card itself, I signed it twice where
23 I received it and released it.

24 During my process, I open the bag, normally from
25 the bottom. When I finish my test, I reseal it, initial

1 it and date it. That has my initials and date.

2 Q Who did you receive that item from?

3 A Ms. Candy Kyzer.

4 Q Would you please state, once again, when you received
5 it?

6 A June 23rd.

7 Q Okay. You mentioned some seals on the bag. Was that
8 bag sealed in any way when you received it?

9 A Yes. The bag will be in a whole and it's sealed on
10 the top with the initials of the person that sealed it.

11 Q And then what do you do when you receive a bag such
12 as that that is sealed?

13 A I normally cut the bottom portion. I do not -- I try
14 not to cut across their seal or destroy their seal at all.
15 And I take the items out, perform the tests that I'm
16 required to do, put them back. I seal them, each bag, and
17 then I seal the bag that has the bags in it, putting my
18 initials on all of them.

19 Q Okay. So you mentioned, I believe, your name and a
20 date on the -- what was it you called that tag?

21 A Evidence tag.

22 Q Evidence tag.

23 I believe you said your initials were on the
24 actual bag containing that green substance?

25 A Yes.

1 Q And where are your initials on that?

2 A Right across the seal on the bottom.

3 Q And who made that seal that you initialed?

4 A I did.

5 Q What are the purposes of the seals?

6 A Maintain the integrity of the items.

7 Q Until it's tested?

8 A No. This is after it's tested -- well, my test --
9 it's tested when I put my seal on it.

10 Q Okay. And did you perform a test on that particular
11 item?

12 A Yes, I did.

13 Q What type of tests do you perform?

14 A I would perform a microscopic and a chemical test on
15 the items, plus weighing it.

16 Q I want to show you what's been marked for ID purposes
17 as State's No. 7.

18 Same question. Can you identify that object?

19 A Yes.

20 Q And how are you able to identify it?

21 A The tag has my name, two places, the date and time.
22 Also, the box, I put the yellow tape on the box and it
23 also has my initials and the date.

24 Q And does that item appear to be in the same condition
25 as it was when you received it?

1 A Except for the tape, yes.

2 Q And who placed the tape there?

3 A I did.

4 Q And you mentioned you initialed the tape?

5 A Yes.

6 Q Did you perform any tests on that object?

7 A I performed the same tests; microscopic and chemical
8 and weighed it.

9 Q And did you receive it at the same time you received
10 this last piece of evidence, State's No. 6?

11 A Yes.

12 Q And what was that date?

13 A June 23.

14 Q I may have already asked this, but who did you
15 receive this from?

16 A Candy Kyzer.

17 Q And is the handwriting on that box yours?

18 A Yes.

19 Q And what does that handwriting say?

20 A Well, this one says, bale three and four, and the
21 case number, box two. This is for my information.

22 Q Okay.

23 A And the date and everything.

24 Q I'll show you State's No. 20.

25 A That is my handwriting, bale number five, case

1 number, box three with my initials on the sealing tape.

2 Q State's No. 4?

3 A That's my writing, bale one and two, case number,
4 box one. The sealing tape has my initials and date.

5 Q Okay. For those two items, were you able to perform
6 tests on those as well?

7 A Yes.

8 Q How did those two come into your possession?

9 A I picked them up the same time.

10 Q What was that date, again?

11 A June 23rd.

12 Q About the same time from Candy Kyzer?

13 A Right.

14 Q And are those exhibits in the same condition as when
15 you received them?

16 A Except for the tape, yes, sir.

17 Q Why was that exhibit turned over to you?

18 A For testing.

19 Q Did you ultimately test those items, too?

20 A Yes, I did.

21 Q All right. What tests were made by you, again?

22 A It starts out with a microscopic and we weigh them
23 and do a chemical test on them.

24 Q From these tests that you performed on State's No. 6,
25 State's No. 7, State's No. 20 and State's No. 4, were you

1 able to form an expert opinion as to what those items
2 contained?

3 A They contained marijuana.

4 Q And what was the weight in total of the marijuana
5 that you tested?

6 MR. WILLIAMS: Your Honor, I'm going to object
7 to that until these items are placed into evidence.

8 MR. SCOTT: Your Honor, the State would offer
9 these items for admission into evidence.

10 MR. WILLIAMS: Your Honor, we would object, that
11 the foundation of the chain is not complete at this time.

12 THE COURT: Now, he says he -- well,
13 Mr. Foreman, ladies and gentlemen of the jury, I need to
14 take a matter of law up with the attorneys, so if you
15 would please retire to the jury room. Again, please do
16 not undertake discussion of the case amongst yourselves.

17 (The jury left open court at approximately
18 2:59 p.m.)

19 THE COURT: Yes, sir, Mr. Williams.

20 MR. WILLIAMS: Your Honor, if our procedure
21 allows for the testimony of the witness to testify as to
22 the weight --

23 THE COURT: Well, wait. The thing is, your
24 objection is that a foundation has not been --

25 MR. WILLIAMS: It has.

1 THE COURT: -- as far as the chain of custody,
2 but -- all right.

3 MR. WILLIAMS: Yes, sir.

4 THE COURT: As I understand it, the witness'
5 testimony is that he received it from Officer Kyzer; is
6 that correct?

7 THE WITNESS: That is correct, Your Honor.

8 THE COURT: And Officer Kyzer said that she --
9 let's see -- at least I know she identified his signature
10 or his -- no. It came from Officer Slice to
11 Sergeant Kyzer to Blackwell and then back to Kyzer. I
12 think that has been the testimony.

13 MR. WILLIAMS: I agree.

14 THE COURT: All right. Now, who did he leave
15 out?

16 MR. WILLIAMS: The person who found the
17 marijuana, who is just walking out the door.

18 THE COURT: No, she found the cocaine.

19 MR. WILLIAMS: She is listed on the search
20 warrant as being the person who retrieved both.

21 THE COURT: Well, I'm not sure about what's on
22 the search warrant, I haven't seen that. The only thing
23 is, I do remember the testimony is that she was the one --
24 we're talking about Officer Barnes; is that right?

25 MR. WILLIAMS: That's correct.

1 THE COURT: That Officer Barnes looked in the
2 open bag and there was the cocaine that everybody had been
3 looking for. At least that's the testimony.

4 Now, I'm not here to weigh the testimony or
5 anything, but I just have to concern myself with whether
6 there is any evidence to sustain the objection.

7 MR. WILLIAMS: Well --

8 THE COURT: Or no evidence to sustain the
9 objection.

10 MR. WILLIAMS: Well, as I was reviewing the
11 search warrant and the return, there's an indication that
12 Officer Barnes was the person that actually seized the
13 marijuana and the cocaine.

14 THE COURT: Well, I didn't understand the
15 marijuana ever being lost.

16 MR. WILLIAMS: Well, I don't know that it's been
17 lost, but seizing it.

18 THE COURT: Well, the seizing of it was
19 obviously when they took control of the premises.

20 MR. WILLIAMS: I agree with that, Your Honor.

21 THE COURT: And the photographs and everything
22 else show that it was on the premises at the time of the
23 taking control, which is seizing.

24 MR. WILLIAMS: But then someone has to take it
25 from whatever location it is and turn it over to Brannon

1 Slice, would be my -- would be the argument.

2 MR. SCOTT: And, Your Honor, we got at least two
3 witnesses who testified Brannon Slice, as the case agent,
4 is responsible for seizing all evidence and transporting
5 off the premises to the locker, evidence locker.

6 THE COURT: Again, I'm not so concerned about
7 the marijuana because I think that has been established:
8 When Officer Slice came in, he saw the marijuana. There
9 was a time when the cocaine was somewhat uncertain as to
10 where its location was. And, now, that might create
11 another problem when you get to the cocaine.

12 MR. SCOTT: Well, Judge --

13 THE COURT: I mean, this witness didn't examine
14 the cocaine.

15 MR. WILLIAMS: No, he didn't.

16 THE COURT: So you're trying to get your
17 exhibits, what is it, 24 and 6 and 7 into evidence.

18 MR. SCOTT: Just the marijuana, Your Honor.

19 THE COURT: That's not all of it?

20 MR. SCOTT: It's 6, 4, 20 -- I'm sorry, I can't
21 remember these numbers -- and 7.

22 THE COURT: That's what I said.

23 MR. SCOTT: We have absolutely no intention of
24 introducing any cocaine for D.I. Blackwell.

25 THE COURT: Well, that's what I understood.

1 So as far as the marijuana is concerned, I don't
2 think there is any question. As soon as the premises were
3 controlled, and Officer Slice was there, he saw the
4 marijuana, which apparently was in clear view, that
5 there's no question that he had control of it even though
6 somebody might have assisted in carrying it out to the car
7 or something.

8 MR. WILLIAMS: All right, sir. Thank you, Your
9 Honor.

10 THE COURT: And the record so far does reflect
11 that.

12 Now, the point is -- and this is more
13 important -- do you want me to instruct the jury on that
14 point of law, that chain of custody, or do you wish for me
15 just to rule on your motion at this point and just say
16 your motion is denied or overruled?

17 MR. WILLIAMS: Just rule on my motion.

18 THE COURT: All right. And, like I said, I can
19 rule at this time that the marijuana does come in as an
20 exhibit. And we'll do that on the record right now, just
21 say -- I mean, correct me, Mr. Scott, now -- State's
22 Exhibits No. 4, 6, 7 and 20 are admitted.

23 MR. SCOTT: That's correct, Your Honor.

24 MR. WILLIAMS: Subject to my objection.

25 THE COURT: Subject obviously to the objection

1 of the defendant and the Court's ruling on those
2 objections.

3 MR. WILLIAMS: Thank you, Your Honor.

4 (WHEREUPON, STATE'S Exhibits Nos. 4, 6, 7, 20
5 were admitted into evidence.)

6 THE COURT: All right. Anything else?

7 MR. SCOTT: Nothing from the State.

8 MR. WILLIAMS: Nothing from the defendant, Your
9 Honor.

10 THE COURT: All right. Very good. Thank you,
11 sir.

12 All right. Ask the jury to join us.

13 (The jury came into open court at approximately
14 3:07 p.m.)

15 THE COURT: All right. You may proceed.

16 MR. SCOTT: Thank you, Your Honor.

17 The State offers 4, 6, 7 and 20.

18 THE COURT: They have been admitted.

19 MR. SCOTT: Thank you.

20 BY MR. SCOTT:

21 Q What was your opinion as to what those exhibits
22 contained?

23 A Marijuana.

24 Q And what was the total weight of marijuana you
25 tested?

1 A There was 23,128.80 grams, 806 -- which equals out to
2 816.14 ounces and 51 pounds, equals out.

3 Q So the total weight of marijuana was 51 pounds?

4 A 51 pounds.

5 MR. SCOTT: Thank you, Mr. Blackwell. Answer
6 any questions that Mr. Williams may have for you.

7 CROSS-EXAMINATION

8 BY MR. WILLIAMS:

9 Q D.I., you weren't involved in the giving of the
10 marijuana or any drugs to any narcotics officers to be
11 used in any drug transaction, were you?

12 A No.

13 Q The only thing that you did in this particular case
14 was test those items that were presented to you?

15 A That's correct.

16 MR. WILLIAMS: That's all I have, Your Honor.

17 THE COURT: Re-examine?

18 MR. SCOTT: Nothing from the State.

19 THE COURT: You may step down.

20 Thank you, sir.

21 MR. HUBBARD: The State calls Paige Barnes.

22 PAIGE BARNS, after being duly sworn, testified
23 as follows:

24 THE CLERK: Please be seated. State your full
25 name.

1 THE WITNESS: Paige Barnes, B-A-R-N-E-S.

2 DIRECT EXAMINATION

3 BY MR. HUBBARD:

4 Q Agent Barnes, where do you work?

5 A Lexington County sheriff's department.

6 Q What do you do at the sheriff's department?

7 A I'm currently assigned to the Narcotics Enforcement
8 Team.

9 Q How long have you been with the NET team?

10 A Approximately five years.

11 Q Were you a participant in the buy-bust operation
12 involving Benji Newman?

13 A I was.

14 Q What was your role?

15 A I was listening to the KEL, the transmission between
16 the undercover and Benji Newman and the CI. I was also
17 part of the -- I didn't actually go in the house, but I
18 came in to secure evidence after the fact and to make sure
19 that Agent Carver was okay.

20 Q You say you didn't go into the house. You mean, you
21 weren't part of the initial entry team?

22 A Correct.

23 Q Is that what SWAT was for?

24 A Yes, sir.

25 Q But you say you did go in the house?

1 A I did.

2 Q And your purpose for going in was what again?

3 A My first original purpose was to go in and gather
4 Agent Carver and get him out of the residence.

5 Q And how long were you-all out at the residence?

6 A Approximately five minutes.

7 Q And where did you go from that point?

8 A I went back into the residence.

9 Q Who was in the residence with you?

10 A Agent Carver, Agent Slice, and Agent Setree.

11 Q And was there some commotion involving the cocaine?

12 A Yes, sir.

13 Q What was that about?

14 A That we could not locate it.

15 Q What was the concern?

16 A That Benji Newman had run off with the cocaine or
17 thrown it.

18 Q And where was he located?

19 A In the backyard.

20 Q Is that where most of the officers were looking?

21 A Yes, sir.

22 Q You were still inside?

23 A Yes, sir.

24 Q And, again, Benji is outside. You-all wanted to keep
25 Agent Carver separate?

1 A Correct.

2 Q So he's back inside?

3 A Yes.

4 Q Who ends up locating the whereabouts of that cocaine?

5 A I do.

6 Q Where did you locate it?

7 A In the black book bag sitting beside the counter in
8 the kitchen.

9 Q I want to show you State's 17 and 16. Is that where
10 you found the cocaine?

11 A Yes, sir.

12 Q And State's 17, is that how it was?

13 A Yes, sir.

14 Q And, again, looking at this big old chart, State's
15 21, where was that black bag located?

16 A It was located right here at the base of the counter.

17 Q Kind of at the foot of it on the floor?

18 A Yes, sir.

19 Q So when it was all said and done, that cocaine was
20 always right there or somewhere in that kitchen area?

21 A Yes, sir. I had spoke with Agent Carver outside
22 because everyone was in a panic because they could not
23 locate the cocaine. I spoke with him, asked him where the
24 cocaine was. He stated to me that last he saw it, it was
25 on the counter.

1 Q That's why you went and looked at that point when you
2 got back inside?

3 A I looked in the general area of where the counter
4 was.

5 Q Okay. And, now, as far as seizing and controlling
6 those drugs, did anybody else come in and take those, that
7 bag of cocaine while you were in there?

8 A No, sir.

9 Q Who was responsible for actually seizing and taking
10 the drugs away from the premises?

11 A Brannon Slice.

12 Q Is he the case agent?

13 A Yes, sir.

14 Q And to the best of your knowledge, is that what he
15 did?

16 A That's what he did.

17 MR. HUBBARD: Thank you.

18 THE COURT: Cross-examine?

19 CROSS-EXAMINATION

20 BY MR. WILLIAMS:

21 Q Agent Barnes -- is it Agent Barnes?

22 A Yes, sir.

23 Q Who is Tucker?

24 A Me.

25 Q So you're not Paige --

1 A I'm divorced. I went back to my original name.

2 Q So you're given name is?

3 A Barnes.

4 Q First name?

5 A Paige.

6 Q Paige Barnes instead of Paige Tucker?

7 A Paige Tucker was my married name.

8 Q Okay. When you came in -- and you were the person
9 who actually took the photographs involved in this case,
10 weren't you?

11 A I did.

12 Q So all these photographs which have been marked into
13 evidence are pictures which you have taken when you first
14 came in; is that right?

15 A That's correct.

16 Q And how long after all this commotion of people
17 looking for the cocaine was it that you went in and took
18 the pictures?

19 A I didn't take the photos until the search warrant was
20 signed.

21 Q All right. And how long was that?

22 A Approximately 30 minutes.

23 Q You-all sat outside for about 30 minutes?

24 A No, sir, we went back inside. I took possession of
25 Agent Carver, went back inside the residence and stood in

1 the living room to keep Agent Carver out of the sight of
2 the other -- of Benji Newman, and we stood in the living
3 room to maintain possession and control of the residence.

4 Q All right. And where did the other SWAT officers go?

5 A I can't speak for that.

6 Q Do you know if they left the scene?

7 A I can't answer that.

8 Q All right. And when was it that you first saw the
9 bag of cocaine in the book bag?

10 A Shortly after.

11 Q Shortly after what?

12 A The arrest.

13 Q On State's Exhibit No. 17, where is that book bag
14 today?

15 A It's actually at our office.

16 Q How big of a book bag is it?

17 A It's a standard size book bag.

18 Q Obviously, it looks like there's room in that book
19 bag for the little bag of cocaine that's in there.

20 There was extra room left in there, wasn't
21 there?

22 A Yes, sir.

23 Q And could you have placed a bale of marijuana on top
24 of the cocaine in that book bag?

25 A No, sir, because we could barely get the bag zipped

1 up with the marijuana in it.

2 Q Can you step down a second for me and show the jury
3 what you're talking about?

4 Oh, if you don't mind, step down a second.

5 Now, how many pockets did you have on the book
6 bag?

7 A Two.

8 Q All right. And were you in -- did you put the
9 marijuana in the book bag?

10 A No, I did not. I did witness it get put in the book
11 bag.

12 Q So you didn't put the marijuana in the book bag?

13 A No, sir, I witnessed it.

14 Q When you said that you could barely get the marijuana
15 in the book bag, are you referring to when someone else
16 put the marijuana in the book bag?

17 A I said "we." I didn't say "I." I said we could
18 barely get the marijuana zipped up.

19 Q What part did you do about putting the marijuana in
20 the book bag?

21 A I observed it.

22 Q So somebody else put the marijuana in the book bag?

23 A Correct.

24 Q Where were you standing when you saw that?

25 A Three feet from them.

1 Q And this would be the item which you say was in the
2 book bag, correct?

3 A That I located afterward, yes, sir, after the arrest
4 of Benji Newman.

5 Q In the book bag?

6 A Yes, sir.

7 Q It's your testimony that you can't put both in there?

8 A I don't believe so.

9 Q But you don't know, do you? You didn't look in
10 bottom of the book bag before the marijuana was put in
11 there, did you?

12 A Actually, the book bag was used for another piece of
13 equipment that we have that we carry around to use in
14 controlled purchases, so that item had to be removed from
15 the book bag in order to put the bale of marijuana inside
16 the book bag.

17 Q What was that item that you carried around in the
18 book bag that you say was so big it kept the book bag --
19 that kept a bale of marijuana from going in?

20 A It's a repeater.

21 Q A repeater?

22 A Uh-huh.

23 Q And what's a repeater?

24 A It enhances the wire.

25 Q All right. And that is a square box?

1 A Yes, sir.

2 Q Thick metal square box?

3 A Yes, sir.

4 Q With no flexibility?

5 A Correct.

6 Q And if you had powder cocaine, which is going into
7 it, that obviously is flexible, isn't it?

8 A Yes.

9 Q Was the marijuana only in one pocket or did you have
10 it in two pockets?

11 A It was only in one pocket.

12 Q What was in the other pocket?

13 A Nothing.

14 Q But, again, you didn't pack the marijuana, did you?

15 A I observed it.

16 Q All right. And you didn't observe who carried the
17 book bag of marijuana -- you say marijuana -- into the
18 residence, did you?

19 A I think it's been tested and proved that it was
20 marijuana, but, no, I did not.

21 Q So you don't know whether or not the confidential
22 informant took that book bag in there or not, do you?

23 A No, sir.

24 Q Now, after you went in there and you observed the
25 cocaine sitting in the bag, did you check the bag out to

1 see if anything else was in the book bag?

2 A Not until the search warrant was signed.

3 Q All right. So you just took a picture of it?

4 A Yes, sir.

5 Q And when you searched the book bag, what did you find
6 inside the book bag?

7 A The big bag of cocaine and a smaller bag of cocaine.

8 Q Anything else?

9 A No, sir.

10 Q All right. And what did you do with the cocaine
11 that -- strike that.

12 Is there anything to distinguish or to show that
13 this bag of cocaine here is different or the same as that
14 bag of cocaine that you show in the picture? Is there
15 something that shows it's the same or different?

16 A I put the bag -- I put the bag of cocaine in another
17 bag and labeled it with the address of 423 Longview.

18 Q Did you secure the marijuana?

19 A I did.

20 Q And --

21 MR. WILLIAMS: Your Honor, can I get you to open
22 up one of these boxes, please?

23 THE COURT: Any objection?

24 MR. HUBBARD: No, sir.

25 THE COURT: All right. Without objection.

1 Which box are we opening, which exhibit?

2 MR. WILLIAMS: The one that says 1, I guess,
3 Your Honor.

4 THE COURT: Well, it has a number.

5 MR. WILLIAMS: The box that says --

6 THE COURT: Look at your -- you just went over
7 it, Mr. Williams, it's next to your tie.

8 MR. WILLIAMS: It's Exhibit No. 20.

9 THE COURT: Very good. Thank you.

10 BY MR. WILLIAMS:

11 Q And it's your testimony that nothing else would fit
12 in that book bag once you had this bale of marijuana in
13 there?

14 A That's correct.

15 Q Now, was this marijuana in the same condition as it
16 is right now?

17 A No, sir.

18 Q It was different?

19 A It was in cellophane. It was wrapped in cellophane.

20 Q Was there evidence of any kind of knife cuts on it?

21 A This was actually turned over to D.I. Blackwell in
22 the condition that we removed it. He removes the
23 packaging from it and puts everything back into the box
24 and tapes it.

25 Q Was there evidence of this matter being cut on?

1 A I can't testify that one particular bale was, but
2 there was a bale that had been cut.

3 Q Well, now, this is the bale which is the single bale,
4 isn't it?

5 A They were all individually wrapped.

6 Q But you've got two boxes with two bales apiece in it,
7 and you've got this one box with one bale in it, right?

8 A But they're all the same item.

9 Q Is this the box which was on the counter?

10 A I can't testify to that.

11 Q You can't testify that this is the marijuana that was
12 on the counter?

13 A No, sir.

14 Q Would you have normally used a single bale which was
15 out of the bag to package up separately or would you
16 somehow grab one that was already in four bales that was
17 in the duffle bag? Do you see what I'm saying?

18 A No, sir.

19 Q If you have a single bag of marijuana sitting on the
20 counter, that would normally be the one you would put in
21 the single box, wouldn't it?

22 A Correct.

23 Q But you can't say this is the bale which was on the
24 counter?

25 A I cannot because we left it in the cellophane, put it

1 back into the book bag and the duffle bag and it was
2 turned over to Brannon Slice.

3 MR. WILLIAMS: Thank you.

4 You can have a seat.

5 Better not go through an airport, Your Honor.

6 THE COURT: Better be careful walking out of
7 this building as well.

8 BY MR. WILLIAMS:

9 Q Did you turn the book bag over to the narcotics
10 people also or -- with the cocaine bag in it or did you
11 just turn the cocaine separately over to them?

12 A I bagged the cocaine, labeled it with the address of
13 423 Longview, and turned it over to Agent Slice.

14 Q All right. So, basically, your involvement was to
15 take pictures, secure the confidential informant -- or not
16 the confidential informant, the undercover officer, and
17 that's it? And help the poor narcotics people find their
18 cocaine that was missing?

19 A I am part of the poor narcotics people, so --

20 Q But you saw it quickly, didn't you?

21 A No, sir, I did not find it quickly. It was just a
22 short time afterwards. I maintain control of all the
23 evidence.

24 Q How long did you look for the cocaine?

25 A Several minutes.

1 Q Twenty minutes?

2 A Several.

3 Q Do you have a rough approximation?

4 A After I spoke with Agent Carver, he told me where it
5 was located. I went to that general area, started there
6 first. Just like you lose your keys, when you remember
7 the last place you remember losing them, you go back,
8 start there first.

9 Q So you started looking in the book bag first?

10 A It was in plain view.

11 MR. WILLIAMS: That's all I have, Your Honor.

12 MR. HUBBARD: One quick follow-up.

13 REDIRECT EXAMINATION

14 BY MR. HUBBARD:

15 Q These boxes, you-all didn't bring the marijuana in
16 the boxes, did you?

17 A No, sir.

18 Q And did you put the marijuana in the boxes?

19 A No, sir.

20 Q So two of those boxes had two bales apiece, correct?

21 A Correct.

22 Q You don't know which bale went into which box?

23 A No, sir.

24 MR. HUBBARD: Thank you.

25 MR. WILLIAMS: No questions on redirect (sic).

1 THE COURT: All right. You may step down.

2 Thank you, ma'am.

3 Call your next witness.

4 MR. SCOTT: Your Honor, the State calls Emily
5 Homer.

6 EMILY HOMER, after being duly sworn, testified
7 as follows:

8 THE CLERK: Please be seated. State your full
9 name, spell your last, ma'am.

10 THE WITNESS: Emily Homer Conrad, and that's
11 C-O-N-R-A-D.

12 DIRECT EXAMINATION

13 BY MR. SCOTT:

14 Q Ms. Conrad, what is your occupation?

15 A I'm a chemist at Lexington County Sheriff's
16 Department.

17 Q How long have you been with Lexington County?

18 A Next month it will be seven years.

19 Q What are your duties as a chemist with Lexington
20 County?

21 A I analyze forensic drug cases, I maintain and run the
22 lab, I apply for grants. I also -- I attend court and I
23 also help with any sort of chemistry needs that the
24 department has.

25 Q What kinds of drugs do you analyze?

1 A I mainly analyze controlled substances, controlled
2 Schedule 1 through 5, either state or federal, and those
3 regulated also by county ordinances.

4 Q And you analyze cocaine?

5 A Yes.

6 Q And what schedule drug is that?

7 A Cocaine is a Schedule 2 drug.

8 Q What type of training must you have to qualify for
9 your position at Lexington County Sheriff's Department?

10 A I need to have a degree in chemistry. I have a
11 master's -- a bachelor's in chemistry and a master's in
12 organic chemistry.

13 I also have been also trained by SLED in the
14 area of drug analysis and trained by DEA in their special
15 testing lab in Virginia for drug analysis.

16 And I also worked as a police officer before I
17 came to Lexington in Charleston City, and I'm also a
18 certified law enforcement by SLED.

19 Q Do you have occasion to chemically analyze substances
20 to determine whether or not they contain a narcotic drug?

21 A Yes.

22 Q Approximately how many times?

23 A Over two thousand.

24 Q Have you had an occasion to chemically analyze a
25 substance to determine whether or not it contained

1 cocaine?

2 A Yes.

3 Q How many times?

4 A Over a thousand. I would have to look at my records.

5 Q In a given month, approximately how many times do you
6 test an item for cocaine?

7 A I usually do between ten to fifteen cases a week.
8 Lately there's been a lot more meth. It fluctuates every
9 month. Sometimes all those cases can be meths. A lot of
10 times most of the -- half of them could be cocaine.

11 Q Well, is the analysis of an item to determine whether
12 or not it has cocaine, is that a regular part of your
13 duties?

14 A Yes.

15 Q Have you had an occasion to qualify as an expert in
16 this area in courts of General Sessions?

17 MR. WILLIAMS: Your Honor, we stipulate that
18 she's qualified to testify as an expert in regards to
19 cocaine.

20 THE COURT: All right. Again, this witness has
21 been qualified as an expert in forensic analysis of drugs
22 or chemical drug analysis?

23 THE WITNESS: Either one is fine.

24 MR. SCOTT: Forensic analysis of cocaine.

25 THE WITNESS: Or drugs.

1 THE COURT: Forensic analysis of cocaine.

2 THE WITNESS: Or drugs.

3 THE COURT: Or drugs, to include cocaine?

4 THE WITNESS: Yes, sir.

5 THE COURT: Very good. Thank you, ma'am.

6 THE WITNESS: Thank you.

7 THE COURT: And as I said earlier, in having
8 been so qualified, she will be able to give her opinion as
9 to those matters relative to that particular area of
10 expertise.

11 Very good. You may proceed.

12 BY MR. SCOTT:

13 Q Did you have an occasion to receive an item for
14 testing in regards to a case against Benjamin Newman?

15 A Yes.

16 Q Let me show you what's been marked as ID purposes as
17 State's Exhibit No. 5. Can you identify State's Item No.
18 5?

19 A The control number on the Best kit, C-014846 matches
20 my paperwork for this case, but -- yes, so this is the
21 same Best kit as pertains to this report.

22 Q Have you marked that item?

23 A Yes, I did.

24 Q When did you mark that item?

25 A This should be on June 6th, 2011, but the bag is

1 folded over a little bit.

2 Q Okay.

3 A And it has the same lab number as the report that I
4 generated for the case.

5 Q When did that item originally come into your
6 possession? And how did it come into your possession?

7 A On June 6th, Candy Kyzer handed it to me.

8 Q Did it go -- from the time Candy Kyzer had it, go to
9 anyone else before it got to you?

10 A In between Candy Kyzer handing it to me, no, I pick
11 it up directly from Candy.

12 Q Do you have the complete chain of custody before you?

13 A Well, I don't have Candy's -- I don't have the
14 Evidence Room's record to compare it to, but I have what I
15 would assume is the complete chain of custody.

16 Q Well, is it your testimony that you received that
17 directly Candy Kyzer?

18 A What is my testimony? I don't understand.

19 Q Where did you receive that item, State's 5?

20 A I received this from Candy Kyzer in the Evidence
21 Room. I physically go over there. We arrange a time each
22 week when I can come to the Evidence Room to physically
23 pick up the evidence. And then I usually pick it up from
24 Candy Kyzer.

25 Q What condition was State's 5 in when you received it?

1 A It was in a Best kit and that was sealed.

2 Q Can you describe what a Best kit is?

3 A Best stands for, you know, B-E-S-T stands for best
4 evidence sampling technique. It's evidence, drug evidence
5 is a fungible type of evidence where you have to take
6 special precautions as far as how it's handled between
7 hands and to make sure that the amount hasn't changed when
8 it's come -- when it eventually arrives for analysis or
9 that it isn't tampered with.

10 Now, the bag, the Best kit bag that we have is a
11 tamper-evident bag. It should be evident if someone
12 tampers with it. And that's what usually holds -- on the
13 inside of this is what usually holds the drug evidence.
14 And it's not tamperproof, but you should be able to tell
15 if these seals are distorted, if someone has tampered with
16 it. And this is how I receive all drug evidence to the
17 lab.

18 I won't receive it if it's not in the Best kit,
19 and if the seal is tampered with, I won't -- I usually
20 just turn it back into Evidence and don't analyze it.

21 Q Is that exhibit in the same condition as when you
22 first received it?

23 A When I first received it, it was in a Best kit. And
24 then afterwards, I reseal it. And it's in the same
25 condition as when -- after I analyzed it.

1 Q Okay. But it's your testimony that you don't test an
2 item if there's any evidence whatsoever of any tampering,
3 right?

4 A Correct.

5 Q Would you have reviewed Item No. 5 up there to detect
6 any forms of tampering with that Best kit bag?

7 A Yes.

8 Q Why was that exhibit turned over to you?

9 A For analysis.

10 Q Were you able to perform an analysis on that item?

11 A Yes.

12 Q What type of analysis did you perform?

13 A I did presumptive screening, and then I did two
14 different confirmatory tests.

15 Q When did you make those analyses?

16 A I did the analysis actually on June 6th.

17 Q The same day you received it?

18 A Yes.

19 Q From those tests, were you able to form an expert
20 opinion as to what that exhibit is or contains?

21 A Yes. There was one Ziploc bag that contained two
22 other bags inside of it. One of the bags inside of that
23 one is labeled 1.1. There was a Ziploc bag that contained
24 a compressed powder substance, and I found that to be
25 cocaine, and it was 709 grams. And then Item 1.2 was also

1 inside Item 1, and it's another tied -- it was a tied
2 plastic bag containing a powder substance that was, again,
3 cocaine. It was 42.34 grams.

4 MR. SCOTT: Thank you.

5 Your Honor, the State would offer State's No. 5
6 for admission into evidence.

7 MR. WILLIAMS: Your Honor, I would argue the
8 chain is not complete.

9 MR. SCOTT: Your Honor, we have identified every
10 single person who's had any contact with this piece of
11 evidence.

12 THE COURT: All right. I'm going to, based on
13 my prior rulings, I'm going to overrule the objection and
14 permit the admission of State's Exhibit 5 -- is that it --

15 MR. SCOTT: Yes, sir.

16 THE COURT: -- into evidence. All right.

17 MR. SCOTT: Thank you, Your Honor.

18 THE COURT: The objection is noted for the
19 record.

20 MR. SCOTT: Thank you.

21 (WHEREUPON, STATE'S Exhibit No. 5 was admitted
22 into evidence.)

23 BY MR. SCOTT:

24 Q Ms. Conrad, again, what's your expert opinion as to
25 what that item is and contains, and what is the total

1 weight of that item?

2 A 1.1 was 709 grams of cocaine, and 1.2 was 42.34 grams
3 of cocaine.

4 MR. SCOTT: Thank you.

5 THE COURT: All right.

6 MR. WILLIAMS: May it please the Court.

7 THE COURT: Yes, sir. Cross-examine.

8 THE WITNESS: Hi.

9 CROSS-EXAMINATION

10 BY MR. WILLIAMS:

11 Q You have no idea about the seizure of that item,
12 where it came from, who found it, anything about it, other
13 than how it arrived at the Lexington County Sheriff's
14 Department?

15 A I don't even know how it arrived. My opinion is an
16 independent opinion. I don't even want to know. I don't
17 even want to see reports of what happened at the scene. I
18 just -- my opinion is of the drug itself.

19 Q So your job is simply to test whatever is presented
20 for you for testing?

21 A Yes.

22 Q Just kind of a curiosity question. When you test,
23 did you test both bags?

24 A Yes.

25 Q And when you tested both bags, were you testing for

1 anything other than cocaine?

2 A Yes. Some of my tests are sort of a wide-spectrum
3 test, that if there is anything else present there, that
4 it should show up, especially when I run things -- one of
5 the confirmatory tests I run is on a GCMS, which is a gas
6 chromatograph mass spectrometer. And what I do is I have
7 a method set up that will show ranges of most common
8 controlled substance drugs, which usually fall within a
9 certain retention time on my column.

10 And the -- I also every time I run any type of
11 sample, I run positive screenings of positive samples that
12 I carry in the lab that show that, yes, methamphetamine,
13 cocaine, and another common drug, heroin, should show up
14 on the instrument. And then I run the sample. And if I
15 do have that identifying drug in that sample, then if my
16 control showed up, then my drug, unknown sample should
17 show up, too.

18 Q So are you saying that what you essentially do is you
19 have a control sample that you test, which would only be
20 the cocaine that you would test, and --

21 A No.

22 Q -- then you would test whatever item you have to see
23 if it matches up to that item?

24 A Well, I have controls in the lab of every controlled
25 substance.

1 Q All right. Okay.

2 A So I don't necessary look for just cocaine. I will
3 take a -- it's an unknown sample, so I don't know what's
4 in it. I see what comes out, and I make sure that it
5 matches with my controls that I have already run on this
6 same instrument.

7 Q All right. And when you say it matches with your
8 controls, are you talking about a color spectrum where it
9 would it look like --

10 A No.

11 Q -- it would appear within a color spectrum?

12 A No.

13 Q How would it match with your sample?

14 A Two different things, that it has a retention time
15 off of the gas chromatograph, and it also matches a
16 minimum of six peaks in the mass spectra of the compound
17 that has come off at that retention time.

18 Q And would there be different -- if you were testing,
19 say, methamphetamine, would that appear differently?

20 A Yes.

21 Q Now, when you test that, can you tell whether or not
22 you have pure cocaine or whether or not it's been mixed
23 with something such as lidocaine?

24 A Well, I don't do -- that's -- I do qualitative
25 analysis. I mainly identify just if a substance is there.

1 Since we don't do quantitative analysis, then I don't try
2 to identify any sort of adulterance that may have been
3 added. And the common adulterances are lidocaine,
4 benzocaine.

5 So I'm more of a -- I specifically look for
6 controlled drugs, which are Schedule 1 through 5.

7 Examples of Schedule 1 is like THC, marijuana,
8 hallucinogens, LSD. Schedule 2 is cocaine,
9 methamphetamine. 3's, you know --

10 Q How much of the sample do you actually test?

11 A It depends on -- I test the amount of sample as
12 dictated by the DEA and SLED.

13 Q How much is that?

14 A Usually about a tenth of a gram each test.

15 Q How much is a tenth of a gram?

16 A It's one tenth of a gram.

17 Q How big does it look like? Is there something that
18 you can describe so I guess the jury could know how big
19 a -- because I don't know what a tenth of a gram looks
20 like?

21 A Well, and then you have to think, my instrument is
22 able to actually read within one part per million, so my
23 instrument doesn't even require -- a tenth of a gram is
24 way too much even for the instrument.

25 Q Is it like a gram of salt, like a little grain of

1 salt?

2 A Well, a grain is 15.432 grains in one gram. So
3 there's more grains in a gram.

4 Q Are you saying that if I had a salt shaker out, and I
5 took out one little grain of salt, it would be more than
6 what you test?

7 A Well, but, then, you have to look at grains, you're
8 talking about weight, not by just visually looking at --

9 Q I'm talking visual.

10 A Well, you can't relate visually by weight.

11 You know, take, for instance, like a
12 bodybuilder, you know. There are some very, you know,
13 look very fit women female body builders, but they have --
14 you know, muscle weighs more than fat, but you can't tell
15 just by looking at them that they may actually weigh more
16 than somebody else. So I don't really classify things
17 this small.

18 Q What you observed when you took it out to test it,
19 how big was it in your vision?

20 A I mean, honestly, it was a lot of cocaine. I've
21 never -- that's a lot. 709 grams of cocaine is a lot.

22 Q So how much was it that you tested?

23 A I test a tenth of a gram per test.

24 Q Okay.

25 A So probably about, you know, three tenths of a gram

1 for the first one, and the other one, the second one, is
2 about three tenths of a gram.

3 Q All right. And when you looked at it, how big did it
4 appear to look when you tested it out?

5 A I mean, I honestly don't relate things as big and
6 small. I just -- you know, a tenth of a gram per test
7 is --

8 Q You could see it?

9 A Yes, I can see it.

10 Q Without the aid of a microscope?

11 A Right. But my instrument can also see things
12 without -- that you can't visually see.

13 You know, I test a lot of residue cases, too,
14 and in that, you don't even see the substance because an
15 instrument can read -- all it needs to have is one part
16 per million, and we're talking, you know, it's very minute
17 that my instrument can read.

18 Q So you can't say what percentage of all that is
19 actually cocaine?

20 A No, we don't do quantitative analysis.

21 MR. WILLIAMS: That's all I have.

22 MR. SCOTT: Nothing further from the State.

23 THE COURT: Very good. You may step down.

24 Thank you, ma'am.

25 MR. HUBBARD: The State rests, Your Honor.

1 starting. There were some other things we needed to take
2 up.

3 All right. With that, again, my instructions
4 will be not to discuss with anybody or permit anybody to
5 discuss it with you. I hope you did not have any problem
6 when you got home, but, still, I think, as you can see,
7 this case is important, and it's important to everyone
8 that it be resolved in a proper fashion. I think that
9 you're doing that.

10 All right. With that, I excuse you for the
11 evening, and see you in the morning at 10 o'clock --
12 9 o'clock. 9 o'clock, I'm sorry, excuse me.

13 (The jury left open court at approximately
14 3:44 p.m.)

15 THE COURT: All right. Before we go forward, I
16 do want to address the objection to the introduction of
17 the cocaine.

18 Now, is there anything the State has to offer?
19 Mr. Williams has objected to my ruling that the cocaine
20 was inadmissible, chain of custody.

21 MR. SCOTT: No, sir. We agree with your ruling
22 completely.

23 THE COURT: So, you're not going to help me?

24 MR. SCOTT: Your Honor, it's just -- the State v
25 Hatcher, the newest law that I've actually argued before,

1 I don't have it in front of me, but it no longer requires
2 every link in the chain.

3 THE COURT: I understand. I understand. It
4 never has, really. It's just been interpreted over and
5 over for years. That was the law even when I was
6 practicing, and that was some time ago, but I understand.
7 But the main thing is in this particular case-- thank you,
8 though.

9 In this particular case, we can start with
10 Officer Barnes. She said that she found the cocaine, it
11 was in plain view, and that she gave the cocaine to
12 Brandon Slice.

13 Officer Kyzer has said that Brian -- I said
14 Brandon -- Brian Slice (sic) had found the cocaine and put
15 it in her box on June the 5th, 2011. And, of course,
16 Ms. Homer testified that -- or Ms. Conrad, excuse me,
17 testified that she had received it directly from
18 Ms. Kyzer.

19 So I think that does satisfy the chain, but I
20 did want to let you know that that's what it was. I just
21 didn't want to send the jury out and I thought that would
22 be -- would not be beneficial to the jury or to your -- to
23 the trial of the case.

24 All right. Now --

25 MR. WILLIAMS: May I save the Court some

1 aggravation?

2 THE COURT: Yes, sir.

3 MR. WILLIAMS: Your Honor, after I make my
4 motion for directed verdict, I thought that I'd tell the
5 Court that we will not be presenting any evidence and that
6 way the Court will have a heads-up on instructions.

7 THE COURT: And, also, I want to advise the
8 defendant.

9 MR. WILLIAMS: Yes, sir.

10 THE COURT: That was another reason for receding
11 at the time we did because I want the defendant, then, to
12 have the full opportunity to consider whether or not he
13 wants to present any evidence or testify. All right.

14 MR. WILLIAMS: I would like to make motions.
15 though, Your Honor.

16 THE COURT: Oh, okay. Well, fine. Did you
17 think we weren't?

18 MR. WILLIAMS: Well, I was concerned.

19 THE COURT: Very well. All right.

20 Mr. Williams.

21 MR. WILLIAMS: Your Honor, we would move for a
22 directed verdict of not guilty. The evidence taken in the
23 light most favorable to the State and viewed in favor of
24 the State would be insufficient as a matter of law for
25 this jury to return a verdict of guilty in regards to

1 either indictment, that is, trafficking in marijuana and
2 the other being trafficking in cocaine.

3 THE COURT: All right. What does the State say?

4 MR. HUBBARD: Your Honor, we believe that there
5 is an abundance of evidence including testimony -- not
6 testimony, but evidence straight from the defendant's
7 mouth himself, backed up by photographs, testimony of
8 officers who were present during this transaction, and, of
9 course, the tests themselves show that the items purport
10 to be what they actually are. There's marijuana and
11 cocaine in the amounts we're alleging, Judge. There is an
12 abundance of evidence, so we'd stand on the evidence
13 presented.

14 THE COURT: All right. Mr. Williams, anything
15 further?

16 MR. WILLIAMS: Nothing further, Your Honor, on
17 that point.

18 THE COURT: Now, you're moving for a directed
19 verdict as to both indictments?

20 MR. WILLIAMS: Yes, sir.

21 THE COURT: Again, I don't need to remind you,
22 but just for the record, of course, Rule 19 of the Rules
23 of Criminal Procedure provide in ruling on the motion for
24 directed verdict, the trial judge shall consider only the
25 existence or nonexistence of the evidence and not its

1 weight.

2 In this particular case, the last witness the
3 State presented did establish the -- not establish, but
4 gave testimony to the effect that there was over 700 -- or
5 at least 709 grams in one bag and 42.34 grams in the
6 second bag. And I think the -- Mr. Blackwell testified
7 that there was -- of cocaine. And Mr. Blackwell testified
8 there was 51 pounds of marijuana, which would come within
9 the indictment.

10 So both motions on each indictment are denied.

11 MR. WILLIAMS: That's all I have, Your Honor.

12 THE COURT: All right. Now, you do understand
13 if you're not presenting any evidence, I do want any
14 charges you have early in the morning so that my law clerk
15 can put them together.

16 MR. WILLIAMS: I thought you would be actually
17 more upset if I just showed up here in the morning without
18 a heads-up, Your Honor.

19 THE COURT: Well, you're absolutely right.

20 MR. WILLIAMS: All right.

21 THE COURT: All right. Is there any problem
22 with the State, do you have any particular requests?

23 MR. HUBBARD: Your Honor, not at this time, but
24 we will look again and anything that we need to provide --
25 what time will your law clerk be here, Your Honor?

1 testify in any way at all as far as your case is
2 concerned.

3 Now, not having put up any evidence, the State
4 will open fully on both law and evidence and then the
5 defense will close.

6 Any question about that, Solicitor?

7 MR. HUBBARD: No, sir, Your Honor.

8 THE COURT: Is that correct as far as your
9 understanding, Mr. Williams?

10 MR. WILLIAMS: Yes, Your Honor.

11 THE COURT: Now, as far as requests to charge,
12 the State has provided, one, that for the Court to
13 instruct the jury that they're not to consider whether or
14 not a search warrant was valid.

15 Is that the position you have taken on that?

16 MR. HUBBARD: Yes, sir, Your Honor. Just that
17 simple statement not indicating how Your Honor has viewed
18 that, but simply that it is your province.

19 THE COURT: Well, the only thing is, Mr.
20 McAninch and Mr. Perry in their Criminal Law of South
21 Carolina, 3rd Edition, addresses the issues of search
22 warrants.

23 "If an issue is raised concerning the basis for
24 a search warrant and there has been no competent testimony
25 concerning the underlying facts, the jury should be

1 instructed that it is not to consider the fact that the
2 search warrant was issued in its deliberations."

3 MR. HUBBARD: I would be fine with that, Your
4 Honor.

5 THE COURT: Well, actually, that's State versus
6 Mollison.

7 MR. HUBBARD: I would be happy with that, Your
8 Honor.

9 THE COURT: Very well.

10 Mr. Williams, do you have any question about
11 that potential charge?

12 MR. WILLIAMS: Would you repeat that one more
13 time, Your Honor?

14 THE COURT: Yes, sir.

15 "If an issue is raised concerning the basis for
16 a search warrant and there has been no competent testimony
17 concerning the underlying facts, the jury should be
18 instructed that it is not to consider the fact that a
19 search warrant was issued in its deliberations," State
20 versus Mollison, 459 S.E.2d 88, Court of Appeals.

21 The court in Mollison also went forward further
22 because the court had not made any sort of instruction
23 about the search warrant and the trial court responded to
24 the jury's inquiries about why the police wanted the
25 search warrant by telling it that there was no evidence

1 about that in the trial, but ended the instruction by
2 stating "you have to use your own judgment," and they said
3 that that was error as to giving -- as this statement
4 invited the jury to speculate about the basis of the
5 warrant and to consider facts not in evidence and resulted
6 in reversible error.

7 MR. WILLIAMS: So, Your Honor, what you're
8 saying, that your instruction would be the second part of
9 the sentence on that or would you simply tell the jury
10 that they're not to consider whether or not a search
11 warrant was issued or not issued?

12 THE COURT: Exactly. Well, I mean, I can't say
13 that it wasn't issued because we do have testimony to its
14 being issued, but as to whether or not it's in their
15 purview to determine whether it was valid.

16 MR. WILLIAMS: And that would be --

17 THE COURT: But, I mean, of course, I will say
18 this, though: That I will note for the record your
19 objection to doing anything about the search warrant.
20 It's almost like a negative pregnant, to deny the search
21 warrant being there.

22 MR. WILLIAMS: All right, sir. I think I was
23 more concerned about the verbiage than about anything
24 else.

25 THE COURT: Do you have a copy of the request?

1 MR. WILLIAMS: I do.

2 THE COURT: And which would you prefer?

3 MR. WILLIAMS: I obviously prefer yours more
4 than I would Mr. Hubbard's because his almost sounds like
5 a comment on the facts.

6 THE COURT: Well, again, I think you're probably
7 right, and that was the one thing that gave me some
8 reservation because a search warrant is much like a
9 statement. In other words, the Court -- where the
10 statement is introduced or the search warrant would be
11 introduced, the Court makes the initial determination
12 whether or not it is done in accordance with the
13 constitutional requirements.

14 However, like all things, along with the
15 voluntariness of the statement and the sufficiency -- or
16 not the sufficiency but the validity of a search warrant
17 based on the facts would be the ultimate decision and that
18 would have to be established beyond a reasonable doubt.

19 MR. WILLIAMS: Yes, sir.

20 THE COURT: I think that --

21 MR. HUBBARD: So, Your Honor, just for
22 clarification, if I mention something about the search
23 warrant or the search, that's an issue for Your Honor?

24 THE COURT: No, sir. I think the search warrant
25 is in.

1 MR. HUBBARD: Well, the warrant itself is not.
2 There was testimony --

3 THE COURT: No. I mean, the fact that -- let me
4 ask you, though. Was there anything -- now that is
5 another thing because obviously the search warrant,
6 whenever and whatever it was for, was done after the
7 contraband was seized, at issue in this case, the
8 marijuana and cocaine.

9 MR. HUBBARD: Yes, sir.

10 THE COURT: So it was not the product of the
11 search warrant.

12 MR. HUBBARD: It was --

13 MR. WILLIAMS: Well, Your Honor, I'm not sure
14 that that's correct because if you look at the Court's
15 exhibit, on the return of the Court's exhibit for the
16 search warrant, it incorporates the items being seized
17 pursuant to the search warrant as being the marijuana and
18 being the cocaine.

19 THE COURT: That was cause, the basis for the
20 search warrant, that contraband was there.

21 MR. WILLIAMS: All I'm saying, Your Honor, is on
22 the return attached to the search warrant, it has the
23 return that says, "Items seized pursuant to the search
24 warrant," and it incorporates those drugs as being seized
25 pursuant to the search warrant.

1 THE COURT: Which, in fact, is not correct.

2 MR. WILLIAMS: Which is not, in fact, correct if
3 you accept the testimony that they elicited.

4 THE COURT: No, I'm not accepting the testimony.
5 I'm accepting the fact that was the testimony.

6 MR. WILLIAMS: Yes, sir.

7 THE COURT: There was no other testimony -- the
8 whole theory of the search warrant was that it was some 30
9 minutes before the search warrant got there.

10 MR. WILLIAMS: That's true.

11 MR. HUBBARD: Your Honor, just for me to
12 interject here briefly, that's why in my proposed charge I
13 didn't mention the search warrant, I just said a search.
14 Because you can have a valid search without a warrant.
15 This was in plain view. So what I was going to propose --
16 and you can take out the first sentence and just say, All
17 issues concerning the validity and lawfulness of a search
18 warrant is for the trial court to consider.

19 Judge, they still consider what was actually
20 obtained and whether it is what it purports to be and the
21 actions of law enforcement, I grant all that. But I know
22 on a search warrant, as I understand it, there are factual
23 issues that you have to determine on the credibility of
24 everybody, but -- and then ultimately is it yea or nay a
25 valid search warrant. If it is, the stuff comes in, but

1 that doesn't relieve the State of the burden of saying
2 that the product of any search, whether it's with or
3 without a search warrant, is sufficient to sustain a
4 conviction. I'm all for that.

5 But I think just this threshold argument -- I'm
6 afraid with what is now in, this talk about, Well, we were
7 searching without a search warrant, I'm afraid this jury's
8 going to think, Well, the judge didn't give us the law on
9 search warrant, what do we do?

10 THE COURT: Well, see, that's the dilemma of
11 Mollison was it said if I tell them they're not to be
12 concerned -- I mean, they aren't supposed to make a
13 decision or anything about it, that's why it creates an
14 issue.

15 MR. WILLIAMS: And I think no comment would
16 probably be the best.

17 THE COURT: I'm thinking that that would be.

18 MR. HUBBARD: May I argue it?

19 THE COURT: Please. Oh, yes. I mean, I'm sure
20 if it has any credibility, Mr. Williams would be arguing
21 it, too.

22 MR. HUBBARD: Okay.

23 THE COURT: But I think the argument is what you
24 pretty much -- I mean, I am the only one who is limited in
25 this courtroom from commenting on the facts.

1 MR. HUBBARD: Yes, sir. Yes, sir.

2 THE COURT: And that's the little difficulty
3 that I have.

4 MR. HUBBARD: If I comment on that the legal
5 issue is yours?

6 THE COURT: No. The thing is you have the right
7 to open on the law and the facts.

8 MR. HUBBARD: Right. Yes, sir.

9 THE COURT: And the law is -- and if I don't
10 correct you, then obviously that becomes the law of the
11 case.

12 MR. HUBBARD: And I just wanted to make sure
13 that I wasn't overstepping my bounds or going outside of a
14 ruling.

15 THE COURT: The difficulty I have is I don't
16 want to suggest something that is not an issue.

17 MR. HUBBARD: Yes, sir.

18 THE COURT: And the fact that a search warrant
19 was issued and the fact that the return includes items
20 that were seized under the plain view doctrine does not
21 affect their seizure properly under the plain view --

22 MR. HUBBARD: Yes, sir.

23 THE COURT: -- and being in the process of
24 securing the premises.

25 All right. So I would rather not give any

1 instruction on it one way or the other, but you can argue
2 the facts, and Mr. Williams can, too, because a search
3 warrant was obtained but nothing new as I understand it --
4 I haven't looked at the return. What was the return?

5 MR. HUBBARD: It had those items that have been
6 introduced and then there were other items like a gun, gun
7 shells, shotgun shells, bullets, stuff that I'm not going
8 to touch.

9 THE COURT: Well, that's just it. I don't think
10 that Mr. Williams would want to open that door.

11 MR. HUBBARD: Right. And, of course, the search
12 warrant was never put in. I can't put it in, as Your
13 Honor knows, with the affidavit. That will get it
14 reversed just like that.

15 I know it happened in this county about 15 years
16 ago. It's one of the cases cited where that happened.

17 I just wanted to make sure that if I tell the
18 jury any issues concerning that, the validity of it is the
19 judge's, leave it alone. They don't have to worry about
20 whether it's valid, lawful, that's your decision, but the
21 facts surrounding it --

22 THE COURT: I think that's a proper statement of
23 the law.

24 MR. HUBBARD: Okay. Thank you, Your Honor.

25 THE COURT: All right. Anything else?

1 Now, as far as entrapment, mere presence, I'll
2 charge both of them, but if you'll forgive me,
3 Mr. Williams, I'm not going to give a discourse on the law
4 according to the learned judge.

5 MR. WILLIAMS: It did appear to be a little
6 long.

7 THE COURT: I will give the statement of
8 entrapment and mere presence, too.

9 Again, please understand that the Court's only
10 concern is whether or not there is any evidence of a
11 defense or a plea, not the weight of it.

12 All right. Anything else?

13 I will not charge anything about the search
14 warrant, but the parties' failure to discuss anything they
15 want to about it that includes the law, but not to get
16 into anything on the search warrant.

17 MR. HUBBARD: Correct. Yes, sir, Your Honor.

18 THE COURT: Unless it's -- well, everything else
19 is coming in not under a search warrant.

20 MR. HUBBARD: Correct.

21 THE COURT: All right. And then I will charge
22 entrapment and mere presence.

23 All right. Anything else from the State?

24 MR. HUBBARD: No, sir, Your Honor.

25 THE COURT: From the defense?

1 MR. WILLIAMS: One matter, Your Honor, and it's
2 kind of crazy.

3 In terms of procedure is Your Honor going to --
4 when the jury comes in, are you going to question whether
5 or not there's any evidence to be presented on behalf of
6 the defense on the record in front of the jury?

7 THE COURT: No, I'm going to just ask -- I'll
8 call on you, I'll recognize you for the defense and you'll
9 just say the defense rests. At that time I will instruct
10 them that the defendant's not compelled to testify or
11 offer any evidence.

12 MR. WILLIAMS: Out of an abundance of caution,
13 Your Honor, as we know, normally at the end of the State's
14 case -- I would make a motion for a direct verdict at the
15 end of the State's case. I'd also note for the record
16 that I would have made one at the conclusion of the
17 defense case.

18 THE COURT: You state the rule correctly, but I
19 think in this case, this is the end of the evidence.

20 MR. WILLIAMS: It is, Your Honor.

21 THE COURT: In other words, you have rested not
22 in front of the jury but you have rested on the record --

23 MR. WILLIAMS: Yes, sir.

24 THE COURT: -- which means that's the conclusion
25 of the testimony and evidence --

1 MR. WILLIAMS: Thank you, Your Honor.

2 THE COURT: -- and you're moving for a directed
3 verdict.

4 MR. WILLIAMS: Yes, sir.

5 THE COURT: All right. And as I did at the end
6 of the State's case, I find that there's sufficient
7 evidence to go forward under Rule 19.

8 MR. WILLIAMS: Thank you, Your Honor.

9 THE COURT: Anything else?

10 MR. HUBBARD: No, sir, Your Honor.

11 THE COURT: Anything else, Mr. Williams?

12 MR. WILLIAMS: No, Your Honor.

13 THE COURT: All right. Ask the jury to join us,
14 please.

15 (The jury came into open court at approximately
16 9:30 a.m.)

17 THE COURT: Let the record reflect that the jury
18 and alternates are in the jury box.

19 Mr. Foreman, ladies and gentlemen of the jury,
20 as you'll remember from yesterday, the State has rested
21 and we now recognize Mr. Williams for the defense.

22 MR. WILLIAMS: Your Honor, the defense rests.

23 THE COURT: Very well.

24 Mr. Foreman, ladies and gentlemen of the jury, a
25 defendant has the constitutional right to remain silent,

1 crime, you must find the defendant not guilty.

2 Also, the mere presence at the crime scene is
3 not sufficient to prove someone guilty of a crime. The
4 defendant's presence where a crime is being committed or
5 mere association with a person who commits a crime does
6 not make a defendant an accomplice or aider and abettor of
7 the person committing the crime. The burden is on the
8 State to prove every element of the crime charged. If you
9 find after reviewing all of the evidence that the State
10 has proved that the defendant was only present at the
11 scene of a crime and they have not proved beyond a
12 reasonable doubt any other participation in the crime,
13 then you must find the defendant not guilty. The law is
14 that the proof -- is that proof of the scene -- the law is
15 that proof of -- at the scene of the crime is not
16 sufficient to find someone guilty. If you have any
17 reasonable doubt of the defendant's guilt after
18 considering all the evidence on either indictment, then
19 you must find the defendant not guilty on that indictment.

20 On the other hand, if you find you have no
21 reasonable doubt of the defendant's guilt after
22 considering all the evidence on either or both of the
23 indictments, then you must find the defendant guilty on
24 that or those indictments.

25 Mr. Foreman, ladies and gentlemen of the jury,

1 MR. WILLIAMS: No, Your Honor.

2 THE COURT: All right. Ask the jury to join us,
3 please.

4 (The jury came into open court at approximately
5 4:42 p.m.)

6 THE COURT: Mr. Foreman, I understand the jury
7 has reached a verdict?

8 THE FOREMAN: Yes, Your Honor.

9 THE COURT: If you would, please, hand it up to
10 the bailiff.

11 Let the record reflect the jury is in the jury
12 box.

13 All right. State of South Carolina versus
14 Benjamin J. Newman.

15 Mr. Newman, if you would please stand and face
16 the jury.

17 Indictment No. 2011-GS-32-2259: We, the jury,
18 unanimously find on Indictment No. 2011-GS-32-2259,
19 trafficking in marijuana, ten pounds or more but less than
20 a hundred pounds, that the defendant, Benjamin J. Newman,
21 is guilty of trafficking in marijuana.

22 Indictment No. 2011-GS-32-2261: We, the jury,
23 unanimously find on Indictment No. 2211-GS-32-2261,
24 trafficking in cocaine, four hundred grams or more, that
25 the defendant, Benjamin J. Newman, is guilty of

1 trafficking in cocaine, signed Jeff P. Gedcke, Foreperson,
2 October 17, 2012.

3 Mr. Foreman, ladies and gentlemen of the jury,
4 is this your verdict and is it still your verdict so say
5 you all? If so, indicate by raising your right hand.

6 Let the record reflect that the jury affirms its
7 verdict.

8 Thank you very much.

9 Is there anything from the State before I bring
10 the jury back -- I mean excuse the jury?

11 MR. HUBBARD: No, Your Honor.

12 THE COURT: From the defense?

13 MR. WILLIAMS: Yes, Your Honor, individual
14 polling.

15 THE COURT: All right. Madam Clerk, could you
16 poll the jury for us?

17 THE CLERK: Yes, sir.

18 When I call your name, please raise your hand.

19 Michael Haga, is this your verdict and is it
20 still your verdict?

21 THE JUROR: Yes.

22 THE COURT: Rex McCormack, is this your verdict
23 and is it still your verdict?

24 THE JUROR: Yes, ma'am.

25 THE CLERK: Kelly Morris, is this your verdict

1 you.

2 Thank you very much. You may be excused.

3 Everyone else remain seated while the jury
4 retires to the courtroom.

5 Mr. Foreman, I do need to see you, though.

6 (Pause.)

7 THE COURT: Is the State ready to proceed?

8 MR. HUBBARD: Yes, sir, Your Honor.

9 THE COURT: Defendant?

10 MR. WILLIAMS: Your Honor, there would be some
11 motions we would ask the Court to note.

12 THE COURT: Very well. Do you want them heard
13 now?

14 MR. WILLIAMS: Now is sufficient, Your Honor.

15 THE COURT: Very good. All right.

16 MR. WILLIAMS: Your Honor, we'd just move for
17 arrested judgment, grant the defendant a new trial. The
18 evidence taken as a whole should have been insufficient as
19 a matter of law for the jury to have returned a verdict of
20 guilty. I think that's it.

21 THE COURT: Well, again, arrested judgment is an
22 interesting judgment because there is no JNOV in a
23 criminal case, but I do find there was sufficient evidence
24 to go forward to the jury and that would support the
25 jury's verdict, so your motion will be denied.

1 she's a teenager or whatever, and you found that somebody
2 was offering her marijuana or cocaine free of charge, what
3 would you do?

4 You don't have to answer that, but I think you
5 see the difficulty that the courts have with dealing with
6 these things. And as I say, apparently the General
7 Assembly has taken it out of the courts' hands and made it
8 a mandatory sentence.

9 You're certainly not here today for a sermon,
10 but I do like to think that you understand the seriousness
11 of this situation.

12 All right. Anything else, Mr. Newman?

13 THE DEFENDANT: No, sir.

14 THE COURT: Has he served any time in jail?

15 MR. WILLIAMS: Thirty-eight days, Your Honor.

16 THE COURT: Anything else from the State?

17 MR. HUBBARD: No, sir, Your Honor.

18 THE COURT: Anything else, Mr. Newman?

19 THE DEFENDANT: No, sir.

20 THE COURT: Mr. Williams?

21 MR. WILLIAMS: No, sir.

22 THE COURT: On Indictment No. 2011-GS-32-2259,
23 it's the sentence of the Court that the defendant,
24 Benjamin J. Newman, be committed to the State Department
25 of Corrections for a term of ten years, plus pay costs and

1 assessments as applicable.

2 On Indictment 2011-GS-32-2261, it's the sentence
3 of the Court that the defendant, Benjamin J. Newman, be
4 committed to the State Department of Corrections for a
5 period of 25 years, plus pay costs and assessments as
6 applicable, the defendant to be given credit for 38 days
7 time served. Both sentences are to run concurrent and
8 he's to undergo drug and alcohol testing and treatment and
9 substance abuse counseling as directed during
10 incarceration.

11 Now, I did give you the minimum sentence on the
12 mandatory sentence. And the only reason for that is that
13 I have been advised by the State that you do not have a
14 prior record. I think obviously they have a minimum
15 mandatory sentence, and the maximum sentence is for those
16 who have a more aggravated record than yours.

17 Good luck to you, sir.

18 MR. WILLIAMS: Thank you, Your Honor.

19 (WHEREUPON, The Court's Exhibits Nos. 14-16 were
20 marked for purposes of the record.)

21 (The proceedings were concluded.)

22 *** END OF REQUESTED TRANSCRIPT OF RECORD ***

23 VOLUME 3 OF 3
24
25

STATE OF SOUTH CAROLINA
COURT OF APPEALS
APPEAL FROM LEXINGTON COUNTY
COURT OF GENERAL SESSIONS

The Honorable Alexander Macaulay, Circuit Court Judge

Indictments Nos. 2011-GS-32-2259, 2011-GS-32-2261

The State of South Carolina Respondent,

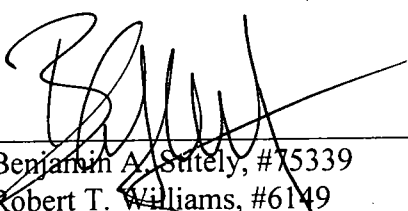
v.

Benjamin J. Newman Appellant.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and complies with the Supreme Court's Order dated August 13, 2007.

July 17, 2013



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STATE OF SOUTH CAROLINA
COURT OF APPEALS
APPEAL FROM LEXINGTON COUNTY
COURT OF GENERAL SESSIONS

The Honorable Alexander Macaulay, Circuit Court Judge

Indictments Nos. 2011-GS-32-2259, 2011-GS-32-2261

The State of South Carolina Respondent,

v.

Benjamin J. Newman Appellant.

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STATEMENT OF ISSUES ON APPEAL

- 1. DID THE TRIAL COURT ERR WHEN IT DENIED THE APPELLANT'S MOTION TO SUPPRESS THE DRUG EVIDENCE OBTAINED AS A RESULT OF AN UNLAWFUL SEARCH?**
 - A) Did the Trial Court err when it denied the Appellant's motion to suppress the drug evidence obtained as a result of an unlawful search conducted prior to the procurement of a search warrant?
 - B) Did the Trial Court's failure to suppress the unlawfully seized drug evidence constitute substantial prejudice to the Appellant?
- 2. DID THE TRIAL COURT ERR WHEN IT FAILED TO GRANT THE APPELLANT'S MOTIONS FOR DIRECTED VERDICT?**

STATEMENT OF THE CASE

On June 5, 2011 Appellant Benjamin Newman was arrested in Lexington County on charges of Trafficking in cocaine, 100 g or more, but less than 200 g, Trafficking in ice, crack or crack - 200 g or more, but less than 400 g, Trafficking in cocaine, 400 g or more, and Trafficking in marijuana, 10 lbs or more, but less than 100 lbs - 1st offense.

On October 15-17, 2012 the Appellant appeared before the Court of General Sessions of Lexington County for a jury trial on indictments 2011-GS-32-02259, Trafficking in marijuana, 10 lbs or more, but less than 100 lbs - 1st offense, and 2011-GS-32-0261, Trafficking in cocaine, 400 g or more.

The case was heard by the Honorable Alexander McCaulay. The Appellant was ultimately convicted on both indictments on October 17, 2012, and received a sentence of Twenty Five (25) years incarceration in the South Carolina Department of Corrections on Indictment 2011-GS-32-0261 and Ten (10) years incarceration in the South Carolina Department of Corrections on Indictment 2011-GS-32-0259 both sentences running concurrently.

On October 23, 2012 the Appellant filed and served his Notice of Intent to Appeal his conviction. A request for transcript was timely filed by Appellant's counsel.

On January 4, 2013 a notice was filed that extended the deadline to produce the trial transcript until February 1, 2013. On February 4, 2013 a notice was filed that extended the deadline to produce the trial transcript until March 1, 2013. On March 4, 2013 a notice was filed that extended the deadline to produce the trial transcript until April 1, 2013. The trial transcript was received by counsel on April 5, 2013.

On April 18, 2013 Appellant's counsel filed a motion to grant an extension to file the Appellant's Initial Brief; said request was granted by Order on April 23, 2013. The extension to file the Appellant's Initial Brief was granted until June 5, 2013.

ARGUMENT

1. THE TRIAL COURT ERRED IN DENYING THE APPELLANT'S MOTION TO SUPPRESS THE DRUG EVIDENCE OBTAINED AS A RESULT OF AN UNLAWFUL SEARCH

A review of the issues dealing with searches is helpful in making a correct assessment as to whether the drug evidence introduced in the Appellant's trial should have been introduced into evidence or not.

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. Const. Amend IV.

The crux of the err committed by the Trial Judge lies in the allowance of evidence obtained from the search of the premises without securing a search warrant, or following additional appropriate Constitutional guidelines.

A) **Did the Trial Court err when it denied the Appellant's motion to suppress the drug evidence obtained as a result of an unlawful search conducted prior to the procurement of a search warrant?**

As previously stated, the Fourth Amendment to the United States Constitution ensures that a person shall be protected from unlawful search and seizure. Section 17-13-140 of the S.C. Code Ann., reflects this same standard provided by our United States Constitution. State v. Covert, 368 S.C. 188, 628 S.E.2d 482 (Ct. App., 2006); State v. Jones, 342 S.C. 121, 536 S.E.2d 675 (2000). The failure of the State to obtain a search warrant is more than a procedural mistake;

this failure amounts to a violation of the Appellant's Constitutional protections.

In the present matter, the Court was in error when it failed to suppress the drug evidence obtained by a search of 433 Longview Rd, in Lexington County prior to the procurement of a search warrant. Agents of the Lexington County Multi-Agency Narcotics Task Force (NET team) conducted an undercover operation utilizing a confidential informant to allegedly broker a drug transaction with the Appellant on June 5, 2011. (R. p 25, l. 8-13) The Lexington County SWAT team entered the premises at 433 Longview Rd. only to find the Appellant outside the home in the rear portion of the property. (R. p 31, l. 21-25, p.32, l. 1-5) Subsequent to the arrest of the Appellant, Agent Tracy obtained a search warrant for the premises. (R. p 32, l. 10-25) The actual search warrant was obtained and delivered a significant period of time after the arrest of the Appellant. (R. p 39, l. 10-22).

During the pretrial hearing on the Appellant's motion to suppress drug evidence, several officers testified before the Court regarding the circumstances surrounding the arrest, search, and subsequent search warrant for 433 Longview Rd. During the pretrial hearing Agent Slice with the NET team testified that during the interim between the arrest of the Appellant and the signing of the Search Warrant, no search was conducted (R. p 41, l. 5-10). This testimony was however contradicted by the evidence from an audio recording made by another officer. The audio recording contains a conversation amongst the NET team officers stating that "officers were searching around for cocaine prior to the search warrant being there." (R. p. 247, l. 5-7) The audio recording in its entirety was offered as an exhibit (Court's Exhibit 7) during the pretrial hearing (R. p 42, l. 5-24). Officer Carver, also with the NET team, testified that he along with agents Barnes and Setree were sitting inside the residence for a period of time waiting on the

search warrant, however nobody was looking around or searching. (R. p 90, l. 5-23) Agent Setree contradicts the testimony of the previous officers stating that there was something “chaotic about this whole search thing” and that officers were in fact searching all around for drug evidence. (R. p 97, l. 19-25, p 98, l. 1-23 and R. p 106, l. 20-23) Additionally, Agent Setree testified that the drug evidence in question was located by Agent Barnes (R. p 107, l. 21-23), the same Agent Barnes, that Agent Carver specifically states was not looking around or searching at all. Agent Barnes further testified that she went in search of the drug evidence in response to statements made by Agent Carver prior to them re-entering the dwelling. (R. p 296, l. 21-25, p. 297, l. 1-11)

The testimony offered from the State’s witnesses was at best contradictory. The admissions by Agent Setree and those from the audio tape, which is the only evidence not diminished by shifting recollections and elapsed time, confirm that there was in fact searching inside and out to locate cocaine evidence.

In State v. Vice, the Court examined the entry into a dwelling and a subsequent search prior to the obtaining of a search warrant on the basis that speed was of the essence, much like in the present matter, and the Court found that where the location is secured it would be inappropriate and reversible error to allow a search and the product of that search into evidence at a trial. State v. Vice, 259 S.C. 30, 190 S.E.2d 510 (1972) *See also* Stoner v. California, 376 U.S. 483 (1964) In the present matter, the location was secured by the Lexington County SWAT team as well as the NET team and there were no exigent circumstances requiring a speedy warrant-less search.

In addition to claiming no search was conducted, the State further argued that the drug

evidence was only located while searching for items in plain view, and was not an item recovered in accordance with the subsequent search warrant. Both, the claims that there was no search and secondarily, that if there was a search it was only conducted for items in plain view are both inconsistent with the actual Return filed with the search warrant. On the actual Search Warrant and Return (Court Exhibit 1), within the inventory of items seized, it clearly states that Agent Barnes discovered and seized the drug evidence as part of the search authorized by the actual search warrant. Specifically, the Return states that the “quantity of off-white material consistent w/ cocaine located in area by kitchen by Tucker (Barnes),” not in a backpack in that was in plain view as previously testified by Agent Setree. (R. p 8) Agent Barnes further admitted to specifically going to “look” for the cocaine in a specific area upon direction from statements made by Agent Carver. (R. p 297, l. 1-4) She continued to “look” for “several minutes.” (R. p 306, l. 24-25) The Appellant maintains that several minutes of “looking” without a warrant is in fact a search and should have resulted in a suppression of the discovered drug evidence.

B) Did the Trial Court’s failure to suppress the unlawfully seized drug evidence constitute substantial prejudice to the Appellant?

The long standing precedent established in Wong Sun v. United States, created the term of art: “fruit of the poisonous tree.” Specifically, evidence obtained as a result of an illegal police action, a search or seizure, must be excluded barring a specifically carved exception. Wong Sun v. United States, 371 U.S. 471, 83 S.Ct. 407 (1963) *See also* State v. Jihad, 347 S.C. 12, 553 S.E.2d 249 (2001).

The Appellant acknowledges that a second prong exists when addressing wrongfully obtained, and subsequently admitted evidence, in that upon appeal he must make a showing that the admission of the evidence created irreparable and reversible harm. This question is particularly important to the issues addressed by the Appellant upon appeal. Absent the admission of the drug evidence, it is the Appellant's position that the Jury would have lacked sufficient direct or circumstantial evidence to return a guilty verdict. Additionally, barring the admission of the drug evidence, the State would not have been able to survive a directed verdict challenge made by the Appellant.

The admittance of said evidence created an irreparable harm to the Defendant and denied him Due Process of law. The actions of the Court should be reversed and a new trial ordered without the admission of any items obtained from unlawful search of the premises.

2. THE TRIAL COURT ERRED IN FAILING TO GRANT THE APPELLANT'S MOTIONS FOR A DIRECTED VERDICT

On appeal, when considering the Trial Court's refusal to grant a Defendant's directed verdict motion it must view the evidence in the light most favorable to the State. State v. McHoney, 344 S.C. 85, 544 S.E.2d 30 (2001). Ultimately, the State relied substantially upon circumstantial evidence presented through directly conflicting testimony. The Trial Court erred in denying the Appellant's motions for directed verdict when made at the conclusion of testimony both the State's and the Appellant's cases. (R. p 324, l.21-25, p 325, l. 1-25, p 326, l. 1-10, p 337, l. 12-25, and p 338, l. 1-7) During a trial, the Trial Court, in a directed verdict motion, must be concerned with the existence or nonexistence of evidence. State v. Cherry, 361

S.C. 588, 606 S.E.2d 475 (2004). Pertinent to this matter, in State v. Edwards, the Court reminds that the trial court should not hesitate to grant a Defendant's motion where the evidence presented by the State merely raises suspicion of guilt. State v. Edwards, 298 S.C. 272, 379 S.E.2d 888 (1989). In the present matter the State did not present evidence sufficient to prove more than a suspicion of guilt, establish that the Appellant had dominion or control over the alleged drug evidence, nor establish more than mere presence.

In order to return a conviction on Indictments 2011-GS-32-2259 and 2011-GS-32-2261 the State must prove that Appellant did knowingly and intentionally possess a controlled prescribed amounts of specific controlled substance, to wit: marijuana not less than Ten pounds, nor more than One Hundred pounds S.C. Code Ann. § 44-53-370 (e)(1)(a)(1) (1976) and cocaine in excess of Four Hundred grams in violation of S.C. Code Ann. § 44-53-370 (e)(2)(e) (1976). (R. p 17, l. 1-4) In order to overcome its burden and sustain a conviction under the aforementioned code sections it requires proof of possession, either actual or constructive, coupled with knowledge of its presence. State v. Muhammed, 338 S.C. 22, 524 S.E.2d 637 (Ct. App. 1999) *rehearing denied, certiorari denied*.

A directed verdict should be granted when evidence presented by the State only establishes circumstances that are suspicious, but ultimately falls short of providing a basis upon which a jury could reasonably determine the Defendant's guilt. State v. Arnold, 351 S.C. 302, 569 S.E.2d 379 (Ct. App 2002) Further, the State bears the burden of demonstrating that the Defendant was not only at the scene of a crime, but actually committed the criminal act to withstand a directed verdict challenge. State v. Schrock, 283 S.C. 129, 32 S.E.2d 450 (1984)

In the present matter with the evidence taken most favorably for the State, Appellant is placed merely at the scene where drugs were found, no direct testimony was offered that he fully possessed a sufficient amount of either marijuana or the cocaine to satisfy the statute. The evidence offered by the State does no more than raise a circumstantial suspicion and fails to meet the required burden to go to a jury, even when evidence is considered in the light most favorable to the prosecution. The circumstantial link between the Appellant and alleged dominion and control over items found in a backpack and duffle bag, both of which were brought to the scene by the NET team or their agents, and which were not presented as evidence at trial leaves a nebulous connection, one that fails to uphold the State's appropriate threshold to withstand a directed verdict motion.

If the Court were to accept the idea that evidence was reasonably sufficient to establish a real possibility that the Appellant could have constructively possessed the controlled substances, by way of dominion and control, the second element of the Statute is still lacking. For a conviction, a second prong requires that possession must be "coupled with knowledge of its presence." As stated, the State's evidence fails to place the backpack containing the drugs in the possession of the Appellant. In State v. Taylor the Court found a Defendant who was negligent in the possession of, but without knowledge could not be convicted under the statute. State v. Taylor, 323 S.C. 162, 473 S.E.2d 817 (Ct. App. 1996).

In making this argument, the Appellant maintains that any drug evidence discovered and seized was done so through an illegal warrant-less search in violation of the Appellant's constitutional and statutory rights. Further, in making this argument, the Appellant notes that only evidence presented at the actual trial, and not testimony taken in pretrial hearings outside the

presence of the jury can be used to successfully withstand a directed verdict motion.

During the trial, the only witness presented by the State who was actually present with the Appellant at the time he allegedly possessed the drug evidence was Agent Carver. Testimony offered by Agent Carter stated that outside the residence, where the initial alleged encounter between Agent Carver and the Appellant took place, no drug evidence was on the person or in the possession of the Appellant, and the only illegal substances present were specifically under the dominion and control of the State's Agent. (R. p 196, l. 3-6) It is further testified that the Appellant never took possession or control of the "duffle bag" containing the alleged marijuana either outside or inside the premises. (R. p 197, l. 3-18, p 203, l. 22-25, p 204, l. 1) As it relates to the cocaine evidence, the only testimony offered by Agent Carter is at first that it was removed from a cardboard box on the counter. (R. p 198, l. 21-25) In later testimony, Agent Carter backtracks and states he only "thought it was on the counter." (R. p 206, l. 20-22) Ultimately, it is testified that the cocaine evidence was actually located in the book bag which was brought to the location by Agents of the State. (R. p 204, l. 19-23, R. p 216, l. 13-22, and R. p 264, l. 3-5) Agent Carver at no point indicates he witnessed the Appellant place the cocaine into the backpack, nor did he observe the Appellant even have an opportunity to do so. Additionally, when examining who searched the backpack prior to its arrival at the premises with the NET team, no testimony was offered regarding verification of its contents. The only testimony offered was that, Agent Laney, who did not testify, allegedly searched Mr. Ainsworth's vehicle where the bag was located prior to arrival. (R. p 243, l. 21-25)

Ultimately, the State failed to satisfactorily produce any testimony or evidence that any and all drug evidence which was recovered did not in fact come with and remain in possession of

the NET team or its Agents. The only consistent evidence presented by the State specifically relating to the Appellant actually possessing, or asserting dominion and control, over any controlled substance was that the Appellant allegedly did examine a small portion of marijuana offered to him by Agent Carver. (R. p 198, l. 5-11) However, there was no testimony nor proof offered establishing this unknown amount of marijuana was a sufficient amount to satisfy the weight requirements of the Statute for trafficking in marijuana.

Totaling all circumstantial evidence presented by the State in its case in chief, at best, places the Appellant at a residence, where a quantity of controlled substances were located within bags which the State's Agents brought to the location. This demonstration of mere presence accompanied by, at best, a suspicion of guilt should have been insufficient to withstand a directed verdict motion.

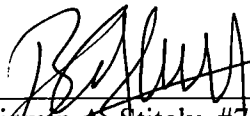
CONCLUSION

The Trial Judge erred by failing to suppress the unlawfully obtained drug evidence as a product of an unlawful search without a search warrant. This error failed to protect the Appellant's Constitutional and Statutory rights and ultimately denied him due process and did not allow him to receive a fair trial.

Further, the Trial Judge was in error by failing to grant the Appellant's Motions for Directed Verdict both at the end of the State's case and at the conclusion of the Appellant's case. Even considered in a light most favorable to the State, evidence which was presented was grossly insufficient to support a finding of guilt.

Respectfully submitted,

July 16, 2013



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COURT OF APPEALS
APPEAL FROM LEXINGTON COUNTY
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The Honorable Alexander Macaulay, Circuit Court Judge

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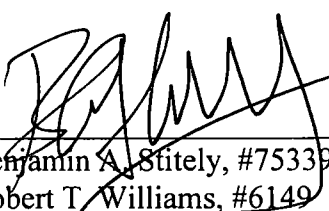
v.

Benjamin J. Newman Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Appellants complies with Rule 211(b),
SCACR.

July 26, 2013



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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Lexington County
Honorable Alexander S. Macaulay, Circuit Court Judge

Appellate Case No: 2012-213383

THE STATE,

Respondent,

v.

BENJAMIN J. NEWMAN,

Appellant.

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STATEMENT OF ISSUES ON APPEAL

I.

The trial court properly denied Appellant's motion to suppress the drug evidence because it was seized lawfully as the result of a transaction that took place in the presence of a law enforcement officer and was found under the plain view exception to the Fourth Amendment rule prohibiting warrantless searches.

II.

Appellant's specific arguments regarding a lack of evidence establishing more than a suspicion, dominion or control, and mere presence are not preserved for review, but even if preserved, the trial court properly denied Appellant's motion for a directed verdict because the State presented sufficient evidence to establish Appellant's guilt on both trafficking charges.

STATEMENT OF THE CASE

A Lexington County Grand Jury indicted Appellant for trafficking in marijuana, 10 pounds or more, but less than 100 pounds, first offense and trafficking in cocaine, 400 grams or more. (R. pp.1-4.) On October 15-17, 2012, Appellant proceeded to trial before a jury. Robert T. Williams, Esquire, represented Appellant, and Assistant Solicitors Samuel R. Hubbard and Dale Scott represented the State. The jury found Appellant guilty of both charges, and the Honorable Alexander S. Macaulay sentenced him to ten years' imprisonment on the marijuana charge and twenty-five years' imprisonment on the cocaine charge, to be served concurrently. (R. p.340-341; 343.)

On October 23, 2012, Appellant filed a Notice of Appeal.

STATEMENT OF FACTS

On June 5, 2011, the Lexington County Multi-Agency Narcotics Enforcement Team (NET) arranged a drug exchange with Appellant, a suspected drug dealer. (R. p.22, lines 12-14; R. p.23, line 4-R. p.24, line 15.) A confidential informant (CI) made arrangements to introduce an undercover agent to Appellant who agreed to exchange fifty pounds of marijuana for twenty-five ounces of cocaine. (R. p.187, lines 7-23; R. p.192, lines 10-21.) Immediately following the exchange, a SWAT team entered following the use of a flash-bang.¹ (R. p.202, lines 2-6.) The CI and the undercover agent got down on the floor, and Appellant ran out the back door. (R. p.202, lines 7-15.) Appellant was apprehended and arrested for trafficking marijuana and cocaine. (R. p.75, lines 22-24; R. pp.1-4.)

Pretrial, Appellant moved to suppress the evidence. (R. p.17, line 15.) The State called NET officer Brannon Slice. (R. p.21, line 16-18.) He testified he entered the residence where the drug deal occurred after the SWAT team arrived, at which time he saw marijuana sitting on a table. (R. p.31, lines 21-25.) Agent Slice estimated he waited approximately 15-20 minutes for the search warrant. (R. p.39, lines 10-22.) He testified that no searching of the residence took place until the officers were notified the search warrant was signed. (R. p.41, lines 5-10.)

NET Agent Dennis Tracy testified next. (R. p.44, lines 7-25.) He testified he was the one who typed the search warrant and took it to Judge Reinhart to be signed. (R. p.48, line 18-R. p.49, line 5.) He explained that afterwards, he called and notified Agent Paige Tucker that the judge had signed it and he was on his way back to the residence.

¹ According to Agent Nicholas Carver, a flashbang is a very loud device that is used to discombulate the occupants in a situation like this. (R. p.202, lines 2-5.)

(R. p.52, lines 17-20.) He testified that when he arrived back at the residence, agents were searching. (R. p.60, lines 18-25.)

The State then called Agent Nicholas Carver, an undercover NET agent who participated in the drug deal while wearing a recording device. (R. p.62, line 18-R. p.63, line 22; R. p.65, lines 2-7.) After he made the drug exchange with Appellant, he testified that he could have arrested Appellant right then because the drug deal occurred in his presence and he was in the residence by consent. (R. p.72, line 23-R. p.73, line 17.) Agent Carver testified no one was searching the house during the time he was removed from the home; rather, they were clearing out the house and removing the people. (R. p.76, lines 5-17.) He verified he heard Agent Setree's voice on the audiotape from the incident. (R. p.76, lines 18-20.) He explained Agent Setree was telling him what he could have done better because Carver was new. (R. p.76, line 21-R. p.77, line 5.) Specifically, Agent Carver testified there was no search going on, but that Agent Setree was making sure and telling him, "[W]e don't do that[;] that's not what we do." (R. p.77, lines 6-10.) He testified that when the officers came in to make the arrest, the marijuana was readily visible. (R. p.77, lines 15-17.) Agent Carver explained that everyone was concerned about where the cocaine went and thought Appellant might have grabbed it when running out the back door. (R. p.77, line 20-R. p.78, line 7.) Carver testified that the officers were looking around the backyard for Appellant and the cocaine. (R. p.78, lines 8-11.) He testified the officers ultimately discovered the cocaine in the book bag he had brought the marijuana in, which was lying open on the floor next to the kitchen island. (R. p.78, lines 15-24.)

On cross-examination, Agent Carver stated no one was searching between the time he was taken out of the house and the time he returned, which was approximately

five minutes. (R. p.89, lines 12-22.) Carver testified nobody was searching while they were waiting for the search warrant. (R. p.90, lines 13-23.) He testified that on the recording, Agent Setree is heard correcting Officer Lance, a SWAT team member, because he “looked over something.” (R. p.90, line 24-R. p.91, line 9.) He testified that Agent Setree told the officer, “Don’t do that.” (R. p.91, lines 5-6.)

The next to testify was Agent Brian Setree of the NET. (R. p.93, line 24.) He testified that no one in the house was searching following Appellant’s arrest. (R. p.96, line 24-R. p.97, line 1.) He explained that the cocaine was on the kitchen counter and then was no longer there and that the SWAT team was looking for it in the backyard because they thought Appellant had taken it when he ran. (R. p.97, line 19-R. p.98, line 4.) Setree testified he was heard on the recording calming the SWAT team down by telling them not to worry about the cocaine because they were getting a search warrant. (R. p.98, lines 14-19.) He further testified he was critiquing what they do and why they do things a certain way in the portion of the recording when he was speaking to Agent Carver. (R. p.98, lines 20-23.) He testified he told other officers, “Don’t worry about looking for this cocaine. We’ll find this cocaine.” (R. p.100, lines 2-3.) Setree clarified that no one was going through any cabinets or looking under any furniture. (R. p.100, lines 4-5.) He explained that because the drug transaction had already gone down at that point, the cocaine had essentially already been seized and the search warrant was to be used to recover any other evidence related to the case. (R. p.100, lines 5-10.) He testified that because two felonies were conducted in the presence of a police officer, the only reason they even needed the search warrant was to search for things tying Appellant to the residence. (R. p.100, lines 11-17.) The trial court listened to the recording from

the audio recording device worn by Agent Carver during the drug transaction. (R. p.27, line 25-R. p.28, line 1; R. p.29, lines 22-25; R. p.110-112.)

Appellant argued officers searched prior to obtaining a search warrant. (R. p.113, lines 1-10.) The State clarified that it was only introducing the drugs and possibly some letters with Appellant's name on them, but that it would not try to introduce other items found such as guns and bullets. (R. p.114, lines 1-6.) Appellant argued the issue was whether the cocaine was seized incident to arrest or during a search. (R. p.114, lines 7-14.) The trial court pointed out that the CI and undercover agent were invited into the house and that the contraband was in clear view. (R. p.114, lines 15-22.) Appellant then specifically stated, "Your Honor, but there are other exhibits which they're intending to introduce aside from that." (R. p.115, lines 6-8.) The State again stated it would only introduce envelopes with Appellant's name on them. (R. p.115, lines 12-16.) The trial court noted that was not contraband but was merely identification. (R. p.115, line 25-R. p.116, line 1.) The trial court determined the cocaine and marijuana would be admitted and cautioned the State to let him know if it intended to introduce anything else so he could rule on it outside the presence of the jury. (R. p.119, lines 5-15.) The trial court denied the motion to suppress. (R. p.119, lines 20-23.)

At trial, the State called Brannon Slice, the NET agent who planned the controlled drug exchange. (R. p.124, line 19-25; R. p.127, lines 14-24.) He explained how he placed a wire on the CI and an audio recording device and videotaping device on Agent Carver. (R. p.137, line 24-R. p.138, line 4.) He testified he mistakenly did not turn on the video recorder. (R. p.138, line 4.) After Appellant objected to Agent Slice's testifying to what was found in the residence, a proffer was presented and the trial court

allowed him to testify that he found a duffle bag of marijuana, a bale of marijuana on the counter, and cocaine in a bag in plain view. (R. p.151, line 17-R. p.164, line 15.)

Next, the State called Agent Nicholas Carver. (R. p.184, line 25.) Agent Carver explained his undercover role as a drug dealer. (R. p.197, lines 7-13.) He testified Appellant told him he wanted 1000 pounds of marijuana next time and explained to Carver how to keep the cocaine in a brick. (R. p.196, lines 12-14; R. p.197, line 21-R. p.198, line 3.) Agent Carver testified Appellant was supposed to trade twenty-five ounces of cocaine for the fifty pounds of marijuana but added two extra ounces. (R. p.199, lines 4-17.) He testified that when the SWAT team activated the flash-bang device, he and the CI got on the floor and Appellant ran out the back door. (R. p.202, lines 2-15.) He stated the cocaine was on the edge of the counter when the bust took place but was not there afterwards. (R. p.204, lines 6-12.) He testified the cocaine ended up in the open book bag that had contained the marijuana before it was removed. (R. p.204, lines 13-23.) Agent Carver testified officers were looking in the backyard for the cocaine at first. (R. p.206, line 23-R. p.207, line 4.) He verified that as an officer, he could have arrested Appellant on his own immediately after the drug exchange. (R. p.217, lines 19-21.)

On cross-examination, Appellant asked Agent Carver whether the audio recording indicated the officers were searching the house prior to obtaining the search warrant, and he said no one was searching prior to issuance of the search warrant. (R. p.246, line 20-R. p.247, line 4.) He clarified the officers were looking for a known item that could not be located but had already been identified during a transaction that took place in front of an officer. (R. p.247, lines 6-12.)

Next, the State called Agent Brian Setree. (R. p.251, line 20.) Agent Setree testified he was the senior NET agent involved in the drug transaction on June 5, 2011. (R. p.252, line 18-R. p.253, line 9.) He testified regarding what he was heard saying on the audio recording. (R. p.256, lines 7-11.) Setree testified that he thought the video recorder was on and admitted saying the video should have been turned off. (R. 256, lines 16-25; R. p.257, lines 15-22.) On the stand, he admitted the audio recorder was left on even though it should have been turned off after the bust. (R. p.258, lines 14-23.) Agent Setree testified he could be heard on the audiotape telling the SWAT agents, who were panicked because the cocaine was no longer on the counter, not to worry about the cocaine because they were getting a search warrant for the residence anyway. (R. p.259, lines 6-25.) He testified he told them, “[I]f it’s not in plain view on the inside of the residence, don’t worry about it. We’ll find it once we obtain the search warrant.” (R. p.260, lines 1-5.) Agent Setree also testified to being present when Agent Barnes saw the cocaine in the book bag in plain view because the bag was open. (R. p.261, lines 7-14.)

The State called D. I. Blackwell, a deputy sheriff with the Lexington County Sheriff’s Department, who analyzed the marijuana and testified it weighed fifty-one pounds. (R. p.249, line 22-R. p.293, line 4.) The next to testify was Paige Barnes (formerly Tucker), another NET agent. (R. p.293, line 21-R. p.294, line 10; R. p.297, line 19-R. p.298, line 7.) She testified she found the cocaine in an open book bag after looking near the counter where she was told by Agent Carver it had been before. (R. p.296, lines 4-25; R. p.297, 1-4.) She testified she waited for the search warrant for about thirty minutes. (R. p.298, lines 16-24.)

Finally, the State called Emily Homer Conrad, a chemist with the Lexington County Sheriff’s Department. (R. p.308, lines 4-16.) She was qualified as an expert in

forensic analysis of drugs, to include cocaine. (R. p310, line 17-R. p.311, line 6.) She testified the cocaine was sealed in a Best evidence kit when she received it from Candy Kyzer, an evidence custodian for the Lexington County Sheriff's Department, on June 6, 2011. (R. p.311, line 13-R. p.313, line 1.) She testified the two packages in the Best kit were cocaine and weighed 709 grams and 42.34 grams. (R. p.314, line 19-R. p.315, line 3.)

At the close of the State's evidence, Appellant moved for a directed verdict, arguing:

Your Honor, we would move for directed verdict of not guilty. The evidence taken in the light most favorable to the State and viewed in favor of the State would be insufficient as a matter of law for this jury to return a verdict of guilty in regards to either indictment, that is, trafficking in marijuana and the other being trafficking in cocaine.

(R. p.324, line 21-R. p.325, line 2.) The trial court denied the motion. (R. p.326, line 10.) Ultimately, the jury found Appellant guilty of both charges, and the trial court sentenced him to ten years' imprisonment on the marijuana charge and twenty-five years' imprisonment on the cocaine charge, to be served concurrently. (R. p.340-341; 343.)

ARGUMENTS

I.

The trial court properly denied Appellant's motion to suppress the drug evidence because it was seized lawfully as the result of a transaction that took place in the presence of a law enforcement officer and was found under the plain view exception to the Fourth Amendment rule prohibiting warrantless searches.

Appellant argues the trial court erred in denying his motion to suppress the drug evidence because it was obtained as a result of an unlawful search. Specifically, he argues officers searched prior to the procurement of a search warrant in violation of the Fourth Amendment. On the contrary, the drug evidence was obtained as the result of the drug deal taking place in the presence of an officer who was inside the residence by Appellant's consent and, thus, no search warrant was required to seize the drugs. Furthermore, the drugs were discovered in plain view, so no search was conducted to locate them. The officers did not begin searching the residence until one of the officers reported back that a judge had signed the search warrant and, because the drugs had already been seized by then, the drugs were not obtained as part of this lawful search. Therefore, the trial court properly denied Appellant's motion to suppress the drug evidence.

In criminal cases, the appellate court sits to review errors of law only. State v. Butler, 353 S.C. 383, 388, 577 S.E.2d 498, 500 (Ct. App. 2003). In Fourth Amendment search and seizure cases, the appellate court is limited to determining if there is *any* evidence to support the trial court's findings and can only reverse due to clear error. State v. Flowers, 360 S.C. 1, 5, 598 S.E.2d 725, 727 (Ct. App. 2004) (emphasis added); State v. Bowman, 366 S.C. 485, 501, 623 S.E.2d 378, 386 (2005). The appellate

court will not reverse merely because it would have reached a different conclusion than the trial judge. State v. Rivera, 384 S.C. 356, 361, 682 S.E.2d 307, 310 (Ct. App. 2009). The reviewing court may conduct its own review of the record to determine whether the trial judge's ruling is supported by the evidence. State v. Khingratsaiphon, 352 S.C. 62, 70, 572 S.E.2d 456, 460 (2002). However, the appellate court *must* affirm the trial court if there is any evidence in the record to support the ruling. State v. Pichardo, 367 S.C. 84, 96, 623 S.E.2d 840, 846 (Ct. App. 2005) (emphasis added).

The Fourth Amendment protects “[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.” U.S. Const. amend. IV. However, “[t]he purpose of the Fourth Amendment is not to eliminate all contact between the police and the citizenry, but ‘to prevent arbitrary and oppressive interference by enforcement officials with the privacy and personal security of individuals.’” United States v. Mendenhall, 446 U.S. 544, 553-54 (1980) (quoting United States v. Martinez-Fuerte, 428 U.S. 543, 554 (1976)).

The Fourth Amendment's exclusionary rule prohibits unreasonable searches and seizures. U.S. Const. amend. IV; see also S.C. Const. art. I, § 10. Any evidence seized as the result of an unreasonable search and seizure must be excluded from trial. State v. Weaver, 374 S.C. 313, 319, 649 S.E.2d 479, 482 (2007). “Generally, a warrantless search is per se unreasonable and thus violative of the Fourth Amendment's prohibition against unreasonable searches and seizures.” State v. Bultron, 318 S.C. 323, 331, 457 S.E.2d 616, 621 (Ct. App. 1995). However, a warrantless search may be constitutional if it falls within a recognized exception. Id. at 331-32, 457 S.E.2d at 621. South Carolina courts have recognized several exceptions to the warrant requirement, including: (1) search incident to a lawful arrest; (2) “hot pursuit”; (3) stop and frisk; (4) the automobile

exception; (5) the “plain view” doctrine; and (6) consent. State v. Bailey, 276 S.C. 32, 36, 274 S.E.2d 913, 915 (1981). Additionally, exigent circumstances can justify a warrantless search of a home which would otherwise be unreasonable. State v. Herring, 387 S.C. 201, 209, 692 S.E.2d 490, 494 (2009). Under the plain view exception, “a law enforcement officer who is lawfully in a position to view [an] object” may seize it. State v. Abdullah, 357 S.C. 344, 352, 592 S.E.2d 344, 349 (Ct. App. 2004). The plain view doctrine applies when “(1) the initial intrusion which afforded the authorities the plain view was lawful; (2) the discovery of the evidence was inadvertent; and (3) the incriminating [nature of the] evidence was immediately apparent to the seizing authorities.” Id. at 352-53, 592 S.E.2d at 349 (quoting State v. Culbreath, 300 S.C. 232, 237, 387 S.E.2d 255, 257 (1990)). The United States Supreme Court has eliminated the requirement that the discovery be inadvertent, as long as the seizure meets the other two requirements. Id. at 353 n.5, 592 S.E.2d at 349 n.5 (citing Horton v. California, 496 U.S. 128, 130 (1990)).

A police officer may, without a warrant, arrest a person who commits a crime in his presence. State v. Tyndall, 336 S.C. 8, 16, 518 S.E.2d 278, 282 (Ct. App. 1999) (citing State v. Mims, 263 S.C. 45, 208 S.E.2d 288 (1974) (officer has power and authority to arrest without warrant those who have committed violation of criminal laws of this State within view of such officer)).

Here, ample evidence exists to support the trial court’s denial of Appellant’s motion to suppress the drug evidence. The trial court held a thorough suppression hearing, during which multiple witnesses testified. Initially, Agent Nicholas Carver, the undercover agent who participated in the drug deal, testified he could have arrested Appellant immediately following the deal because it occurred in his presence and he was

inside the residence by consent. However, he also testified that no one was searching the house during the time he was removed, that officers were merely clearing out the house and removing the people, and that no one was searching while they all waited for the search warrant. Agent Carver explained that officers were merely looking around the backyard for both Appellant and the cocaine after Appellant fled. He testified that when the officers entered the residence, the marijuana was readily visible. Agent Brannon Slice also testified that when he first entered the residence following the SWAT team's arrival, the marijuana was sitting on a table in plain view. He further testified no searching took place until Agent Dennis Tracy called on the way back from obtaining the judge's signature and notified the officers the search warrant had been issued by the judge. Agent Tracy verified he had made that telephone call and that when he reached the residence, officers were searching.

Agent Brian Setree also verified that no one was searching the house following Appellant's arrest. However, he did state that SWAT officers were looking for the cocaine in the backyard because they thought Appellant had grabbed it when he ran. He admitted he told the SWAT team not to worry about finding the cocaine because they were getting a search warrant. He testified that even when he said something on the audiotape about "looking for the cocaine," no one was going through cabinets or looking under any furniture. Agent Setree pointed out that because two felonies were conducted in the presence of Agent Carver, the search warrant was not necessary to obtain the drugs but would likely be used to look for items that might connect Appellant to the residence.

First, the testimony demonstrates the drug evidence was obtained without the need for a search warrant because the transaction occurred in the presence of Agent Carver, who had the authority to arrest Appellant as soon as the exchange took place.

Second, the marijuana was in plain view when the officers lawfully entered the residence when attempting to arrest Appellant during the drug bust. In addition to the lawful entry to arrest, Agent Carver was lawfully in the residence by consent. Under either scenario, the initial intrusion that afforded the plain view was lawful. Similarly, the cocaine was located in plain view in an open book bag without having to search underneath items or manipulate items. Thus, the drug evidence fell within the plain view exception to the exclusionary rule and was properly admitted. See Abdullah, 357 S.C. at 353 n.5, 592 S.E.2d at 349 n.5 (noting the United States Supreme Court has eliminated the requirement that the discovery be inadvertent, as long as the seizure meets the other two requirements that the initial intrusion was lawful and the incriminating nature of the evidence was immediately apparent).

In sum, the trial court properly denied Appellant's motion to suppress the drug evidence, determining the drugs were obtained lawfully because the exchange occurred in the presence of an officer who was invited into the house and the drugs were in plain view. (R. p.114, lines 15-22.) Therefore, this Court should affirm the trial court's denial of Appellant's motion to suppress the drug evidence.

II.

Appellant's specific arguments regarding a lack of evidence establishing more than a suspicion, dominion or control, and mere presence are not preserved for review, but even if preserved, the trial court properly denied Appellant's motion for a directed verdict because the State presented sufficient evidence to establish Appellant's guilt on both trafficking charges.

Appellant argues the trial court erred in denying his directed verdict motion because the State did not present evidence sufficient to (1) prove more than a suspicion of guilt, (2) establish Appellant had dominion or control over the alleged drug evidence, or (3) establish more than mere presence. However, Appellant did not make these specific arguments at trial; rather, he simply stated the evidence would be insufficient to return a guilty verdict. Accordingly, these particular arguments are not preserved for appellate review. In any case, the State did present sufficient evidence showing Appellant was guilty of both crimes. Thus, the trial court correctly denied the directed verdict motion and allowed the case to be submitted to the jury for resolution.

In criminal cases, the appellate court sits to review errors of law only. State v. Wilson, 345 S.C. 1, 5, 545 S.E.2d 827, 829 (2001). "When ruling on a motion for a directed verdict, the trial court is concerned with the existence or nonexistence of evidence, not its weight." State v. Weston, 367 S.C. 279, 292, 625 S.E.2d 641, 648 (2006). When reviewing a trial court's denial of a defendant's motion for a directed verdict, an appellate court must view the evidence in a light most favorable to the State. State v. Venters, 300 S.C. 260, 264, 387 S.E.2d 270, 272 (1990). An appellate court must find a case is properly submitted to the jury if any direct evidence or any substantial circumstantial evidence reasonably tends to prove the guilt of the accused. Weston, 367

S.C. at 292-93, 625 S.E.2d at 648. An appellate court may reverse a trial court's denial of a motion for a directed verdict if there is no evidence to support the trial court's ruling or if the ruling is based on an error of law. State v. Dantonio, 376 S.C. 594, 603, 658 S.E.2d 337, 342 (Ct. App. 2008). “[U]nless there is a total failure of evidence tending to establish the charge laid in the indictment, the trial judge’s ruling upon a motion for a directed verdict must stand absent an error of law.” State v. Nix, 288 S.C. 492, 496, 343 S.E.2d 627, 629 (Ct. App. 1986) (emphasis added).

“In reviewing a denial of directed verdict, issues not raised to the trial court in support of the directed verdict motion are not preserved for appellate review. A defendant cannot argue on appeal an issue in support of his directed verdict motion when the issue was not presented to the trial court below.” State v. Kennerly, 331 S.C. 442, 455, 503 S.E.2d 214, 221 (Ct. App. 1998). See State v. Bailey, 298 S.C. 1, 5, 377 S.E.2d 581, 584 (1989) (“A party cannot argue one ground for a directed verdict in trial and then an alternative ground on appeal.”).

The only grounds Appellant argued in his motion for directed verdict at trial were as follows:

Your Honor, we would move for directed verdict of not guilty. The evidence taken in the light most favorable to the State and viewed in favor of the State would be insufficient as a matter of law for this jury to return a verdict of guilty in regards to either indictment, that is, trafficking in marijuana and the other being trafficking in cocaine.

(R. p.324, line 21-R. p.325, line 2.) He did not argue the State raised only a mere suspicion of his guilt, nor did he argue the State failed to establish Appellant had dominion or control over the alleged drug evidence or failed to establish more than mere presence. Thus, these specific issues are not preserved for review. See Kennerly, 331

S.C. at 455, 503 S.E.2d at 221 (noting issues not raised to the trial court in support of a directed verdict motion are not preserved for appellate review).

Addressing the merits, the trial court properly denied the directed verdict motion because sufficient evidence existed to establish Appellant's guilt as to both charges, raising much more than a mere suspicion. Agent Carver testified about his role as the undercover drug dealer who exchanged fifty pounds of marijuana for twenty-seven ounces of cocaine. The audiotape provided evidence of Appellant's participation in the drug deal. Appellant was even heard asking for 1,000 pounds of marijuana for the next deal. He is also heard giving Agent Carver two extra ounces of cocaine and telling him how to work with the cocaine when he unwraps it. The State called D. I. Blackwell, a deputy sheriff with the Lexington County Sheriff's Department, and Emily Homer Conrad, a chemist with the department, to testify regarding the weight of the drugs: 51 pounds of marijuana and a total of 751.34 grams of cocaine.

In regard to proving dominion or control over the drugs, Agent Carver established this element when he testified about how the drug exchange took place. Further evidence of that transaction was provided on the audiotape. The details of the drug deal itself demonstrate Appellant's dominion and control over the drugs when he invited Agent Carver and the CI into the home and engaged in a drug transaction by taking the fifty pounds of marijuana in exchange for twenty-seven ounces of cocaine. In regard to Appellant's mere presence argument, as noted earlier, this was not argued at trial. Regardless, it is clear from the testimony and the audiotape that Appellant was an active participant in the drug deal and was not merely present. Thus, this argument has no merit. Notably, mere presence was part of the jury instructions per Appellant's request. (R. p.336, lines 1-8; R. p.339, lines 2-19.)

In sum, sufficient evidence existed to support the denial of Appellant's directed verdict motion, and the trial court properly submitted the case to the jury for its resolution. Contrary to what is required before a directed verdict should be granted, Appellant's case did not present a complete failure of evidence of his guilt. See State v. Brown, 205 S.C. 514, 520, 32 S.E.2d 825, 827 (1945) ("Where there is any evidence, however slight, on which the jury may justifiably find the existence or the non-existence of material facts in issue, or if the evidence is of such character that different conclusions as to such facts reasonably may be drawn therefrom, the issues should be submitted to the jury.").

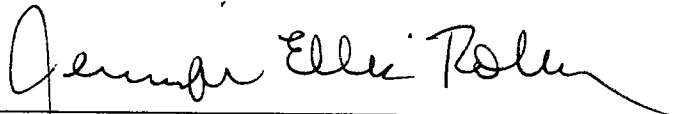
CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

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ATTORNEYS FOR RESPONDENT

July 23, 2013

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Lexington County
Honorable Alexander S. Macaulay, Circuit Court Judge

Appellate Case No: 2012-213383

THE STATE,

Respondent,

v.

BENJAMIN J. NEWMAN,

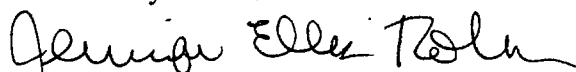
Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR.

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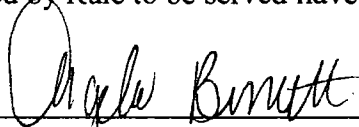
Appellant.

PROOF OF SERVICE

I, Angela Bennett, certify that I have served the within Final Brief of Respondent on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Benjamin A. Stitely, Esquire
Robert T. Williams, Esquire
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I further certify that all parties required by Rule to be served have been served.
This 23rd day of July, 2013.


ANGELA BENNETT
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